UNITED STATES CODE

1970 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 20, 1971

Prepared and published under authority of Title 1, U.S. Code, Section 202 (c)
by the Committee on the Judiciary of the House of Representatives

VOLUME TWO

TITLE 8—ALIENS AND NATIONALITY

TO

TITLE 11—BANKRUPTCY

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

For Sale by the
Superintendent of Documents
U.S. Government Printing Office, Washington, D.C. 20402
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COMMITTEE ON THE JUDICIARY

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TITLES OF UNITED STATES CODE

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*This title has been enacted as law.
†This title has been eliminated by the enactment of Title 10.

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PREFACE—1970 EDITION

This eighth edition of the United States Code was prepared and published pursuant to section 202 (c) of Title 1 of the Code. It contains a consolidation and codification of all the general and permanent laws of the United States which are in force on January 20, 1971. By statutory authority this edition may be cited "U.S.C. 1970 ed." Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, and 1964.

Inasmuch as many of the general and permanent laws which are required to be incorporated in this Code are inconsistent, redundant, and obsolete, the Committee on the Judiciary is engaged in a comprehensive project of revising and enacting the Code into law, title by title. In furtherance of this plan bills have been enacted to revise, codify and enact into law Titles 1, 3, 4, 5, 6, 9, 10, 13, 14, 17, 18, 23, 28, 32, 35, 37, 38, 39, and 44. In addition, bills relating to other titles are also being prepared for introduction. When this work is completed all the titles of the Code will be legal evidence of the general and permanent law and recourse to the numerous volumes of the Statutes at Large for this purpose will be unnecessary.

The title and chapter structure of the 1964 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1964.

In this edition numerous notes have been added captioned "Section referred to in other sections". These notes have been inserted following each section that is referred to in the text of another section, indicating the section that contains the internal reference. They should be extremely useful to the Congress, the bench and bar, and the public.

The actual work of preparing and editing the material for this edition was done by the West Publishing Co. of St. Paul, Minnesota, under the supervision of the Committee on the Judiciary of the House of Representatives. West Publishing Co. prepared the original Code which Congress enacted in 1926 and has continuously served the Committee since that time in the preparation of the authorized new editions and Supplements to the Code. Grateful acknowledgment is made to the editorial and manuscript staffs of the publishing company and of Joseph Fischer, Esq., the law revision counsel for the Committee, and his staff for their untiring efforts to make this edition as nearly perfect as possible. Acknowledgment of valuable assistance is made also to various officers of Government departments and agencies and the Government Printing Office for their helpful suggestions and criticisms.

The Committee on the Judiciary invites criticisms or suggestions with the view of improving the Code wherever possible. It is hoped that the program of enacting the entire Code, title by title, to improve its present status as merely prima facie evidence of the law, will meet with early success.

Emanuel Celler

Chairman,
Committee on the Judiciary.

Robert W. Kastenmeier

Chairman, Subcommittee No. 3,
Committee on the Judiciary.

WASHINGTON, D.C., *January 2, 1971.*

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CROSS REFERENCES

Enemy aliens, see chapter 3 of Title 50, War and National Defense.

Chapter 1.—GENERAL PROVISIONS

§§ 1 to 18. Repealed or Omitted.

These sections, relating to citizenship, were affected by the Nationality Act of 1940, former section 501 et seq. of this title.

That act was passed on Oct. 14, 1940, to consolidate and restate the laws of the United States regarding citizenship, naturalization, and expatriation, and, in addition to certain specific repeals thereby, all acts or parts of acts in conflict with its provisions were repealed by former section 904 of this title. See the notes below for history of individual sections.

SECTION 1, relating to citizenship of persons born in the United States, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from R. S. § 1922, which was revised from act Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27. Similar provisions were contained in former section 601 (a) of this title, and present provisions are contained in section 1401 of this title.

SECTION 2, related to citizenship of persons born in Territory of Oregon. It was from R. S. § 1995, which was revised from act May 18, 1872, ch. 172, § 3, 17 Stat. 134.

SECTIONS 3—3c, related to citizenship of Indians. Section 3 was from acts Feb. 8, 1887, ch. 119, § 6, 24 Stat. 390; Mar. 3, 1901, ch. 868, 31 Stat. 1447; May 8, 1906, ch. 2348, 34 Stat. 182; Nov. 6, 1919, ch. 95, 41 Stat. 350; Mar. 3, 1921, ch. 120, § 3, 41 Stat. 1250; June 2, 1924, ch. 233, 43 Stat. 253; Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1173. Section 3a was from act June 19, 1930, ch. 544, 46 Stat. 787. Section 3b was from acts May 7, 1934, ch. 221, § 1, 48 Stat. 667; July 23, 1947, ch. 304, § 1, 61 Stat. 414. Section 3c was from act May 7, 1934, ch. 221, § 2, 48 Stat. 667.

SECTION 4, related to citizenship of Hawaiians. It was from act Apr. 30, 1900, ch. 339, § 4, 31 Stat. 141. Present provisions are contained in section 1405 of this title.

SECTIONS 5 and 5a, related to citizenship of Puerto Ricans. They were from act Mar. 2, 1917, ch. 145, §§ 5, 5a, respectively, 39 Stat. 953, as amended Mar. 4, 1927, ch. 503, § 2, 44 Stat. 1418; May 17, 1932, ch. 190, 47 Stat. 158. Present provisions are contained in section 1402 of this title.

SECTION 5a-1, making a further extension of time for Puerto Ricans to become citizens in cases of misinformation regarding status, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1174. It was from act May 16, 1938, ch. 225, 52 Stat. 377. Present provisions are contained in section 1402 of this title.

SECTIONS 5b and 5c, related to citizenship of inhabitants of the Virgin Islands. They were from act Feb. 25, 1927, ch. 192, §§ 1, 3, respectively, 44 Stat. 1234, 1235, as amended May 17, 1932, ch. 190, 47 Stat. 158; June 28, 1932, ch. 283, § 5, 47 Stat. 336. Present provisions are contained in section 1406 of this title.

SECTIONS 5d—9a were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 5d and 5e, relating to citizenship of persons born in Canal Zone or Panama, were from act Aug. 4, 1937, ch. 563, §§ 1, 2, respectively, 50 Stat. 558; present provisions are contained in section 1403 of this title. Section 6, relating to citizenship of children born outside the United States, was from R. S. § 1993 (revised from acts Apr. 14, 1802, ch. 28, § 4, 2 Stat. 155; Feb. 10, 1855, ch. 71, § 1, 10 Stat. 604); act Mar. 2, 1907, ch. 2534, §§ 6, 7, 34 Stat. 1229, as amended May 24, 1934, ch. 344, § 1, 48 Stat. 797; present provisions are contained in sections 1431—1433 of this title. Section 7, relating to citizenship of children of persons naturalized under certain laws, was from R. S. § 2172, which was revised from act Apr. 14, 1802, ch. 28, § 4, 2 Stat. 155; present provisions are contained in section 1432 of this title. Section 8, relating to citizenship, upon parent's naturalization, of children born abroad of alien parents, was from act Mar. 2, 1907, ch. 2534, § 5, 34 Stat. 1229, as amended May 24, 1934, ch. 344, § 2, 48 Stat. 797; present provisions are contained in section 1432 of this title. Section 9, relating to citizenship of women citizens as affected by marriage, was from acts Sept. 22, 1922, ch. 411, § 3 (a), 42 Stat. 1022; July 3, 1930, ch. 835, § 1, 46 Stat. 854; Mar. 3, 1931, ch. 442, § 4 (a), 46 Stat. 1511; present provisions are contained in section 1435 of this title. Section 9a, relating to repatriation of native-born women married to aliens prior to Sept. 22, 1922, was from act June 25, 1936, ch. 801, 49 Stat. 1917, as amended July 2, 1940, ch. 509, 54 Stat. 715; present provisions are contained in section 1435 (c) of this title.

SECTION 10, related to the effect of certain repeals on citizenship of women marrying citizens. It was from act Sept. 22, 1922, ch. 411, § 6, 42 Stat. 1022.

SECTIONS 11 and 12, related to forfeiture of citizenship for desertion from armed forces. Section 11 was from R. S. § 1998 (revised from act Mar. 3, 1865, ch. 79, § 21, 13 Stat. 490) as amended by acts Aug. 22, 1912, ch. 336, § 1, 37 Stat. 356; Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 12 was from R. S. §§ 1996, 1997, which were revised from acts Mar. 3, 1865, ch. 79, § 21, 13 Stat. 490, and July 19, 1867, ch. 28, 15 Stat 14, respectively; present provisions are contained in sections 1481 and 1483 of this title.

SECTIONS 13 and 14, relating to the protection of citizens when abroad, were transferred to sections 1731 and 1732 of Title 22, Foreign Relations and Intercourse.

SECTION 15, R. S. § 1999, relating to right of expatriation, is now covered by sections 1482 and 1483 of this title.

SECTIONS 16—18, relating to loss of citizenship, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 16 was from act Mar. 2, 1907, ch. 2534, § 2, 34 Stat. 1228. Section 17 was from act Mar. 2, 1907, ch. 2534, §§ 2, 7, 34 Stat. 1228, 1229; present provisions are contained in sections 1481 (a), 1482 and 1484 of this title. Section 17a was from act May 24, 1934, ch. 344, § 3, 48 Stat. 797; present provisions are contained in section 1481 (a) of this title. Section 18 was from acts June 29, 1906, ch. 3592, § 4 (12), 34 Stat. 596; May 9, 1918, ch. 69, § 1, 40 Stat. 545; June 21, 1930, ch. 559, 46 Stat. 791; present provisions are contained in sections 1438 (a), 1454, 1455 and 1459 of this title.

Chapter 2.—ELECTIVE FRANCHISE

§§ 31, 32. Transferred.

CODIFICATION

Sections 31 and 32 transferred to sections 1971 and 1972, respectively, of Title 42, The Public Health and Welfare.

Chapter 3.—CIVIL RIGHTS

§§ 41 to 43. Transferred.

CODIFICATION

Sections 41—43 transferred to sections 1981—1983, respectively, of Title 42, The Public Health and Welfare.

§§ 44, 45. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 44, act Mar. 1, 1875, ch. 114, § 4, 18 Stat. 336, related to exclusion of jurors on account of race or color, and is now covered by section 243 of Title 18, Crimes and Criminal Procedure.

Section 45, acts Mar. 1, 1875, ch. 114, § 3, 18 Stat. 336; May 28, 1896, ch. 252, § 19, 29 Stat. 184, related to prosecutions for banning jurors because of race or color, and is now covered by section 243 of Title 18, Crimes and Criminal Procedure.

§§ 46 to 51. Transferred.

CODIFICATION

Sections 46—51 transferred to sections 1984—1990, respectively, of Title 42, The Public Health and Welfare.

§ 52. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.

Section R. S. § 1986; acts May 28, 1896, ch. 252, § 6, 29 Stat. 179; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099, related to fees of district attorneys, marshals, and clerks of court.

§§ 53 to 56. Transferred.

CODIFICATION

Sections 53—56 transferred to sections 1991—1994, respectively, of Title 42, The Public Health and Welfare.

Chapter 4.—FREEDMEN

§§ 61 to 65. Omitted.

CODIFICATION

Section 61, R. S. 2032, related to continuation of laws then in force, and is omitted as obsolete.

Section 62, R. S. 2033, related to enforcement of laws by former Secretary of War, and is omitted as obsolete.

Section 63, acts Mar. 3, 1879, ch. 182, § 2, 20 Stat. 402; Feb. 1, 1888, ch. 4, § 1, 25 Stat. 9; July 1, 1898, ch. 546, 30 Stat. 640, related to claims for pay or bounty, and is omitted as obsolete.

Section 64, act July 1, 1902, ch. 1351, 32 Stat. 556, related to retained bounty fund, and is omitted as obsolete.

Section 65, R. S. § 2037, related to wives and children of colored soldiers, and is omitted as executed.

Chapter 5.—ALIEN OWNERSHIP OF LAND

§§ 71 to 78. Transferred.

CODIFICATION

Sections 71 to 78 transferred to sections 1501 to 1508, respectively, of Title 48, Territories and Insular Possessions.

§§ 79 to 82. Omitted.

CODIFICATION

Sections 79 to 82 related to alien ownership of real estate in the District of Columbia. Sections 79 to 81 were from act Mar. 3, 1887, ch. 340, §§ 1, 2, 4, respectively, 24 Stat. 476, 477, as specifically excepted from amendment by act Mar. 2, 1897, ch. 363, 29 Stat. 618 (for said act Mar. 3, 1887, as amended by the 1897 act, see sections 1501 to 1507 of Title 48, Territories and Insular Possessions); and section 82 was from act Mar. 9, 1888, ch. 30, 25 Stat. 45.

Sections 1, 2 and 4 of the 1887 act, and the act of 1888 were incorporated in sections 396—398 of the District of Columbia Code enacted by act Mar. 3, 1901, ch. 854, 31 Stat. 1252, and amended by act June 30, 1902, ch. 1329, 32 Stat. 530. Said sections 396—398 of the 1901 D. C. Code, as so amended, were omitted from the 1929 D. C. Code as having been superseded by section 1508 of Title 48, Territories and Insular Possessions, but they were set out as sections 45-1502, 45-1503 and 1504 of the 1940 and 1951 D. C. Codes, and said act of 1888 was set out as section 45-1505 of such Codes.

§§ 83 to 86. Transferred.

CODIFICATION

Sections 83 to 86 transferred to sections 1509 to 1512, respectively, of Title 48, Territories and Insular Possessions.

Chapter 6.—IMMIGRATION

SUBCHAPTER I.—IMMIGRATION AND NATURALIZATION AGENCIES, OFFICERS, AND STATIONS

§§ 100, 101. Transferred.

CODIFICATION

Section 100 transferred to section 1551 of this title.
Section 101 transferred to section 1552 of this title.

§ 102. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (13), 66 Stat. 279, eff. Dec. 24, 1952.

Section, acts Feb. 5, 1917, ch. 29, § 23, 39 Stat. 892; May 14, 1937, ch. 181, 50 Stat. 164; Oct. 29, 1945, ch. 438, 59 Stat. 551; Oct. 15, 1949, ch. 695, § 5 (a), 63 Stat. 880, related to the administration of immigration laws and is now covered by sections 1103 (a) (b), 1228 (b) and 1260 of this title.

§ 103. Commissioner of Immigration and Naturalization; administration of alien contract labor laws.

CODIFICATION

Section, acts Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to the administration of alien contract laws, was transferred to section 342h of former Tile 5, Executive Departments and Government Officers and Employees, omitted as obsolete, and repealed by section 403(b) of act June 27, 1952, ch. 477, 66 Stat. 280, set out as a note under section 1101 of this title. See, also, section 1103 of this title.

§ 103a. Reimbursement of expenses incurred by other agencies of federal, state, and local governments.

Section, act July 9, 1947, ch. 211, title II, § 201, 61 Stat. 292, was from the Department of Justice Appropriation Act, 1948, and was not repeated in the Department of Justice Appropriation Act, 1949, act June 3, 1948, ch. 400, title II, § 201, 62 Stat. 316.

SIMILAR PROVISIONS

Similar provisions were carried in prior appropriation acts as follows:

1946—July 5, 1946, ch. 541, title II, § 201, 60 Stat. 462.
1945—May 21, 1945, ch. 129, title II, § 201, 59 Stat. 185.
1944—June 28, 1944, ch. 294, title II, § 201, 58 Stat. 412.
1943—July 1, 1943, ch. 182, title II, § 201, 57 Stat. 288.
1942—July 2, 1942, ch. 472, title II, § 201, 56 Stat. 483.
1941—June 28, 1941, ch. 258, title III, 55 Stat. 292.

§ 104. Repealed. Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600.

Section, acts June 6, 1900, ch. 791, § 1, 31 Stat. 611; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F. R. 2423, 54 Stat. 1238, provided that the Commissioner of Immigration and Naturalization should have charge, under supervision of the Attorney General, of the administration of the Chinese exclusion laws.

§ 105. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (13), 66 Stat. 279, eff. Dec. 24, 1952.

Section, act Feb. 5, 1917, ch. 29, § 30, 39 Stat. 895, related to the division of information.

§§ 106 to 106c. Repealed. Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172.

Sections, acts June 29, 1906, ch. 3592, § 1, 34 Stat. 596; Mar. 2, 1929, ch. 536, §§ 1—3, 45 Stat. 1512, 1513; Apr. 19, 1934, ch. 154, § 6, 48 Stat. 598; June 8, 1934, ch. 429, 48 Stat. 926; Aug. 7, 1939, ch. 517, 53 Stat. 1243, related to registry of aliens. Similar provisions were contained in former sections 728, 729, 742 (b), and 746 (*l*) of this title. Present provisions are contained in sections 1230 and 1259 of this title.

§ 107. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 637, 642.

Section, acts Aug. 18, 1894, ch. 301, § 1, 28 Stat 391; Aug. 1, 1914, ch. 223, § 1, 38 Stat. 666; June 5, 1920, ch. 235, § 1, 41 Stat. 936, provided for the appointment of commissioners of immigration at the several ports.

§§ 108, 109. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (13), 66 Stat. 279, eff. Dec. 24, 1952.

Section 108, act Feb. 5, 1917, ch. 29, § 23, 39 Stat. 892, related to duties of immigration officers and is now covered by section 1103 (a) of this title.

Section 109, acts Feb. 5, 1917, ch. 29, § 24, 39 Stat. 893; June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 29, 1928, ch. 864, 45 Stat. 954; Feb. 21, 1931, ch. 270, 46 Stat. 1205; May 2, 1932, ch. 156, 47 Stat. 145; June 20, 1942, ch. 426, 56 Stat. 373, related to officers and employees and is now covered by sections 1101 note, 1103 (a) and 1353 of this title.

§§ 109a to 109d. Transferred.

CODIFICATION

Sections 109a to 109d transferred to sections 1353a, 1353b, 1353d, and 1555, respectively, of this title.

§ 110. Repealed. June 27, 1952, ch 477, title IV, § 403 (a) (25), 66 Stat. 279, eff. Dec. 24, 1952.

Section, acts Feb. 27, 1925, ch. 364, title IV, 43 Stat. 1049; Aug. 7, 1946, ch. 768, 60 Stat. 856; Mar. 20, 1952, ch. 108, § 2, 66 Stat. 26, related to arrest of aliens without warrant, and is now covered by section 1357 of this title.

§§ 111, 112. Transferred.

CODIFICATION

Section 111 transferred to section 1554 of this title.

Section 112 transferred to section 3421 of former Title 5, Executive Departments and Government Officers and Employees, and was subsequently repealed.

§ 113. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (13), 66 Stat. 279, eff. Dec. 24, 1952.

Section, act Feb. 5, 1917, ch. 29, § 11a, 39 Stat. 882, related to detail of inspectors on vessels.

§ 114. Lease of immigrant station at Charleston.

CODIFICATION

Section transferred to section 342k of former Title 5, Executive Departments and Government Officers and Employees, and subsequently repealed. See section 1103 of this title.

§§ 115, 116. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (13), 66 Stat. 279, eff. Dec. 24, 1952.

Section 115, act Feb. 5, 1917, ch. 29, § 26, 39 Stat. 894, related to disposal of privileges at immigrant stations, and is now covered by section 1355 (a) of this title.

Section 116, act Feb. 5, 1917, ch. 29, § 27, 39 Stat. 894, related to local jurisdiction over immigrant officers, and is now covered by section 1358 of this title.

§ 117. Repealed. July 1, 1944, ch. 373, title XI, § 1114, 58 Stat. 714.

Section, act July 12, 1943, ch. 221, title II, § 1, 57 Stat. 193, related to use of the hospital at Ellis Island Immigration Station for the care of Public Health Service patients, and is now covered in part by section 1356 (a) of this title.

SIMILAR PROVISIONS

Similar provisions were carried in prior appropriation acts as follows:

1942—July 2, 1942, ch. 475, title II, § 1, 56 Stat. 581.
1941—July 1, 1941, ch. 269, title II, 55 Stat. 481.
1940—June 26, 1940, ch. 428, title II, 54 Stat. 585.
1939—May 6, 1939, ch. 115, title I, § 1, 53 Stat. 668.
1938—Mar. 28, 1938, ch. 55, § 1, 52 Stat. 133.
1937—May 14, 1937, ch. 180, title I, 50 Stat. 149.
1936—June 23, 1936, ch. 725, § 1, 49 Stat. 1839.
1935—May 14, 1935, ch. 110, 49 Stat. 229.
1934—Mar. 15, 1934, ch. 70, title I, § 1, 48 Stat. 435.
1933—Mar. 3, 1933, ch. 212, title I, § 1, 47 Stat. 1500.
1932—July 5, 1932, ch. 430, title I, § 1, 47 Stat. 591.
1931—Feb. 23, 1931, ch. 277, title I, § 1, 46 Stat. 1228.
1930—May 15, 1930, ch. 289, title I, § 1, 46 Stat. 347.
1928—Dec. 20, 1928. ch. 39, title I, § 1, 45 Stat. 1039.
Mar. 5, 1928, ch. 126, title I, § 1, 45 Stat. 174.
1927—Jan. 26, 1927, ch. 58, § 1, 44 Stat. 1038.
1926—Mar. 2, 1926, ch. 43, § 1, 44 Stat. 147.
1925—Jan. 22, 1925, ch. 87, title I, 43 Stat. 775.
1924—Apr. 4, 1924, ch. 84, title I, 43 Stat. 75.
1923—Jan. 3, 1923, ch. 22, 42 Stat. 1101.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed this section, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88-581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89-239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and 1114 by Pub. L. 91-572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

USE OF HOSPITAL AT ELLIS ISLAND BY PUBLIC HEALTH SERVICE

Provisions of prior years relating to the use of the hospital at Ellis Island by the Public Health Service were repealed by act July 1, 1944, ch. 373, title VII, § 711, 58 Stat. 714, renumbered Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049. However, the Labor-Security Appropriation Act, 1945, June 28, 1944, ch. 302, title II, § 201, 58 Stat. 558, which was not included in the repeals by said act of July 1, 1944, provided: "The Immigration and Naturalization Service shall permit the Public Health Service to use the hospitals at Ellis Island Immigration Station for the care of Public Health Service patients free of expense for physical upkeep, but with a charge of actual cost of fuel, light, water, telephone, and similar supplies and services, to be covered into the proper Immigration Service appropriations; and money collected by the Immigration Service on account of hospital expenses of persons detained in hospitals of the Public Health Service under the immigration laws and regulations shall be covered into the Treasury as miscellaneous receipts."

§ 118. Motor vehicles for enforcement of immigration and Chinese exclusion laws.

CODIFICATION

Section, act Apr. 18, 1930, ch. 184, title IV, § 1, 46 Stat. 216, expired with the appropriations acts of which it was a part.

SIMILAR PROVISIONS

Similar provisions were carried in prior appropriation acts as follows:

1929—Jan. 25, 1929, ch. 102, title IV, 45 Stat. 1137.
1928—Feb. 15, 1928. ch. 57, title IV, 45 Stat. 107.
1927—Feb. 24, 1927, ch. 189, title IV, 44 Stat. 1223.
1926—Apr. 29, 1926, ch. 195, title IV, 44 Stat. 371.
1925—Feb. 27, 1925, ch. 364, Title IV, 43 Stat. 1049.
1924—May 28, 1924, ch. 204, title IV, 43 Stat. 240.
1923—Jan. 5, 1923, ch. 24, title II, 42 Stat. 1127.
1922—Mar. 28, 1922, ch. 117, title II, 42 Stat. 487.
1917—June 12, 1917, ch. 27, § 1, 40 Stat. 170.

SUBCHAPTER II.—REGULATION AND RESTRICTION OF IMMIGRATION IN GENERAL

§ 131. Control of immigration.

CODIFICATION

Section transferred to section 342a of former Title 5, Executive Departments and Government Officers and Employees, and was subsequently repealed.

§§ 136 to 137-10. Repealed. June 27, 1952, ch. 477, title IV, § 403(a) (13), (16), (48), 66 Stat. 279, 880, eff. Dec. 24, 1952.

Section 132, act Feb. 5, 1917, ch. 29, § 2, 39 Stat. 875, related to head tax, and is now covered by section 1351 of this title.

Section 133, act Mar. 4, 1909, ch. 299, § 1, 35 Stat. 982, related to covering of monies into Treasury, and is now covered by section 1356(b) of this title.

Section 134, act Feb. 3, 1905, ch. 297, § 1, 33 Stat. 684, authorized refunds of head taxes erroneously collected under act Mar. 3, 1903, ch. 1012, § 1, 32 Stat. 1213. Said act Mar. 3, 1903 was repealed by acts Feb. 20, 1907, ch. 1134, § 43, 34 Stat. 911; Feb. 5, 1917, ch. 29, § 38, 39 Stat. 897.

Section 135, R.S. § 2164, related to state tax or charge on immigrants.

Section 136, acts Feb. 5, 1917, ch. 29, § 3, 39 Stat. 875; June 5, 1920, ch. 243, 41 Stat. 981; Mar. 4, 1920, ch. 690, § 1(d), 45 Stat. 1551; Sept. 27, 1944, ch. 418, § 2, 58 Stat. 746, related to exclusion of aliens and is now covered by numerous provisions of sections 1102, 1154 and 1182 of this title.

Section 137, acts Oct. 16, 1918, ch. 186, § 1, 40 Stat. 1012; June 5, 1920, ch. 251, 41 Stat. 1008; June 28, 1940, ch. 439, title II, § 23(a), 54 Stat. 673; May 25, 1948, ch. 338, 62 Stat. 268; Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat. 1006, related to the exclusion of subversive aliens, and is now covered by numerous provisions of sections 1101 and 1182 of this title.

Section 137-1, acts Oct. 16, 1918, ch. 186, § 2, 40 Stat. 1012; June 28, 1940, ch. 439, title II, § 23(b), 54 Stat. 673; Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat. 1006, related to exceptions as to certain aliens seeking temporary entrance, and is now covered by section 1182 (d) (2) of this title.

Section 137-2, acts Oct. 16, 1918, ch. 186, § 3, 40 Stat. 1012; Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat. 1006, related to prohibition against issuance of visas to subversive aliens, and is now covered by section 1182 (a) (26) of this title.

Section 137-3, act Oct. 16, 1918, ch. 186, § 4, as added Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat. 1006, related to deportation of subversive aliens, and is now covered by section 1251 (a) (6) (A-C) and (a) (7) of this title.

Sections 137-4 to 137-8, act Oct. 16, 1918, ch. 186, §§ 5—9, as added Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat., 1006, related to temporary exclusion of suspects, subversive aliens and penalties, and are now covered by sections 1102, 1182, 1225, 1253, 1326 and 1327 of this title.

Section 137-9, act Mar. 28, 1951, ch. 23, § 1, 65 Stat. 28, related to clarification of immigration status of certain aliens, and is now covered by section 1182 (a) (28) of this title.

Section 137-10, act Mar. 28, 1951, ch. 23, § 2, 65 Stat. 28, related to recordation of entry for permanent residence, and is now covered by section 1182 (a) (28) of this title.

§ 137a. Repealed. May 24, 1934, ch. 344, § 5, 48 Stat. 798.

Section, act Sept. 22, 1922, ch. 411, § 8, as added July 3, 1930, ch. 826, 46 Stat. 849, provided as follows:

"§ 137a. Married woman whose husband is native-born citizen and veteran of World War. Any woman eligible by race to citizenship who has married a citizen of the United States before July 3, 1930, whose husband shall have been a native-born citizen and a member of the military or naval forces of the United States during the World War, and separated therefrom under honorable conditions; if otherwise admissible, shall not be excluded from admission into the United States under section 136 of this title, unless she be excluded under the provisions of that section relating to—

"(a) Persons afflicted with a loathsome or dangerous contagious disease, except tuberculosis in any form;

"(b) Polygamy;

"(c) Prostitutes, procurers, or other like immoral persons:

"(d) Persons convicted of crime: *Provided,* That no such wife shall be excluded because of offenses committed during legal infancy, while a minor under the age of twenty-one years, and for which the sentences imposed were less than three months, and which were committed more than five years previous to July 3, 1930;

"(e) Persons previously deported;

"(f) Contract laborers.

"After admission to the United States she shall be subject to all other provisions of [former] sections 9 and 10 and 367—370 of this title."

SAVINGS CLAUSE

Section 5 of act May 24, 1934, provided that the repeal of this section should "not affect any right or privilege or terminate any citizenship acquired under" it before such repeal.

§§ 137b to 173. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (2), (3), (5), (13), (18), (19), (23), (31), (32), (47), 66 Stat. 279, 280, eff. Dec. 24, 1952.

Sections 137b—137d, act Mar. 17, 1932, ch. 85, §§ 1—3, 47 Stat. 67, related to alien musicians, and are now covered by section 1182 (a) of this title.

Section 138, act Feb. 5, 1917, ch. 29, § 4, 39 Stat. 878, related to importation of aliens for immoral purposes, and is now covered by sections 1326, 1328 and 1329 of this title.

Section 139, act Feb. 5, 1917, ch. 29, § 5, 39 Stat. 879, related to contract laborers and is now covered by section 1330 of this title.

Section 140, acts Oct. 19, 1888, ch. 1210, § 1, 25 Stat. 566; April 28, 1904, No. 34, 33 Stat. 591; March 4, 1913, ch. 141, § 3, 37 Stat. 737, related to rewards to informer.

Section 141, act Feb. 26, 1885, ch. 164, § 2, 23 Stat. 332, related to validity of contracts for labor of aliens made before importation.

Section 142, act Feb. 5, 1917, ch. 29, § 6, 39 Stat. 879, related to advertisement of employment and is now covered by section 1330 of this title.

Section 143, act Feb. 5, 1917, ch. 29, § 7, 39 Stat. 879, related to solicitation of immigration by transportation companies and is now covered by section 1330 of this title.

Section 144, acts Feb. 5, 1917, ch. 29, § 8, 39 Stat. 880; Mar. 20, 1952, ch. 108, § 1, 66 Stat. 26, related to bringing in or harboring certain aliens, and is now covered by section 1324 (a) of this title.

Section 145, acts Feb. 5, 1917, ch. 29, § 9, 39 Stat. 880; May 26, 1924, ch. 190, § 26, 43 Stat. 166, related to bringing in aliens subject to disability or afflicted with disease, and is now covered by section 1322 of this title.

Section 146, acts Feb. 5, 1917, ch. 29, § 10, 39 Stat. 881; May 26, 1924, ch. 190, § 27, 43 Stat. 167, related to prevention of unauthorized landing of aliens, and is now covered by section 1321 of this title.

Section 147, act Feb. 5, 1917, ch. 27, § 11, 39 Stat. 881, related to detention of aliens for observation and examination, and is now covered by section 1222 of this title.

Section 148, acts Feb. 5, 1917, ch. 29, § 12, 39 Stat. 882; May 17, 1932, ch. 190, 47 Stat. 158; July 30, 1947, ch. 384, 61 Stat. 630, related to lists of passengers arriving or departing, and is now covered by section 1221 (a), (e) of this title.

Section 149, act Feb. 5, 1917, ch. 29, § 13, 39 Stat. 884, related to grouping of alien passengers in lists, and is now covered by section 1221 (c) of this title.

Section 150, act Feb. 5, 1917, ch. 29, § 14, 39 Stat. 884, related to refusal or failure to furnish alien passenger list, and is now covered by section 1221 (d) of this title.

Section 151, acts Feb. 5, 1917, ch. 29, § 15, 39 Stat. 885; Dec. 19, 1944, ch. 608, § 1, 58 Stat. 816, related to inspection of alien passengers on arrival, and is now covered by section 1223 (a), (b) of this title.

Section 152, acts Feb. 5, 1917, ch. 29, § 16, 39 Stat. 885; July 1, 1944, ch. 373, title VII, § 713, 58 Stat. 714, renumbered Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, renumbered Feb. 28, 1948, ch. 83, § 9 (b), 62 Stat. 47, related to physical and mental examination of alien passengers, and is now covered by sections 1224, 1225 (a) and 1362 of this title.

Section 153, act Feb. 5, 1917, ch. 29, § 17, 39 Stat. 887, related to boards of special inquiry, and is now covered by section 1226 of this title.

Section 154, acts Feb. 5, 1917, ch. 29, § 18, 39 Stat. 887; Mar. 4, 1929, ch. 690, § 1 (e), 45 Stat. 1551; Dec. 19, 1944, ch. 608, § 2, 58 Stat. 816, related to immediate deportation of aliens brought in in violation of law, and is now covered by section 1227 of this title.

Section 155, acts Feb. 5, 1917, ch. 29, § 19, 39 Stat. 889; June 28, 1940, ch. 439, title II, § 20, 54 Stat. 671; Dec. 8, 1942, ch. 697, 56 Stat. 1044; July 1, 1948, ch. 783, 62 Stat. 1206, related to deportation of undesirable aliens generally, and is now covered by numerous provisions of sections 1251, 1254 and 1351 of this title. Section 22 of act June 28, 1940 provided that no alien should be deportable by reason of amendments to former section 155 of this title by said act, on account of any act committed prior to the date of enactment of that act [June 28, 1940].

Section 155a, act Sept. 27, 1950, ch. 1052, ch. III, § 101, 64 Stat. 1048, related to deportation or exclusion proceedings unaffected by the Administrative Procedure Act.

Section 156, acts Feb. 5, 1917, ch. 29, § 20, 39 Stat. 890; July 13, 1943, ch. 230, 57 Stat. 553; Sept. 23, 1950, ch. 1024, title I, § 23, 64 Stat. 1010; June 18, 1952, ch. 442, 66 Stat. 138, related to control over, and facilitation of deportation, and is now covered by various provisions of sections 1251—1254 of this title.

Section 156a, acts Feb. 18, 1931, ch. 224, 46 Stat. 1171; June 28, 1940, ch. 439, title II, § 21, 54 Stat. 673, related to deportation of aliens engaged in narcotic traffic, and is now covered by section 1251 (a) (11) of this title.

Section 22 of act June 28, 1940, provided that no alien should be deportable by reason of amendments to former section 156a of this title by said act, on account of any act committed prior to the date of enactment of that act [June 28, 1940].

Section 157, act May 10, 1920, ch. 174, §§ 1—3, 41 Stat. 593, 594, related to deportation of aliens convicted of war-time offenses, and is now covered by section 1251 (a) (17) of this title.

Sections 158—163, act Feb. 5, 1917, ch. 29, §§ 21—23, 28, 39 Stat. 891—894, related to admission of aliens, detention, etc., and are now covered by sections 1103 (a), 1183, 1128 (c) and 1327 of this title.

Section 164, act Feb. 5, 1917, ch. 29, § 25, 39 Stat. 893, related to the jurisdiction of district courts, and is now covered by section 1329 of this title.

Section 165, act Feb. 5, 1917, ch. 29, § 31, 39 Stat. 895, related to signing alien on ship's articles with intent to permit landing in violation of law, and is now covered by section 1287 of this title.

Section 166, acts Feb. 5, 1917, ch. 29, § 34, 39 Stat. 896; May 26, 1924, ch. 190, § 19, 43 Stat. 164, related to landing of excluded seamen, and is now covered by sections 1282 (b) and 1287 of this title.

Section 167, acts May 26, 1924, ch. 190, § 20 (a—c), 43 Stat. 164; Dec. 19, 1944, ch. 608, § 4, 58 Stat. 817, related to control of alien seamen, and is now covered by section 1284 of this title.

Section 168, act Feb. 5, 1917, ch. 29, § 33, 39 Stat. 896, related to paying off or discharging alien seamen, and is now covered by sections 1282 (a) and 1286 of this title.

Section 169, act Feb. 5, 1917, ch. 29, § 35, 39 Stat. 896, related to employment on passenger vessels of aliens suffering with mental disabilities, and is now covered by section 1285 of this title.

Section 170, act Dec. 26, 1920, ch. 4, 41 Stat. 1082, related to treatment in hospitals of alien seamen, and is now covered by section 1283 of this title.

Section 171, act Feb. 5, 1917, ch. 29, § 36, 39 Stat. 896, related to lists of aliens employed on vessels arriving from foreign ports, and is now covered by section 1281 of this title.

Section 172, acts Mar. 3, 1893, ch. 206, § 8, 27 Stat. 570; Feb. 14, 1903, ch. 552, § 7, 32 Stat. 328; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737, related to posting of laws by agents of steamship companies.

Section 173, acts Feb. 5, 1917, ch. 29, §§ 1, 37, 39 Stat. 874, 897; June 2, 1924, ch. 233, 43 Stat. 253, related to definitions of aliens, seamen, etc. and is now covered by section 1101 (a) (3), (10), (38), (b) (3), (d) (7) of this title.

§ 174. Finality of decisions of immigration officers.

CODIFICATION

Section transferred to section 342k of former Title 5, Executive Departments and Government Officers and Employees, and was subsequently repealed.

§§ 175 to 181. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (12), (13), (23), (30), (33), 66 Stat. 279, eff. Dec. 24, 1952.

Section 175, act Feb. 5, 1917, ch. 29, § 1, 39 Stat. 874, related to application of laws to Philippine Islands.

Section 176, act Mar. 15, 1934, ch. 70, § 1, 48 Stat. 435, related to disposition of monies received or paid for detention of aliens, and is now covered by section 1356 (a) of this title.

Section 177, act Feb. 5, 1917, ch. 29, § 29, 39 Stat. 894, related to international conference for regulation of immigration of aliens.

Section 178, act Feb. 5, 1917, ch. 29, § 38, 39 Stat. 897, provided for the effective date of the act of Feb. 5, 1917, repealed specified provisions, and set forth laws unaffected by the enactment of this act.

Section 179, act May 26, 1924, ch. 190, § 21 (b), 43 Stat. 165, related to blank forms of manifest and crew lists, and is now covered by section 1352 (b) of this title.

Section 180, acts Mar. 4, 1929, ch. 690, § 1 (a—c), 45 Stat. 1551; June 24, 1929, ch. 40, 46 Stat. 41, related to reentry or attempted reentry of deported aliens, and is now covered by sections 1101 (g) and 1326 of this title.

Sections 180a—180d, act Mar. 4, 1929, ch. 690, §§ 2—5, 45 Stat. 1551, 1552, related to reentry or attempted reentry of deported aliens, and are now covered by various provisions of sections 1101, 1182, 1203, 1252 and 1325 of this title.

Section 181, act May 25, 1932, ch. 203, § 7, 47 Stat. 166, related to reentry of deported aliens, and is now covered by section 1326 of this title.

SUBCHAPTER III.—QUOTA AND NONQUOTA IMMIGRANTS

§§ 201 to 204. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (23), (24), 66 Stat. 279, eff. Dec. 24, 1952.

Section 201, act May 26, 1924, ch. 190, § 1, 43 Stat. 153, related to short title.

Section 202, acts May 26, 1924, ch. 190, § 2, 43 Stat. 153; Feb. 25, 1925, ch. 316, 43 Stat. 976, related to immigration visas.

Section 203, acts May 26, 1924, ch. 190, § 3, 43 Stat. 154; July 6, 1932, ch. 434, 47 Stat. 607; July 1, 1940, ch. 502, § 1, 54 Stat. 711, Dec. 29, 1945, ch. 652, title I, § 7 (c), 59 Stat. 672, related to the definition of immigrant.

Section 204, acts May 26, 1924, ch. 190, § 4, 43 Stat. 155; July 3, 1926, ch. 738, § 1, 44 Stat. 812; May 29, 1928, ch. 914, §§ 1, 2, 45 Stat. 1009; July 3, 1930, ch. 835, § 3, 46 Stat. 854; July 11, 1932, ch. 471, § 1, 47 Stat. 656; May 19, 1948, ch. 311, § 1, 62 Stat. 241, related to definition of nonquota immigrant.

§§ 204a, 204b. Omitted.

CODIFICATION

Sections related to natives of the Virgin Islands residing in foreign countries on June 22, 1932, and were based upon act June 28, 1932, ch. 283, §§ 1, 2, 47 Stat. 336. Former section 204b of this title provided that section 204a should not apply after June 28, 1934.

§§ 204c to 219. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (23), (36), (44), (45), 66 Stat. 279, 280, eff. Dec. 24, 1952.

Sections 204c, 204d, act June 28, 1932, ch. 283, §§ 3, 4, 47 Stat. 336, related to deportation as public charge and are now covered by section 1251 (a) (8) of this title.

Section 205, act May 26, 1924, ch. 190, § 5, 43 Stat. 155, related to definition of quota immigrant.

Section 206, acts May 26, 1924, ch. 190, § 6, 43 Stat. 155; May 29, 1928, ch. 914, § 3, 45 Stat. 1009; July 11, 1932, ch. 471, § 2, 47 Stat. 656; May 19, 1948, ch. 311, § 2, 62 Stat. 241, related to enumeration of preferences within quotas.

Section 207, act May 26, 1924, ch. 190, § 7, 43 Stat. 156, related to application for visas.

Section 208, act May 26, 1924, ch. 190, § 8, 43 Stat. 156, related to nonquota immigration visas.

Section 209, acts May 26, 1924, ch. 190, § 9, 43 Stat. 157; May 14, 1937, ch. 182, § 1, 50 Stat. 164, related to visas of nonquota and preferred immigrants.

Section 210, acts May 26, 1924, ch. 190, § 10, 43 Stat. 158; June 3, 1948, ch. 403, 62 Stat. 335, related to reentry permits.

Section 211, acts May 26, 1924, ch. 190, § 11, 43 Stat. 159; Mar. 4, 1927, ch. 514, 44 Stat. 1455; Mar. 31, 1928, ch. 306, 45 Stat. 400, related to immigration quotas as determined by national origin.

Section 212, act May 26, 1924, ch. 190, § 12, 43 Stat. 160, related to determination of nationality. See section 1152 of this title.

Section 212a, acts Dec. 17, 1943, ch. 344, § 2, 57 Stat. 601; Aug. 9, 1946, ch. 945, § 2, 60 Stat. 975, related to reentry permits for Chinese persons.

Section 212b, act July 2, 1946, ch. 534, § 4, 60 Stat. 417, related to reentry permits for Indians and races indigenous to India.

Section 212c, act July 2, 1946, ch. 534, § 5, 60 Stat. 417, related to definitions and allocations of quota.

Section 213, acts May 26, 1924, ch. 190, § 13, 43 Stat. 161; June 13, 1930, ch. 476, 46 Stat. 581; May 14, 1937, ch. 182, § 2, 50 Stat. 165; Aug. 9, 1946, ch. 945, § 1, 60 Stat. 975, related to compliance with immigration requirements.

Section 213a, act May 14, 1937, ch. 182, § 3, 50 Stat. 165, related to deportation of alien securing visa through fraudulent marriage.

Section 214, act May 26, 1924, ch. 190, § 14, 43 Stat. 162, related to deportation and procedure thereunder.

Section 215, acts May 26, 1924, ch. 190, § 15, 43 Stat. 162; July 1, 1932, ch. 363, 47 Stat. 524; July 1, 1940, ch. 502, § 2, 54 Stat. 711; Dec. 29, 1945, ch. 652, title I, § 7 (d), 59 Stat. 672, related to admission of persons excepted from definition of immigrant and nonquota immigrants.

Section 216, acts May 26, 1924, ch. 190, § 16, 43 Stat. 163; Dec. 19, 1944, ch. 608, § 3, 58 Stat. 817, related to the unlawful bringing of aliens into United States by water.

Section 217, act May 26, 1924, ch. 190, § 17, 43 Stat. 163, related to contracts with transportation lines.

Section 218, act May 26, 1924, ch. 190, § 18, 43 Stat. 164, related to unused immigration visas.

Section 219, act May 26, 1924, ch. 190, § 21 (a), 43 Stat. 165, related to reentry permits.

§ 220. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, act May 26, 1924, ch. 190, § 22, 43 Stat. 165, related to forging, counterfeiting, etc., of reentry permits, and is now covered by section 1546 of Title 18, Crimes and Criminal Procedure.

§§ 221 to 227. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (20), (22), (23), (29), 66 Stat. 279, eff. Dec. 24, 1952.

Section 221, act May 26, 1924, ch. 190, § 23, 43 Stat. 165, related to burden of proof upon entry of alien or in deportation proceedings.

Section 222, act May 26, 1924, ch. 190, § 24, 43 Stat. 166, related to rules and regulations.

Section 223, act May 26, 1924, ch. 190, § 25, 43 Stat. 166, related to quota law as additional to other immigration laws.

Section 224, acts May 26, 1924, ch. 190, § 28 (a—e, g—n), 43 Stat. 168; June 2, 1924, ch. 233, 43 Stat. 253; Oct. 29, 1945, ch. 437, 59 Stat. 551, related to definitions.

Section 225, act May 26, 1924, ch. 190, § 29, 43 Stat. 169, related to appropriations.

Section 226, act May 26, 1924, ch. 190, § 32, 43 Stat. 169, related to partial invalidity.

Section 226a, act Apr. 2, 1928, ch. 308, 45 Stat. 401, related to American Indians born in Canada.

Section 227, act Dec. 27, 1922, ch. 15, 42 Stat. 1065, related to the admission of certain aliens in excess of quotas.

§ 228. Certain aliens admitted in excess of quotas permitted to remain.

CODIFICATION

Section, act June 7, 1924, ch. 379, 43 Stat. 669, related to aliens who entered prior to July 1, 1924 under quota of 1921, and was omitted as executed.

§§ 229 to 231. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (17), (23), (27), 66 Stat. 279, eff. Dec. 24, 1952.

Section 229, acts May 19, 1921, ch. 8, 42 Stat. 5; May 26, 1924, ch. 190, § 30, 43 Stat. 169, related to the imposition and enforcement of penalties under act May 19, 1921.

Section 230, Joint Res. Oct. 16, 1918, ch. 190, 40 Stat. 1014, related to alien residents conscripted or volunteering for service during World War I.

Section 231, act May 26, 1926, ch. 400, 44 Stat. 657, related to admission into Puerto Rico of certain resident Spanish subjects.

§§ 232 to 237. Omitted.

CODIFICATION

Sections 232 to 236, act Dec. 28, 1945, ch. 591, §§ 1—6, 59 Stat. 659, relating to admission of alien spouses and minor children of World War II veterans, omitted as expired three years after Dec. 28, 1945.

Section 237, act Dec. 28, 1945, ch. 591, § 6, added July 22, 1947, ch. 289, 61 Stat. 401.

§ 238. Prevention of transportation in foreign commerce of alien women and girls under international agreement; commissioner designated as authority to receive and preserve information.

CODIFICATION

Section transferred to section 1557 of this title.

§ 239. Admission of alien spouses and minor children of members of armed forces.

CODIFICATION

Section, acts Aug. 19, 1950, ch. 759, 64 Stat. 464; Mar. 19, 1951, ch. 9, 65 Stat. 6, relating to admission of alien spouses and minor children of members of armed forces, expired by its own terms on Mar. 19, 1952.

SUBCHAPTER IV.—ALIEN VETERANS OF WORLD WAR I

§§ 241 to 246. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (28), 66 Stat. 279, eff. Dec. 24, 1952.

Sections, act May 26, 1926, ch. 398, §§ 1—6, 44 Stat. 654, 655, related to alien veterans of World War I.

Chapter 7.—EXCLUSION OF CHINESE

CODIFICATION

Former chapter 7 of this title included the provisions of the several Chinese Exclusion acts, beginning with the temporary act of May 6, 1882, ch. 126, 22 Stat. 58, which, as being then in force, were, by act Apr. 27, 1904, ch. 1630, § 5, 33 Stat. 428, amending act Apr. 29, 1902, ch. 641, 32 Stat. 176, "re-enacted, extended, and continued, without modification, limitation, or condition;" with the further provisions of the act and those of subsequent acts relating to the subject which remained in force.

§ 261. Control of exclusion of Chinese.

CODIFICATION

Section, acts Feb. 14, 1903, ch. 552, § 7, 32 Stat. 828; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F. R. 2423, 54 Stat. 1238, conferred upon the Attorney General the authority, power, and jurisdiction by

virtue of any law relating to the exclusion from and residence within the United States, its Territories and the District of Columbia, of Chinese and persons of Chinese descent, and vested in the collectors of customs and collectors of internal revenue, under control of the Commissioner of Immigration and Naturalization, as the Attorney General might designate therefor, the authority, power, and jurisdiction in relation to such exclusion previously vested in such officers. It is now obsolete in view of the repeal, by act Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600, of sections 262—297 and 299 of this title.

§§ 262 to 297. Repealed. Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600.

Sections, acts May 6, 1882, ch. 126, §§ 1, 3, 6—13, 15, 16, 22 Stat. 59—61; July 5, 1884, ch. 220, 23 Stat. 115—118; Sept. 13, 1888, ch. 1015, §§ 5—11, 13, 14, 25 Stat. 477—479; Oct. 1, 1888, ch. 1064, §§ 1, 2, 25 Stat. 504; May 5, 1892, ch. 60, §§ 1—3, 5—8, 27 Stat. 25, 26; Nov. 3, 1893, ch. 14, §§ 1, 2, 28 Stat. 7, 8; July 7, 1898, No. 55, § 1 (part), 30 Stat. 751; Apr. 30, 1900, ch. 339, § 101, 31 Stat. 161; June 6, 1900, ch. 791, § 1 (part), 31 Stat. 611; Mar. 3, 1901, ch. 845, §§ 1—3, 31 Stat. 1093; Apr. 29, 1902, ch. 641, §§ 1, 2, 4, 32 Stat. 176, 177; Apr. 27, 1904, ch. 1630, § 5, 33 Stat. 428; Aug. 24, 1912, ch. 355, § 1 (part), 37 Stat. 476, related to the exclusion of Chinese and persons of Chinese descent from the United States or its Territories, and to various matters pertaining thereto, including the requirement of certificates of permission and identity by those who might be entitled to entry, exemptions, duties of masters of vessels and Federal officers, arrest, hearing and removal of Chinese unlawfully within the United States or its Territories, habeas corpus, and forfeitures and penalties for violation of the exclusion laws.

§ 298. Bertillon system of identification.

CODIFICATION

Section, acts Mar. 17, 1894, Art. III, 28 Stat. 1211; Apr. 28, 1904, ch. 1762, § 1, 33 Stat. 478, provided for the Bertillon system of identification at the various ports of entry, to prevent unlawful entry of Chinese into the United States. It is obsolete in view of the repeal of sections 262—297 of this title by act Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600. For some years prior to such act, no moneys had been appropriated to prevent unlawful entry of Chinese, referred to in this section.

§ 299. Repealed. Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600.

Section, act June 23, 1913, ch. 3, § 1, 38 Stat. 65, provided for delivery by the marshal, of all Chinese persons ordered deported under judicial writs, into the custody of any officer designated for that purpose, for conveyance to the frontier or seaboard for deportation.

Chapter 8.—THE COOLY TRADE

Sec.
331. Cooly trade prohibited.
332. Same; forfeiture of vessels.
333. Building vessels to engage in cooly trade; penalty.
334. Punishment for engaging in cooly trade.
335. Voluntary emigration of "coolies" excepted.
336. Same; inquiry and certificate by consular officer.
337. Examination of vessels.
338. Involuntary transportation of Chinese, Japanese, etc., for purpose of holding to service; penalty; contracts void.
339. Contracting to supply cooly labor.

§ 331. Cooly trade prohibited.

No citizen of the United States, or foreigner coming into or residing within the same, shall, for himself or for any other person, either as master, factor, owner, or otherwise, build, equip, load, or otherwise prepare, any vessel, registered, enrolled, or licensed, in the United States, for the purpose of procuring from any port or place the subjects of China, Japan, or of any other oriental country, known as "coolies", to be transported to any foreign port, or place, to be disposed of, or sold, or transferred, for any time, as servants or apprentices, or to be held to service or labor. (R. S. § 2158.)

DERIVATION

Acts Feb. 19, 1862, ch. 27, § 1, 12 Stat. 340; Feb. 9, 1869, ch. 24, 15 Stat. 269.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 333, 334, 335, 337, 339 of this title.

§ 332. Same; forfeiture of vessels.

If any vessel, belonging in whole or in part to a citizen of the United States, and registered, enrolled, or otherwise licensed therein, be employed in the "cooly trade", so called, contrary to the provisions of section 331 of this title, such vessel, her tackle, apparel, furniture, and other appurtenances, shall be forfeited to the United States, and shall be liable to be seized, prosecuted, and condemned in any of the district courts of the United States for the district where the vessel may be found, seized, or carried. (R. S. § 2159; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

DERIVATION

Act Feb. 19, 1862, ch. 27, § 1, 12 Stat. 340.

CHANGE OF NAME

"District court" was substituted for "circuit courts or district courts" to conform to act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts.

CROSS REFERENCES

Fine, penalties and forfeitures, see chapter 163 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 335, 337 of this title.

§ 333. Building vessels to engage in cooly trade; penalty.

Every person who so builds, fits out, equips, loads, or otherwise prepares, or who sends to sea, or navigates, as owner, master, factor, agent, or otherwise, any vessel, belonging in whole or in part to a citizen of the United States, or registered, enrolled, or licensed within the same, knowing or intending that such vessel is to be or may be employed in that trade, contrary to the provisions of section 331 of this title, shall be liable to a fine not exceeding $2,000, and be imprisoned not exceeding one year. (R.S. § 2160.)

DERIVATION

Act Feb. 19, 1862, ch. 27, § 2, 12 Stat. 340.

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment for a term not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 335, 337 of this title.

§ 334. Punishment for engaging in cooly trade.

Every citizen of the United States who, contrary to the provisions of section 331 of this title, takes on board of any vessel, or receives or transports any such subjects as are described in that section, for the purpose of disposing of them in any way as therein

prohibited, shall be liable to a fine not exceeding $2,000 and be imprisoned not exceeding one year. (R. S. § 2161.)

DERIVATION

Act Feb. 19, 1862, ch. 27, § 3, 12 Stat. 340.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 335, 337 of this title.

§ 335. Voluntary emigration of "coolies" excepted.

Nothing contained in sections 135, 331 to 334, and 337 of this title shall be deemed to apply to any voluntary emigration of the subjects specified in section 331 of this title, or to any vessel carrying such person as passenger on board the same, but a certificate shall be prepared and signed by the consul or consular agent of the United States residing at the port from which such vessel may take her departure, containing the name of such person, and setting forth the fact of his voluntary emigration from such port, which certificate shall be given to the master of such vessel; and the same shall not be given until such consul or consular agent is first personally satisfied by evidence of the truth of the facts therein contained. (R. S. § 2162.)

DERIVATION

Act Feb. 19, 1862, ch. 27, § 4, 12 Stat. 341.

REFERENCES IN TEXT

Section 135 of this title, referred to in the text, was repealed by act June 27, 1952, ch. 477, title IV, § 403 (a) (1), 66 Stat. 279.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 336, 337 of this title.

§ 336. Same; inquiry and certificate by consular officer.

In determining whether the immigration of any subject of China, Japan, or any Oriental country, to the United States, is free and voluntary, as provided by section 335 of this title, it shall be the duty of the consul general or consul of the United States residing at the port from which it is proposed to convey such subjects, in any vessels enrolled or licensed in the United States, or any port within the same, before delivering to the masters of any such vessels the permit or certificate provided for in such section, to ascertain whether such immigrant has entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes; and if there be such contract or agreement, the said consul general or consul shall not deliver the required permit or certificate. (Mar. 3, 1875, ch. 141, § 1, 18 Stat. 477.)

§ 337. Examination of vessels.

The President is empowered, in such way and at such time as he may judge proper, to direct the vessels of the United States, and the masters and commanders thereof, to examine all vessels navigated or owned in whole or in part by citizens of the United States, and registered, enrolled, or licensed under the laws thereof, whenever in the judgment of such master or commanding officer, reasonable cause exists to believe that such vessel has on board any subjects of China, Japan, or other oriental country, known as "coolies"; and, upon sufficient proof that such vessel is employed in violation of the provisions of sections 331 to 335 of this title, to cause her to be carried, with her officers and crew, into any port or district within the United States, and delivered to the marshal of such district, to be held and disposed of according to law. (R. S. § 2163.)

DERIVATION

Act Feb. 19, 1862, ch. 27, § 6, 12 Stat. 341.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 335 of this title.

§ 338. Involuntary transportation of Chinese, Japanese, etc., for purpose of holding to service; penalty; contracts void.

If any citizen of the United States, or other person amenable to the laws of the United States, shall take, or cause to be taken or transported, to or from the United States any subject of China, Japan, or any oriental country, without their free and voluntary consent, for the purpose of holding them to a term of service, such citizen or other person shall be liable to be indicted therefor, and, on conviction of such offense, shall be punished by a fine not exceeding $2,000 and be imprisoned not exceeding one year; and all contracts and agreements for a term of service of such persons in the United States, whether made in advance or in pursuance of such illegal importation, and whether such importation shall have been in American or other vessels, are declared void. (Mar. 3, 1875, ch. 141, § 2, 18 Stat. 477.)

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment for a term not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Indictment, see rules 6—9, Title 18, Appendix, Crimes and Criminal Procedure.

§ 339. Contracting to supply cooly labor.

If any person shall knowingly and willfully contract, or attempt to contract, in advance or in pursuance of such illegal importation, to supply to another the labor of cooly or other person brought into the United States in violation of section 331 of this title, or of any other section of the laws prohibiting the cooly trade, such person shall be deemed guilty of a felony, and, upon conviction thereof, in any United States court, shall be fined in a sum not exceeding $500 and imprisoned for a term not exceeding one year. (Mar. 3, 1875, ch. 141, § 4, 18 Stat. 477.)

CROSS REFERENCES

Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Chapter 9.—MISCELLANEOUS PROVISIONS

§§ 351 to 416. Repealed or transferred.

These sections, relating to naturalization, were in large degree affected by the Nationality Act of 1940, former section 501 et seq. of this title. That act was passed on Oct. 14, 1940, to consolidate and restate the laws of the United States regarding citizenship, naturalization, and expatriation, and, in addition to certain specific repeals thereby, all acts or parts of acts in conflict with its provisions were repealed by former section 904 of this title. See notes below for history of individual sections.

Sections 351—354, relating to Bureau of Naturalization, were repealed by act Oct. 14, 1940, ch. 876, title I, subchap.

V, 54 Stat. 1172. Sections 351—353 were from act June 29, 1906, ch. 3592, § 1, 34 Stat. 596, and section 354 was from act May 9, 1918, ch. 69, § 1, 40 Stat. 544. Present provisions are contained in section 1443 of this title. See also section 1551 et seq. of this title for general provisions relating to Immigration and Naturalization Service.

Section 355, relating to reports of expenditures of Bureau of Naturalization, was repealed by act May 29, 1928, ch. 901, § 1, 45 Stat. 994. It was from act Mar. 4, 1909, ch. 299, § 1, 35 Stat. 982.

Sections 356—358a were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 356, relating to regulations for execution of naturalization laws and use of copies of papers in evidence, was from acts June 29, 1906, ch. 3592, § 28, 34 Stat. 606, and Mar. 2, 1929, ch. 536, § 8, 45 Stat. 1515; present provisions are contained in section 1443 of this title. Section 356a, relating to quarters for photographic studio in New York City, was from act May 25, 1932, ch. 203, § 9, 47 Stat. 166; present provisions are contained in section 1443 (g) of this title. Sections 357 (from act June 29, 1906, ch. 3592, § 3, 34 Stat. 596, as amended Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; June 25, 1936, ch. 804, 49 Stat. 1921), 358 (from act Mar. 2, 1917, ch. 145, § 41, 39 Stat. 965), and 358a (from act Feb. 25, 1927, ch. 192, § 4, 44 Stat. 1235), related to jurisdiction of naturalization courts; present provisions are contained in section 1421 of this title.

Section 359, relating to racial limitation of naturalization, was from R. S. § 2169 (revised from act July 14, 1870, ch. 254, § 7, 16 Stat. 256), and acts Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; May 9, 1918, ch. 69, § 2, 40 Stat. 547. According to a communication of Jan. 8, 1943, the Immigration and Naturalization Service stated that it was the opinion of that office that said section 359 was superseded by former section 703 of this title. Present provisions are contained in section 1422 of this title.

Section 360, relating to admission of persons not citizens owing permanent allegiance to the United States, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, 54 Stat. 1172. It was from act June 29, 1906, ch. 3592, § 30, 34 Stat. 606. Present provisions are contained in section 1436 of this title.

Section 361, relating to period of residence required for citizenship, was repealed by act Mar. 2, 1929, ch. 536, 45 Stat. 1514. It was from R. S. § 2170, which was revised from act Mar. 3, 1813, ch. 42, § 12, 2 Stat. 811. Present provisions concerning period of residence are contained in section 1427 of this title.

Section 362, forbidding naturalization of citizens within thirty days preceding a general election, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from act June 29, 1906, ch. 3592, § 6, 34 Stat. 598. Present provisions are contained in section 1447 (c) of this title.

Section 363, making Chinese inadmissible to citizenship, was repealed by act Dec. 17, 1943, ch. 344, § 1, 57 Stat. 600. It was from act May 6, 1882, ch. 126, § 14, 22 Stat. 61.

Sections 364—366a, relating to persons inadmissible to citizenship, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 364 and 365 were from act June 29, 1906, ch. 3592, §§ 7, 8, respectively, 34 Stat. 598, 599; present provisions are contained in sections 1424 and 1423, respectively, of this title. Section 366 was from acts May 18, 1917, ch. 15, § 2, 40 Stat. 77; July 9, 1918, ch. 143, § 4, 40 Stat. 885. Section 366a was from act Feb. 11, 1931, ch. 118, 46 Stat. 1087.

Sections 367—368a, relating to naturalization of women, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. They were from act Sept. 22, 1922, ch. 411, §§ 1, 2, 3 (c), respectively, 42 Stat. 1021, 1022, as amended Mar. 3, 1931, ch. 442, § 4 (a), 46 Stat 1511; May 17, 1932, ch. 190, 47 Stat. 158; May 24, 1934, ch. 344, § 4, 48 Stat. 797. Present provisions on the subject of section 367 are contained in section 1422 of this title, and on the subject of 368, in section 1430 of this title.

Section 368b, relating to citizenship of women born in Hawaii prior to June 14, 1900, was repealed by act June 27, 1952, ch. 477, title IV, § 403 (a) (34), 66 Stat. 280. It was from acts July 2, 1932, ch. 395, 47 Stat. 571; July 1, 1940, ch. 495, 54 Stat. 707.

Sections 369 and 369a, relating to naturalization of women, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. They were from act Sept. 22, 1922, ch. 411, §§ 4, 3 (b), respectively, 42 Stat. 1022 as amended July 3, 1930, ch. 835, § 2 (a), 46 Stat. 854; Mar. 3, 1931, ch. 442, § 4 (a), 46 Stat. 1511. Present provisions are contained in section 1435 (a) of this title.

Section 370, relating to naturalization of women married to aliens ineligible to citizenship, was repealed by act Mar. 3, 1931, ch. 442, § 4 (b), 46 Stat. 1512. It was from act Sept. 22, 1922, ch. 411, § 5, 42 Stat. 1022.

Section 371, relating to naturalization of wives and children of aliens becoming insane after declaration of intention to become citizens, was repealed by act May 24, 1934, ch. 344, § 5, 48 Stat. 798, which provided that such repeal should "not affect any right or privilege or terminate any citizenship acquired under" the section before its repeal. Section was from act Feb. 24, 1911, ch. 151, 36 Stat. 929.

Sections 372—373 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 372, relating to procedure for naturalization, was from act June 29, 1906, ch. 3592, § 4, 34 Stat. 596; present provisions are contained in section 1421 (d) of this title. Section 372a, relating to naturalization of former citizens, was from act Mar. 3, 1931, ch. 442, § 3, 46 Stat. 1511. Section 373, relating to declaration of intention to become citizen, was from acts June 29, 1906, ch. 3592, § 4, 34 Stat. 596; Mar. 4, 1929, ch. 683, § 1, 45 Stat. 1545; June 20, 1939, ch. 224, § 1, 53 Stat. 843; present provisions are contained in section 1445 (f) of this title.

Section 374, making it unlawful to make a declaration of intention on election day, was repealed by act May 25, 1926, ch. 388, § 1, 44 Stat. 652. It was from acts June 29, 1906, ch. 3592, § 4 (7); May 9, 1918, ch. 69, § 1, 40 Stat. 544.

Section 375, providing that declarations of intention should not be required of widow or minor children of aliens dying after having filed a declaration of intention, was repealed by act May 24, 1934, ch. 344, § 5, 48 Stat. 798, which provided that such repeal should "not affect any right or privilege or teminate any citizenship acquired under" the section before its repeal. Section was from act June 29, 1906, ch. 3592, § 4, 34 Stat. 597.

Section 375a, act July 2, 1940, ch. 512, §§ 1, 2, 54 Stat. 715, relating to exemption from declaration of intention and filing of petition by children spending childhood in United States, was repealed by act June 27, 1952, ch. 477, title IV, § 403 (a) (40), 66 Stat. 280.

Section 376, providing that alien seamen declarants should be deemed citizens for purposes of protection, was repealed by act June 15, 1935, ch. 255, § 1, 49 Stat. 376. It was from act June 29, 1906, ch. 3592, § 4 (8), as amended May 9, 1918, ch. 69, § 1, 40 Stat. 544.

Section 377, authorizing naturalization of certain aliens erroneously exercising rights and duties of citizenship prior to July 1, 1920, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from acts June 29, 1906, ch. 3592, § 4 (10); May 9, 1918, ch. 69, § 1, 40 Stat. 545; May 25, 1932, ch. 203, § 10, 47 Stat. 166.

Section 377a, related to naturalization of inhabitants of Virgin Islands. It was from acts Feb. 25, 1927, ch. 192, § 2, 44 Stat. 1234; May 17, 1932, ch. 190, 47 Stat. 158.

Sections 377b—382c were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 377b, requiring lawful entry and certificate of arrival as prerequisite to declaration of intention, was from acts Mar. 2, 1929, ch. 536, § 4, 45 Stat. 1513; May 25, 1932, ch. 203, § 6, 47 Stat. 166; similar provisions were contained in former section 729 (b) of this title. Section 377c, relating to photographs of aliens seeking to become citizens, was from act June 29, 1906, ch. 3592, § 36, as added Mar. 2, 1929, ch. 536, § 9, 45 Stat. 1516; present provisions are contained in section 1444 of this title. Section 378, enumerating conditions under which alien enemies could be naturalized, was from act June 29, 1906, ch. 3592, § 4 (11), as added May 9, 1918, ch. 69, § 1, 40 Stat. 545; present provisions are contained in section 1442 of this title. Section 379, relating to petitions for naturalization, was from act June 29, 1906, ch. 3592, § 4, 34 Stat. 596, as added Mar. 2, 1929, ch. 536, § 6 (a), 45 Stat. 1513, and amended June 20, 1939, ch. 224, § 2, 53 Stat. 843; present provisions are contained in sections 1445 and 1446(f) of this title. Section 380, providing that certificate of arrival and declaration of intention should be made a part of petition for naturalization

was from act June 29, 1906, ch. 3592, § 4, 34 Stat. 596; present provisions are contained in section 1445 (a), (b) of this title. Section 380a, relating to fees for issuance of certificates of arrival, was from acts Mar. 2, 1929, ch. 536, § 5, 45 Stat. 1513; Apr. 19, 1934, ch. 154, § 3, 48 Stat. 597; present provisions are contained in section 1455 (b)(2) of this title. Section 380b, defining county as used in former sections 379, 382, and 388 of this title, was from act June 29, 1906, ch. 3592, § 35, as added Mar. 2, 1929, ch. 536, § 9, 45 Stat. 1516, and amended May 17, 1932, ch. 190, 47 Stat. 158. Sections 381 and 382(c), relating to oaths of aliens admitted to citizenship and certain prerequisites to admission, respectively, were from acts June 29, 1906, ch. 3592, § 4, 34 Stat. 596; Mar. 2, 1929, ch. 536, § 6b, 45 Stat. 1513; June 25, 1936, ch. 811, § 1, 49 Stat. 1925; June 29, 1938, ch. 819, 52 Stat. 1247; June 20, 1939, ch. 224, § 3, 53 Stat. 844; present provisions on the subject of section 381 are contained in section 1448 of this title; and on the subject of section 382 in sections 1427, 1430(b) and 1446(g) of this title. Sections 382a, relating to absence from country as affecting continuity of residence for purpose of naturalization, was from act June 25, 1936, ch. 811, § 2, 49 Stat. 1925; present provisions are contained in section 1427(c) of this title. Sections 382b and 382c, relating to temporary absences of clergymen as affecting continuity of residence, were from act Aug. 9, 1939, ch. 610, §§ 1, 2, respectively, 53 Stat. 1273; present provisions are contained in sections 1428 and 1443(a), respectively, of this title.

Section 383, relating to proof of residence by deposition, was repealed by act Mar. 2, 1929, ch. 536, § 6 (e), 45 Stat. 1514. It was from act June 29, 1906, ch. 3592, § 10, 34 Stat. 599.

Section 384, relating to residence of aliens serving on vessels of foreign registry, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from act June 29, 1906, ch. 3592, § 4 (7), as added May 9, 1918, ch. 69, § 1, 40 Stat. 544, and amended May 25, 1932, ch. 203, § 3, 47 Stat. 165. Present provisions are contained in section 1441(a)(2) of this title.

Section 385, related to validation of Hawaiian jurisdiction exercised prior to Sept. 27, 1906. It was from acts Apr. 30, 1900, ch. 339, § 100, 31 Stat. 161; May 27, 1910, ch. 258, § 9, 36 Stat. 448; Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172.

Sections 386—389 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 386, providing for the renunciation of titles of nobility by aliens seeking citizenship, was from act June 29, 1906, ch. 3592, § 4, 34 Stat. 596; present provisions are contained in section 1448(b) of this title. Section 387, relating to reimbursement for publication of citizenship textbooks, was from act June 29, 1906, ch. 3592, § 4(9); May 9, 1918, ch. 69, § 1, 40 Stat. 544; present provisions are contained in sections 1443 (b) and 1457 of this title. Section 388, relating to residence requirements for certain Filipinos and Puerto Ricans serving in military service, was from act June 29, 1906, ch. 3592, § 4 (7), as added May 9, 1918, ch. 69, § 1, 40 Stat. 542, June 4, 1920, ch. 227, § 30, 41 Stat. 776; Mar. 2, 1929, ch. 536, § 6(c), (d), 45 Stat. 1514; May 17, 1932, ch. 190, 47 Stat. 158; May 25, 1932, ch. 203, § 2(a), 47 Stat. 165; July 30, 1937, ch. 545, § 3, 50 Stat. 548; present provisions are contained in sections 1427, 1439, and 1441(a)(1) of this title. Section 389, relating to residence of aliens conditionally serving in military services after honorable discharge, was from act June 29, 1906, ch. 3592, § 4(7); May 9, 1918, ch. 69, § 1, 40 Stat. 542.

Section 389a, relating to naturalization of alien veterans of World War I, was repealed by act June 27, 1952, ch. 477, title IV, § 403 (a) (37), 66 Stat. 280. It was from act Aug. 19, 1937, ch. 698, § 2, as added Aug. 16, 1940, ch. 684, 54 Stat. 789.

Sections 390—392, relating to naturalization of alien veterans of World War I, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. They were from act June 29, 1906, ch. 3592, §§ 4 (7), 4 (13), respectively, as amended May 19, 1918, ch. 69, § 1, 40 Stat. 542—544. Present provisions are contained in section 1439 of this title.

Sections 392a—392d, related to naturalization of alien veterans of World War I. Sections 392b–392d were repealed by act Oct. 11, 1940, ch. 876 title I, subch. V, § 504, 54 Stat. 1172. Section 392a was from acts May 26, 1926, ch. 398, § 7, 44 Stat. 655; Mar. 4, 1929, ch. 683, § 3, 45 Stat. 1546. Sections 392b—392d were from acts May 25, 1932, ch. 203, § 1, 47 Stat. 165; Ex. Ord. No. 6166, § 14, June 10, 1933; June 24, 1935, ch. 288, §§ 1—3, 49 Stat. 395; Aug. 23, 1937, ch. 735, §§ 1—3, 50 Stat. 743, 744; June 21, 1939, ch. 234, §§ 1—3, 53 Stat. 851.

Sections 392e—398 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 392e—392g, relating to naturalization of alien veterans of World War I formerly ineligible because of race, were from act June 24, 1935, ch. 290, §§ 1—3, respectively, 49 Stat. 397, 398. Sections 393—395, relating to naturalization of alien veterans, were from act June 29, 1906, ch. 3592, § 4(7); May 9, 1918, ch. 69, §§ 1, 2, 40 Stat. 543; present provisions are contained in sections 1439 and 1441(a)(1) of this title. Sections 396–398, relating to time of filing petition, subpoena of witnesses, and final hearings on petitions, respectively, were from act June 29, 1906, ch. 3592, §§ 6, 5, 9, respectively, 34 Stat. 598, 599, as amended Mar. 3, 1931, ch. 442, §§ 1, 2, 46 Stat. 1511; present provisions are contained in sections 1445(c) and 1447 (a), (e) of this title.

Section 398a, act May 3, 1940, ch. 183, § 2, 54 Stat. 178, which related to patriotic address to new citizens, is now section 154 of Title 36, Patriotic Societies and Observances.

Sections 399—402 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Section 399, authorizing the United States to appear and oppose the right of aliens to naturalization, was from act June 29, 1906, ch. 3592, § 11, 34 Stat. 599; present provisions are contained in section 1447 of this title. Section 399a, relating to preliminary examination of petitioners for naturalization, was from act June 8, 1926, ch. 502, 44 Stat. 709; present provisions are contained in sections 1446 and 1447 of this title. Sections 399b–399d, relating to certificates of citizenship, were from acts June 29, 1906, ch. 3592, §§ 32–34, respectively; Mar. 2, 1929, ch. 536, § 9, 45 Stat. 1515; May 25, 1932, ch. 203, §§ 4, 5, 47 Stat. 165; Apr. 19, 1934, ch. 154, §§ 2, 4, 48 Stat. 597; present provisions are contained in sections 1452, 1454 and 1455 (g) of this title. Section 399e, relating to annual reports of Commissioner of Immigration, was from act Mar. 2, 1929, ch. 536, § 10, 45 Stat. 1516; present provisions are contained in section 1458 of this title. Section 399f, relating to counsel fees in naturalization proceedings, was from act Apr. 19, 1934, ch. 154, § 5, 48 Stat. 598; present provisions are contained in section 1455 of this title. Sections 400–402, relating to clerks of naturalization courts and their fees and clerical assistants, were from acts June 29, 1906, ch. 3592, §§ 12, 13, 34 Stat. 166, as amended June 25, 1910, ch. 401, § 1, 36 Stat. 829; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; June 12, 1917, ch. 27, § 1, 40 Stat. 171; Feb. 26, 1919, ch. 49, §§ 1, 2, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; June 10, 1921, ch. 18, § 304, 42 Stat. 24; Mar. 2, 1929, ch. 536, § 7 (a), 45 Stat. 1514; and Apr. 19, 1934, ch. 154, § 1, 48 Stat. 597; present provisions are contained in sections 1450 (a–d), 1455 and 1459 (b, c) of this title.

Section 402a, related to disposition of fees received by clerks of courts. It was from act Mar. 2, 1929, ch. 536, § 7 (b), 45 Stat. 1515; Ex. Ord. No. 6166, § 14, June 10, 1933. Present provisions are contained in section 1455 (e) of this title.

Sections 403—405 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 403 and 404, relating to fees collectible from alien soldiers, and to recording declarations and petitions, respectively, were from act June 29, 1906, ch. 3592, §§ 4 (7), 14, respectively, 34 Stat. 601, as amended May 9, 1918, ch. 69, § 1 40 Stat. 544; present provisions are contained in sections 1450(e) and 1455(h) of this title. Section 405, relating to cancellation of certificates of citizenship, was from acts June 29, 1906, ch. 3592, § 15, 34 Stat. 601; May 9, 1918, ch. 69, § 1, 40 Stat. 544; present provisions are contained in section 1451 of this title.

Sections 406 and 407 validated certain certificates of naturalization. They were from acts May 9, 1918, ch. 69,

§ 3, 40 Stat. 548, and June 29, 1906, ch. 3624, § 1, 34 Stat. 630, respectively.

Sections 408—415 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 408 and 409, relating to naturalization forms, were from act June 29, 1906, ch. 3592, §§ 3, 27, respectively, 34 Stat. 596, 603; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; May 9, 1918, ch. 69, § 3, 40 Stat. 548; present provisions on the subject of section 408 are contained in sections 1421(c) and 1443(c) of this title, and on the subject of section 409 in sections 1445 (a)-(d), (f), and 1449 of this title. Sections 410–415, relating to the punishment of crimes in connection with the naturalization of aliens, were from act June 29, 1906, ch. 3592, §§ 18, 20—24, respectively, 34 Stat. 602, 603; present provisions are contained in sections 1451 (a, b, d, e, g–i) and 1459 of this title and sections 911, 1015, 1421–1429, 1719 and 3282 of Title 18, Crimes and Criminal Procedure.

Section 416, authorizing the punishment of offenses against the naturalization laws committed prior to May 9, 1918, under laws then in effect but is since repealed, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from act May 9, 1918, ch. 69, § 2, 40 Stat. 547. Present provisions are contained in note set out under section 1101 of this title.

Chapter 10.—ALIEN REGISTRATION

§§ 451 to 460. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (39), 66 Stat. 280, eff. Dec. 24, 1952.

Section 451, act June 28, 1940, ch. 439, title III, § 30, 54 Stat. 673, required an alien seeking entry into United States to be registered and fingerprinted before the issuance to him of a visa, and is now covered by sections 1182 (a) (20), (26), 1201 (b) and 1301 of this title.

Section 452, act June 28, 1940, ch. 439, title III, § 31, 54 Stat. 673, related to registration of aliens in United States, and is now covered by section 1302 of this title.

Section 453, act June 28, 1940, ch. 439, title III, § 32, 54 Stat. 674, related to special provisions governing registration, and is now covered by section 1303 of this title.

Section 454, act June 28, 1940, ch. 439, title III, § 33, 54 Stat. 674, related to places of registration and duties of postmasters.

Section 455, act June 28, 1940, ch. 439, title III, § 34, 54 Stat. 674, related to forms and procedure, confidential status of records and oaths in connection with the registration and fingerprinting of aliens, and is now covered by section 1304 of this title.

Section 456, acts June 28, 1940, ch. 439, title III, § 35, 54 Stat. 675; Sept. 23, 1950, ch. 1024, title I, § 24 (a), 64 Stat. 1012, related to notice of change of address, and is now covered by section 1305 of this title.

Section 457, acts June 28, 1940, ch. 439, title III, § 36, 54 Stat. 675; Oct. 13, 1941, ch. 432, 55 Stat. 736; Sept. 23, 1950, ch. 1024, title I, § 24 (b), 64 Stat. 1013, related to penalties, and is now covered by section 1306 of this title.

Section 458, act June 28, 1940, ch. 439, title III, § 37, 54 Stat. 675, related to administration and enforcement of registration law, and is now covered by section 1306 of this title.

Section 459, act June 28, 1940, ch. 439, title III, § 38, 54 Stat. 675, related to definitions and effective date. Subsection (a) of said section 459 is now covered by section 1101 (a) (8), (38) of this title.

Section 460, act June 28, 1940, ch. 439, title III, § 39, 54 Stat. 676, related to registration of aliens in Canal Zone.

NATIONALITY ACT OF 1940

On October 14, 1940, and subsequent to the enactment of former section 451 et seq. of this title, Congress passed the Nationality Act of 1940 [former section 501 et seq. of this title] for the purpose of consolidating and restating the laws of the United States upon citizenship, naturalization and expatriation. Said act contained further provisions relating to registry of aliens [former sections 728 and 746 (*l*) of this title], and section 504 thereof, in addition to certain specific repeals, provided that all acts or parts of acts in conflict therewith were thereby repealed.

Chapter 11.—NATIONALITY

SUBCHAPTER I.—DEFINITIONS

§§ 501 to 504. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Sections, act Oct. 14, 1940, ch. 876, title I, subch. I, §§ 101—104, 54 Stat. 1137, 1138, related to definitions and place of general abode, and are now covered by various provisions of section 1101 of this title.

SUBCHAPTER II.—NATIONALITY AT BIRTH

§§ 601 to 605. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Sections 601, acts Oct. 14, 1940, ch. 876, title I, subch. II, § 201, 54 Stat. 1138; July 31, 1946, ch. 708, 60 Stat. 721, related to persons born nationals and citizens, and is now covered by section 1401 of this title.

Sections 602—605, act Oct. 14, 1940, ch. 876, title I, subch. II, §§ 202—205, 54 Stat. 1139, related to citizens by birth in Puerto Rico, Canal Zone or Panama, nationals but not citizens and children born out of wedlock, and are now covered by sections 1402, 1403, 1408, 1409, (a, c) and 1407, respectively, of this title.

§ 606. Citizens by birth in Guam on and after April 11, 1899.

CODIFICATION

Section transferred to section 1421*l* of Title 48, Territories and Insular Possessions.

SUBCHAPTER III.—NATIONALITY THROUGH NATURALIZATION

§§ 701 to 724a. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (40), (42), 66 Stat. 279, 280, eff. Dec. 24, 1952.

Section 701, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 301, 54 Stat. 1140, related to jurisdiction to naturalize, and is now covered by section 1421 of this title.

Section 702, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 302, 54 Stat. 1140, related to sex or marriage, as affecting eligibility for naturalization, and is now covered by section 1422 of this title.

Section 703, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 303, 54 Stat. 1140; Dec. 17, 1943, ch. 344, § 3, 57 Stat. 601; July 2, 1946, ch. 534, § 1, 60 Stat. 416; Aug. 1, 1950, ch. 512, § 4 (b), 64 Stat. 385, related to races affecting eligibility, and is now covered by section 1422 of this title.

Section 704, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 304, 54 Stat. 1140, Sept. 23, 1950, ch. 1024, title I, § 30, 64 Stat. 1018, related to language, history and principles of government affecting eligibility, and is now covered by section 1423 of this title.

Section 705, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 305, 54 Stat. 1141; Sept. 23, 1950, ch. 1024, title I, § 25, 64 Stat. 1013, related to exclusion from naturalization, and is now covered by sections 1424 (a—c), 1427 (f) and 1451 (c) of this title.

Section 706, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 306, 54 Stat. 1141, related to desertion from the armed forces or evasion of draft as affecting eligibility, and is now covered by section 1425 of this title.

Section 707, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 307, 54 Stat. 1142, related to residence as affecting eligibilty, and is now covered by sections 1427 (a—c) and 1441 (a) (2) of this title.

Section 708, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 308, 54 Stat. 1143, related to temporary absence of clergyman as affecting eligibility, and is now covered by section 1428 of this title.

Section 709, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 309, 54 Stat. 1143, related to requirements as to proof of eligibility, and is now covered by sections 1446 (f—h) and 1447 (e) of this title.

Section 710, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 310, 54 Stat. 1144, related to married persons being

excepted from certain requirements, and is now covered by section 1430 (a) of this title.

Section 711, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 311, 54 Stat. 1145, related to spouse of United States citizen residing in United States, in marital union prior to petition, and is now covered by section 1430 (a) of this title.

Section 712, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 312, 54 Stat. 1145, related to alien whose spouse is United States citizen regularly stationed abroad by United States employer, and is now covered by section 1430 (b) of this title.

Section 713, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 313, 54 Stat. 1145, related to children born outside United States, one parent a continuous United States citizen and other an alien subsequently naturalized, and is now covered by section 1431 of this title.

Section 714, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 314, 54 Stat. 1145, related to children born outside United States, both parents aliens, or one an alien and the other a citizen subsequently losing citizenship, and is now covered by section 1432 of this title.

Section 715, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 315, 54 Stat. 1146, related to children born of one parent a United States citizen, and is now covered by section 1433 of this title.

Section 716, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 316, 54 Stat. 1146, related to children adopted by United States citizens, and is now covered by section 1434 (a) of this title.

Section 717, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 317, 54 Stat. 1146, related to former citizens being excepted from certain requirements, and is now covered by sections 1435 (a, c) and 1482 of this title.

Sections 718—720, act Oct. 14, 1940, ch. 876, title I, subchap. III, §§ 318—320, 54 Stat. 1147, 1148, related respectively to citizenship lost by parent's expatriation, minor child's citizenship lost through cancellation of parent's naturalization and the exception from certain requirements of persons misinformed of citizenship status. Sections 718 and 719 are now covered by sections 1482 and 1451(f), respectively, of this title.

Section 720a, act July 2, 1940, ch. 512, §§ 1, 2, 54 Stat. 715, related to aliens spending childhood in United States as excepted from certain requirements.

Section 721, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 321, 54 Stat. 1148, related to nationals but not citizens of the United States, and is now covered by section 1436 of this title.

Section 721a, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 321a, as added July 2, 1946, ch. 534, § 2, 60 Stat. 417, related to resident Filipinos excepted from certain requirements, and is now covered by section 1437 of this title.

Section 722, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 322, 54 Stat. 1148, related to persons born in Puerto Rico of alien parents, and is now covered by section 1402 of this title.

Section 723, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 323, 54 Stat. 1149; Apr. 2, 1942, ch. 208, 56 Stat. 198; Aug. 16, 1951, ch. 321, § 2, 65 Stat. 191, related to former United States citizens losing citizenship by entering armed forces of nonenemy countries during World Wars I and II, and is now covered by section 1438 (a) of this title.

Section 723a, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 323a, as added Dec. 7, 1942, ch. 690, 56 Stat. 1041, related to naturalization of persons serving in the armed forces of United States during World War I and earlier wars, and is now covered by section 1440 (a) of this title.

Section 724, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 324, 54 Stat. 1149; July 2, 1946, ch. 534, § 3, 60 Stat. 417, related to persons serving in the armed forces of the United States, and is now covered by section 1439 of this title.

Section 724a, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 324a, as added June 1, 1948, ch. 360, § 1, 62 Stat. 282, and amended June 29, 1949, ch. 274, 63 Stat. 282, related to persons serving on active duty in armed forces of United States during World Wars I and II, and is now covered by section 1440 (a—c) of this title.

§ 724a-1. Naturalization of aliens enlisted in Regular Army.

CODIFICATION

Section, acts June 30, 1950, ch. 443, § 4, 64 Stat. 316; June 27, 1952, ch. 477, title IV, § 402 (e), 66 Stat. 276, is now set out as a note under section 1440 of this title.

§§ 725 to 727. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Section 725, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 325, 54 Stat. 1150; Sept. 23, 1950, ch. 1024, title I, § 26, 64 Stat. 1015, related to aliens serving on certain United States vessels, and is now covered by section 1441 (a) (1) of this title.

Section 726, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 326, 54 Stat. 1150, related to alien enemies, and is now covered by section 1442 (a—c, e) of this title.

Section 727, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 327, 54 Stat. 1150; May 16, 1947, ch. 72, 61 Stat. 97, related to administration of naturalization laws, and is now covered by section 1443 of this title.

§ 727a. Repealed. Feb. 29, 1952, ch. 49, § 3, 66 Stat. 10.

Section, act May 3, 1940, ch. 183, § 2, 54 Stat. 178, related to patriotic address to new citizens, and is now covered by section 154 of Title 36, Patriotic Societies and Observances.

§§ 728 to 746. Repealed. June 27, 1952, ch. 177, title IV, § 403 (a) (42), (46), 66 Stat. 280, eff. Dec. 24, 1952.

Section 728, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 328, 54 Stat. 1151, related to registration of aliens, and is now covered by sections 1230 and 1259 of this title.

Section 729, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 329, 54 Stat. 1152; Sept. 23, 1950, ch. 1024, title I, § 27, 64 Stat. 1015, related to certificate of arrival. Subsecs. (b) and (c) of said section 729 are now covered by section 1429 of this title.

Section 730, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 330, 54 Stat. 1152, related to photographs, and is now covered by section 1444 of this title.

Section 731, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 331, 54 Stat. 1153; May 31, 1947, ch. 87, § 1, 61 Stat. 121, related to declaration of intention, and is now covered by section 1445 (f) of this title.

Section 732, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 332, 54 Stat. 1154; May 31, 1947, ch. 87, § 2, 61 Stat. 122; June 25, 1948, ch. 656, 62 Stat. 1026, related to petition for naturalization, and is now covered by section 1445 (a—d) of this title.

Section 732a, act May 31, 1947, ch. 87, § 5, 61 Stat. 122, related to waiver of appearance or petition for naturalization, and is now covered by section 1445(e) of this title.

Section 733, acts. Oct. 14, 1940, ch. 876, title I, subchap. III, § 333, 54 Stat. 1156; Sept. 23, 1950, ch. 1024, title I, § 28 (a), 64 Stat. 1016, related to hearings on petitions, and is now covered by section 1446 (a—e) of this title.

Section 734, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 334, 54 Stat. 1156; May 31, 1947, ch. 87, § 3, 61 Stat. 122; Sept. 23, 1950, ch. 1024, title I, § 28 (b), 64 Stat. 1016, related to final hearings, and is now covered by section 1447 (a—d, f) of this title.

Section 735, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 335, 54 Stat. 1157; May 31, 1947, ch. 87, § 4, 61 Stat. 122; Sept. 23, 1950, ch. 1024, title I, § 29, 64 Stat. 1017, related to oath of renunciation and allegiance, and is now covered by section 1448 of this title.

Section 736, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 336, 54 Stat. 1157, related to certificate of naturalization, and is now covered by section 1449 of this title.

Section 737, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 337, 54 Stat. 1158, related to functions and duties of the clerks of courts, and is now covered by sections 1449 and 1450 of this title.

Section 738, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 338, 54 Stat. 1158, related to revocation of naturalization, and is now covered by section 1451 (a, b, d, e, g—i) of this title.

Section 739, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 339, 54 Stat. 1160; Jan. 20, 1944, ch. 2, § 3, 58 Stat. 4; July 23, 1947, ch. 304, § 2, 61 Stat. 414, related to

certificates of derivative citizenship, and is now covered by section 1452 of this title.

Section 740, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 340, 54 Stat. 1160, related to revocation of certificates issued by the commissioner or deputy, and is now covered by section 1453 of this title.

Section 741, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 341, 54 Stat. 1160, related to documents and copies issued by commissioner or deputy, and is now covered by section 1454 of this title.

Section 742, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 342, 54 Stat. 1161; Jan. 20, 1944, ch. 2, § 3, 58 Stat. 5; Sept. 27, 1944, ch. 415, 58 Stat. 745; Sept. 28, 1944, ch. 446, §§ 1, 2, 58 Stat. 755; Nov. 21, 1945, ch. 490, 59 Stat. 585; July 1, 1947, ch. 194, 61 Stat. 240, related to fiscal provisions, and is now covered by section 1455 of this title.

Sections 743—745, act Oct. 14, 1940, ch. 876, title I, subchap. III, §§ 343—345, 54 Stat. 1163, related to mail, textbooks, and compilation of naturalization statistics, and are now covered by sections 1457 and 1458 of this title.

Section 746, acts Oct. 14, 1940, ch. 876, title I, subchap. III, § 346, 54 Stat. 1163; June 25, 1948, ch. 645, § 21, 62 Stat. 862, related to penal provisions, and is now covered by section 1459 of this title and sections 911, 1015, 1421—1429, 1719 and 3282 of Title 18, Crimes and Criminal Procedure.

§ 747. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, act Oct. 14, 1940, ch. 876, title I, subchap. III, § 347, 54 Stat. 1168, related to saving clauses. Similar subject matter is now contained in note under section 1101 of this title.

SUBCHAPTER IV.—LOSS OF NATIONALITY

§ 800. Right of expatriation.

CODIFICATION

Section, R. S. § 1999, is set out as a note under section 1481 of this title.

§§ 801 to 810. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Section 801, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 401, 54 Stat. 1168; Jan. 20, 1944, ch. 2, § 1, 58 Stat. 4; July 1, 1944, ch. 368, § 1, 58 Stat. 677; Sept. 27, 1944, ch. 418, § 1, 58 Stat. 746, related to general means of losing United States nationality, and is now covered by section 1481 (a) of this title.

Section 802, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 402, 54 Stat. 1169, related to presumption of expatriation, and is now covered by section 1482 of this title.

Section 803, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 403, 54 Stat. 1169; July 1, 1944, ch. 368, § 2, 58 Stat. 677, related to restrictions on expatriation, and is now covered by sections 1482 and 1483 (b) of this title.

Section 804, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 404, 54 Stat. 1170, related to expatriation of naturalized nationals by residence abroad, and is now covered by section 1484 (a) of this title.

Section 805, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 405, 54 Stat. 1170, related to exceptions in the case of persons employed or compensated by United States while residing abroad, and is now covered by section 1485 (1, 2) of this title.

Section 806, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 406, 54 Stat. 1170; Dec. 8, 1942, ch. 696, 56 Stat. 1043; Dec. 24, 1942, ch. 819, 56 Stat. 1085, related to additional exceptions, and is now covered by section 1485 (3—9) of this title.

Section 807, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 407, 54 Stat. 1170, related to minor children of naturalized nationals losing nationality by foreign residence, and is now covered by section 1487 of this title.

Section 808, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 408, 54 Stat. 1171, related to exclusiveness of means of losing nationality, and is now covered by section 1488 of this title.

Section 809, acts Oct. 14, 1940, ch. 876, title I, subchap. IV, § 409, 54 Stat. 1171; Oct. 16, 1941, ch. 446, 55 Stat. 743; Oct. 9, 1942, ch. 585, 56 Stat. 779; Sept. 27, 1944, ch. 419, 58 Stat. 747; Oct. 11, 1945, ch. 410, 59 Stat. 544, related to nationality not lost under sections 804 or 807 until October, 1942, and is now covered by section 1487 of this title.

Section 810, act Oct. 14, 1940, ch. 876, title I, subchap. IV, § 410, 54 Stat. 1171, related to chapter being inapplicable where it contravened convention of treaties, and is now covered by section 1489 of this title.

SUBCHAPTER V.—MISCELLANEOUS

§§ 901 to 903. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Section 901, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 501, 54 Stat. 1171, related to procedure when diplomatic officials believe that persons in foreign state have lost American nationality, and is now covered by section 1501 of this title.

Section 902, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 502, 54 Stat. 1171, related to certificates of nationality for non-naturalized United States nationals, and is now covered by section 1502 of this title.

Section 903, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 503, 54 Stat. 1171, related to judicial proceedings for declaration of United States nationality in event of denial of rights and privileges as national, and is now covered by section 1503 of this title.

§§ 903a, 903b. Transferred.

CODIFICATION

Sections 903a and 903b transferred to sections 1731 and 1732, respectively, of Title 22, Foreign Relations and Intercourse.

§§ 904 to 907. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Section 904, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 504, 54 Stat. 1172, related to repeals.

Section 905, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 505, 54 Stat. 1174, related to separability clause.

Section 906, act Oct. 14, 1940, ch. 876, title I, subchap. V, § 505, 54 Stat. 1174, related to effective date of chapter.

Section 907, act Oct. 14, 1940, ch. 876, title I, § 1, 54 Stat. 1137, related to short title of chapter.

SPECIFIC REPEALS BY ACT OCTOBER 14, 1940

In addition to the provisions from which former section 904 was taken, section 504 of act Oct. 14, 1940, specifically repealed all or parts of the following: Title 8, §§ 1, 3, 5a–1, 5d, 5e, 6, 7, 8, 9, 9a, 11, 16, 17, 17a, 18, 106, 196a, 106b, 106c, 351, 352, 353, 354, 356, 356a, 357, 358, 358a, 360, 362, 364, 365, 366, 366a, 367, 368, 368a, 369, 369a, 372, 372a, 373, 377, 377b, 377c, 378, 379, 380, 380a, 380b, 381, 382, 382a, 382b, 382c, 384, 385, 386, 387, 388, 389, 390, 391, 392, 392b, 392c note, 392d note, 392e, 392f, 392g, 393, 394, 395, 396, 397, 398, 399, 399a, 399b, 399c, 399d, 399e, 399f, 400, 401, 402, 403, 404, 405, 408, 409, 410, 411, 412, 413, 414, 415; Title 18, §§ 135, 137, 138, 139, 140, 141, 142, 143; Title 39, § 324; Title 48, § 733b; Title 50 App. § 202.

SUBCHAPTER VI.—NATURALIZATION OF PERSONS SERVING IN THE ARMED FORCES OF THE UNITED STATES DURING WORLD WAR II

§§ 1001 to 1006. Repealed. June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952.

Section 1001, act Oct. 14, 1940, ch. 876, title III, § 701, as added Mar. 27, 1942, ch. 199, title X, § 1001, 56 Stat. 182, and amended Dec. 22, 1944, ch. 662, § 1, 58 Stat. 886; Dec. 28, 1945, ch. 590, § 1 (c) (1), 59 Stat. 658, related to exceptions from certain requirements of naturalization of persons serving in the armed forces during World War II, and is now covered by section 1440 of this title.

Section 1002, act Oct. 14, 1940, ch. 876, title III, § 701, as added Mar. 27, 1942, ch. 199, title X, § 1001, 56 Stat. 182, and amended Dec. 22, 1944, ch. 662, § 2, 58 Stat. 887, related to alien serving outside of jurisdiction of naturalization court, and is now covered by section 1440 of this title.

Section 1003, act Oct. 14, 1940, ch. 876, title III, § 703, as added Mar. 27, 1942, ch. 199, title X, § 1001, 56 Stat.

183, related to waiver of notice to commissioner in case of alien enemy, and is now covered by section 1440 of this title.

Section 1004, act Oct. 14, 1940, ch. 876, title III, § 704, as added Mar. 27, 1942, ch. 199, title X, § 1001, 56 Stat. 183, related to persons excepted from former subchapter, and is now covered by section 1440 of this title.

Section 1005, act Oct. 14, 1940, ch. 876, title III, § 705, as added Mar. 27, 1942, ch. 199, title X, § 1001, 56 Stat. 183, related to forms, rules and regulations, and is now covered by section 1440 of this title.

Section 1006, act Oct. 14, 1940, ch. 876, title III, § 706, as added Dec. 28, 1945, ch. 590, § 1 (c) (2), 59 Stat. 658, related to time of service limitation, and is now covered by section 1440 of this title.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 sections 3253, 8253; title 22 section 2454.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1101. Definitions.

(a) As used in this chapter—

(1) The term "administrator" means the administrator of the Bureau of Security and Consular Affairs of the Department of State.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations.

(7) The term "clerk of court" means a clerk of a naturalization court.

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term "consular officer" means any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas. In cases of aliens, in the Canal Zone and the outlying possessions of the United States, the term "consular officer" means an officer designated by the Governor of the Canal Zone, or the governors of the outlying possessions, for the purpose of issuing immigrant or nonimmigrant visas under this chapter.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13) The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary: *Provided,* That no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) (i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; (i) solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and

direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;

(F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designed by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

(G) (i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives,[1] and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country; or (iii) who is coming temporarily to the United States as a trainee; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

(K) an alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry, and the minor children of such fiancée or fiancé accompanying him or following to join him.

(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

(16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaties relating to military service, an individual who is, or

[1] So in original. Probably should read "representative".

was at any time permanently debarred from becoming a citizen of the United States under section 3 (a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 454 (a) of Appendix to Title 50, or under any section of this title, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) The term "naturalization court", unless otherwise particularly described, means a court authorized by section 1421 (a) of this title to exercise naturalization jurisdiction.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term "special immigrant" means—

(A) an immigrant who was born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him: *Provided,* That no immigrant visa shall be issued pursuant to this clause until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(14) of this title;

(B) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(C) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;

(D) (i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him; or

(E) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided,* That the principal officer of a Foreign Service establishment, in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Residence shall be considered continuous for the purposes of sections 1482 and 1484 of this title where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes (except as used in section 1421(a) of this title) the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States. For the purpose of issuing certificates of citizenship to persons who are citizens of the United States, the term "United States" as used in section 1452 of this title includes the Canal Zone.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(b) As used in subchapters I and II of this chapter—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a legitimate child; or

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided,* That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection.

(3) The term "person" means an individual or an organization.

(4) The term "special inquiry officer" means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this chapter to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this chapter, as the Attorney General shall prescribe.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in subchapter III of this chapter—

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 to 144 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) As used in Part 3 of subchapter III of this chapter—

(1) The term "veteran" means a person who served in the armed forces of the United States at

any time in an active-duty status during the period from April 21, 1898, to August 12, 1898, or from April 6, 1917, to November 11, 1918, or from December 7, 1941, to December 31, 1946, or from June 25, 1950, to July 1, 1955, all dates inclusive, and who was discharged therefrom under honorable conditions. The records of the armed forces shall be conclusive as to type of a discharge and as to whether the conditions under which a discharge was given were honorable.

(2) (A) The term "Spanish-American War" relates to the period from April 21, 1898, to August 12, 1898; (B) the term "World War I" relates to the period from April 6, 1917, to November 11, 1918; (C) the term "World War II" relates to the period from December 7, 1941, to December 31, 1946; and (D) the term "Korean hostilities" relates to the period from June 25, 1950, to July 1, 1955, all dates inclusive.

(e) For the purposes of this chapter—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was—

(1) a habitual drunkard;

(2) one who during such period has committed adultery;

(3) a member of one or more of the classes of persons, whether excludable or not, described in paragraphs (11), (12), and (31) of section 1182 (a) of this title; or paragraphs (9), (10), and (23) of section 1182 (a) of this title, if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of the crime of murder.

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

(g) For the purposes of this chapter any alien ordered deported (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed. (June 27, 1952, ch. 477, title I, § 101, 66 Stat. 166; Sept. 11, 1957, Pub. L. 85–316, §§ 1, 2, 71 Stat. 639; July 7, 1958, Pub. L. 85–508, § 22, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86–3, § 20 (a), 73 Stat. 13, Sept. 21, 1961, Pub. L. 87–256, § 109 (a), (b), 75 Stat. 534; Sept. 26, 1961, Pub. L. 87–301, §§ 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, Pub. L. 89–236, §§ 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, Pub. L. 89–710, 80 Stat. 1104; Apr. 7, 1970, Pub. L. 91–225, § 1, 84 Stat. 116.)

REFERENCES IN TEXT

The Headquarters Agreement with the United Nations (61 Stat. 758), referred to in subsec. (a) (15) (C), is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

The International Organization Immunities Act (59 Stat. 669), referred to in subsec. (a) (15) (G) (i), is classified to sections 288—288f of Title 22, Foreign Relations and Intercourse.

Section 3 (a) of the Selective Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844) referred to in subsec. (a) (19) was formerly classified to section 303 of Appendix to Title 50, War and National Defense and has been omitted as obsolete as of January 1, 1947.

AMENDMENTS

1970—Subsec. (a) (15) (H). Pub. L. 91–225, § 1(a), provided for nonimmigrant alien status for alien spouse and minor children of any alien specified in par. (H) if accompanying him or following to join him and deleted "temporary", "other", and "industrial" preceding "services", "temporary services", and "trainee" in cls. (i) to (iii), respectively.

Subsec. (a) (15) (K), (L). Pub. L. 91–225, § 1(b), added subpars. (K) and (L).

1966—Subsec. (a) (38). Pub. L. 89–710 inserted sentence providing that the term "United States" as used in section 1452 of this title, for the purpose of issuing certificates of citizenship to persons who are citizens of the United States, shall include the Canal Zone.

1965—Subsec. (a) (27). Pub. L. 89–236, § 8(a), substituted "special immigrant" for "nonquota immigrant" as the term being defined.

Subsec. (a) (32). Pub. L. 89–236, § 8(b), substituted the term "profession" and its definition for the term "quota immigrant" and its definition.

Subsec. (b) (1) (F). Pub. L. 89–236, § 8(c), expanded the definition to include a child, under the age of 14 at the time a petition is filed in his behalf to accord a classification as an immediate relative or who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption, and made minor amendments in the existing definition.

Subsec. (b) (6). Pub. L. 89–236, § 24, struck out subsec. (b) (6) which defined the term "eligible orphan".

1961—Subsec. (a)(15). Pub. L. 87-256 included the alien spouse and minor children of any such alien if accompanying him or following to join him in subpar. (F), and added subpar. (J).

Subsec. (b)(1). Pub. L. 87-301, § 2, added subpar. (F).

Subsec. (b)(6). Pub. L. 87-301, § 1, added subsec. (b)(6).

Subsec. (d)(1). Pub. L. 87-301, § 7(a), inserted "or from June 25, 1950, to July 1, 1955,".

Subsec. (d)(2). Pub. 87-301, § 7(b), added the definition of Korean hostilities.

1959—Subsec. (a). Pub. L. 86-3 eliminated Hawaii from cl. (36).

1958—Subsec. (a)(36). Pub. L. 85-508 eliminated Alaska.

1957—Subsec. (b)(1). Pub. L. 85-316 inserted "whether or not born out of wedlock" in subpar. (B), and added subpars. (D) and (E).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

EFFECTIVE DATE

Section 407 of act June 27, 1952, provided that: "Except as provided in subsection (k) of section 401 [section 1106 (k) of this title], this Act [this chapter] shall take effect at 12:01 ante meridian United States Eastern Standard Time on the one hundred eightieth day immediately following the date of its enactment [June 27, 1952]."

SHORT TITLE

Congress in enacting this chapter and various amendments to other laws provided in part by section 1 of Act June 26, 1952 that it should be popularly known as the "Immigration and Nationality Act". For amendments to sections of other titles, see Tables Volumes.

REPEALS

Section 403 (b) of act June 27, 1952, provided that: "Except as otherwise provided in section 405 [set out as a note under this section], all other laws, or parts of laws, in conflict or inconsistent with this Act [this chapter] are, to the extent of such conflict or inconsistency, repealed."

SAVINGS CLAUSE

Section 405 of act June 27, 1952, provided in part that:

"(a) Nothing contained in this Act [this chapter], unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act [this chapter] shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal done or existing, at the time this Act [this chapter] shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act [this chapter] are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act [this chapter], makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended [former section 155 of this title], or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended [section 1953 of Appendix to Title 50], which is pending on the date of enactment of this Act [June 27, 1952], shall be regarded as a proceeding within the meaning of this subsection.

"(b) Except as otherwise specifically provided in title III [subchapter III of this chapter], any petition for naturalization heretofore filed which may be pending at the time this Act [this chapter] shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

"(c) Except as otherwise specifically provided in this Act [this chapter], the repeal of any statute by this Act [this chapter] shall not terminate nationality heretofore lawfully acquired nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party.

"(d) Except as otherwise specifically provided in this Act [this chapter], or any amendment thereto, fees, charges and prices for purposes specified in title V of the Independent Offices Appropriation Act, 1952 (Public Law 137, Eighty-second Congress, approved August 31, 1951), may be fixed and established in the manner and by the head of any Federal Agency as specified in that Act.

"(e) This Act [this chapter] shall not be construed to repeal, alter, or amend section 231 (a) of the Act of April 30, 1946 (60 Stat. 148; [section 1281 (a) of Title 22]), the Act of June 20, 1949 (Public Law 110, section 8, Eighty-first Congress, first session; 63 Stat. 208 [section 403h of Title 50]), the Act of June 5, 1950 (Public Law 535, Eighty-first Congress, second session [former section 1501 et seq. of Title 22]), nor title V of the Agricultural Act of 1949, as amended (Public Law 78, Eighty-second Congress, first session [sections 1461—1468 of title 7])."

SEPARABILITY OF PROVISIONS

Section 406 of act June 27, 1952, provided that: "If any particular provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby."

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment of this section by Pub. L. 85-508 as dependent upon the admission of the State of Alaska into the Union, see section 8 (b) of Pub. L. 85-508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

APPROPRIATIONS

Section 404 of act June 27, 1952, provided that: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [this chapter]."

ADDITIONAL DEFINITIONS

Many of the terms listed in this section are similarly defined in section 782 of Title 50, War and National Defense.

PHILIPPINE TRADERS AS NONIMMIGRANTS

Philippine traders as classifiable as nonimmigrants under subsec. (a) (15) (E) of this section, see section 1184a of this title.

CROSS REFERENCES

Definition of the terms—

Alien enemies, see section 21 of Title 50, War and National Defense.

Committee, see section 1106 (a) of this title.

Crew list visa, see section 1201 (f) of this title.

Order of deportation, see section 1252 (c) of this title.

Permits to enter, see section 1185 (g) of this title.

Person, see sections 1185 (d) and 1322 (e) of this title.

Religious training and belief, see section 1448 of this title.

Transportation line and transportation company, see section 1228 (e) of this title.

United States, see section 1185 (d) of this title.

Immigration and Naturalization Service, see section 1551 et seq. of this title.

Peace Corps programs, nonimmigrant status of foreign participants, see section 2508 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1152, 1153, 1154, 1181, 1182, 1184, 1184a, 1201, 1251, 1253, 1254, 1255, 1255b, 1257, 1258, 1282, 1303, 1481 of this title; title 22 sections 2395, 2508; title 26 sections 871, 872, 1441, 3121, 3231, 3306; title 42 section 410; title 45 sections 228a, 351.

§ 1102. Diplomatic and semidiplomatic immunities.

Except as otherwise provided in this chapter, for so long as they continue in the nonimmigrant classes enumerated in this section, the provisions of this chapter relating to ineligibility to receive visas and the exclusion or deportation of aliens shall not be construed to apply to nonimmigrants—

(1) within the class described in paragraph (15) (A) (i) of section 1101 (a) of this title, except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraph (15) (A) (i), and, under such rules and regulations as the President may deem to be necessary, the provisions of paragraph (27) of section 1182 (a) of this title;

(2) within the class described in paragraph (15) (G) (i) of section 1101 (a) of this title, except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentaion[1] necessary to establish their qualifications under such paragraph (15) (G) (i), and the provisions of paragraph (27) of section 1182 (a) of this title; and

(3) within the classes described in paragraphs (15) (A) (ii), (15) (G) (ii), (15) (G) (iii), or (15) (G) (iv) of section 1101 (a) of this title, except those provisions relating to reasonable requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraphs, and the provisions of paragraphs (27) and (29) of section 1182 (a) of this title.

(June 27, 1952, ch. 477, title I, § 102, 66 Stat. 173.)

CROSS REFERENCES

All cases affecting ambassadors, other public ministers and consuls—

Judicial power as extending to, see Const. Art. III, § 2, cl. 1.

Supreme Court as having original jurisdiction, in, see Const. Art. III, § 2, cl. 2.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Nonimmigrant visa, see section 1101 (a) (26) of this title.

Passport, see section 1101 (a) (30) of this title.

Original and exclusive jurisdiction of—

District courts of all actions and proceedings against consuls or vice consuls of foreign states, see section 1351 of Title 28, Judiciary and Judiciary Procedure.

Supreme Court of all actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants not inconsistent with the law of nations, see section 1251 (a), (2) of Title 28, Judiciary and Judicial Procedure.

International organizations, privileges, exemptions, and immunities of officers, employees, and their families, see section 288d of Title 22, Foreign Relations and Intercourse.

Original but not exclusive jurisdiction of Supreme Court of all actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties, see section 1251 (b) (1) of Title 28, Judiciary and Judicial Procedure.

[1] So in original. Probably should read "documentation."

§ 1103. Powers and duties of the Attorney General and Commissioner; appointment of Commissioner.

(a) The Attorney General shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such intructions;[1] and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter. He is authorized, in accordance with the civil-service laws and regulations and chapter 51 and subchapter III of chapter 53 of Title 5, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this chapter; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish officers of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detail employees of the Service for duty in foreign countries.

(b) The Commissioner shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate. He shall be charged with any and all responsibilities and authority in the administration of the Service and of this chapter which are conferred upon the Attorney General as may be delegated to

[1] So in original. Probably should read "instructions".

him by the Attorney General or which may be prescribed by the Attorney General. (June 27, 1952, ch. 477, title I, § 103, 66 Stat. 173.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (a), are classified generally to Title 5, Government Organization and Employees.

CODIFICATION

Provisions of subsec. (b) which prescribed the annual compensation of the Commissioner were omitted to conform with the provisions of the Federal Executive Salary Schedule. See section 5316(44) of Title 5, Government Organization and Employees.

EMERGENCY PLANS FOR ALIEN CONTROL

Attorney General to develop emergency plans for control of aliens and control of entry and departure, see section 2(e) of Ex. Ord. No. 11310, Oct. 11, 1966, 31 F.R. 13199, set out as a note under section 509 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 (g) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Commissioner, see section 1101 (a) (8) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

Service, see section 1101 (a) (34) of this title.

Office of Commissioner of Immigration and Naturalization, see section 1552 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1152, 1153, 1154, 1202, 1254 of this title.

§ 1104. Secretary of State.

(a) Powers and duties.

The Secretary of State shall be charged with the administration and the enforcement of the provisions of this chapter and all other immigration and nationality laws relating to (1) the powers, duties, and functions of diplomatic and consular officers of the United States, except those powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas; (2) the powers, duties, and functions of the Bureau of Security and Consular Affairs; and (3) the determination of nationality of a person not in the United States. He shall establish such regulations; prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the department or independent establishment under whose jurisdiction the employee is serving, any of the powers, functions, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Department of State or of the American Foreign Service.

(b) Creation of Bureau of Security and Consular Affairs; appointment and duties of Administrator.

There is established in the Department of State a Bureau of Security and Consular Affairs, to be headed by an administrator (with an appropriate title to be designated by the Secretary of State), with rank equal to that of an Assistant Secretary of State. He shall be appointed by the President by and with the advice and consent of the Senate. The administrator shall be a citizen of the United States, qualified by experience, and shall maintain close liaison with the appropriate committees of Congress in order that they may be advised regarding the administration of this chapter by consular officers. He shall be charged with any and all responsibility and authority in the administration of the Bureau and of this chapter which are conferred on the Secretary of State as may be delegated to him by the Secretary of State or which may be prescribed by the Secretary of State. He shall also perform such other duties as the Secretary of State may prescribe.

(c) Passport Office, Visa Office, and other offices; directors.

Within the Bureau there shall be a Passport Office, a Visa Office, and such other offices as the Secretary of State may deem to be appropriate, each office to be headed by a director. The Directors of the Passport Office and the Visa Office shall be experienced in the administration of the nationality and immigration laws.

(d) Same; transfer of duties.

The functions heretofore performed by the Passport Division and the Visa Division of the Department of State shall hereafter be performed by the Passport Office and the Visa Office, respectively, of the Bureau of Security and Consular Affairs.

(e) General Counsel of Visa Office; appointment and duties.

There shall be a General Counsel of the Visa Office, who shall be appointed by the Secretary of State and who shall serve under the general direction of the Legal Adviser of the Department of State. The General Counsel shall have authority to maintain liaison with the appropriate officers of the Service with a view to securing uniform interpretations of the provisions of this chapter.

(f) Deputy Under Secretary of State for Administration; jurisdiction.

The Bureau shall be under the immediate jurisdiction of the Deputy Under Secretary of State for Administration. (June 27, 1952, ch. 477, title I, § 104, 66 Stat. 174; June 28, 1962, Pub. L. 87–510, § 4(a)(2), 76 Stat. 123; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(43), 78 Stat. 428.)

AMENDMENTS

1964—Subsec. (b). Pub. L. 88–426 repealed provisions which related to the compensation of the Administrator. See section 5311 et seq. of Title 5, Government Organization and Employees.

1962—Subsec. (b). Pub. L. 87–510 provided for the appointment of the Administrator of the Bureau of Security and Consular Affairs by the President by and with the advice and consent of the Senate.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Compensation of Administrator, Bureau of Security and Consular Affairs, see section 5315 of Title 5, Government Organization and Employees.

Definition of the term—

Administrator, see section 1101 (a) (1) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

National, see section 1101 (a) (21) of this title.

Nonimmigrant visa, see section 1101 (a) (26) of this title.

Passport, see section 1101 (a) (30) of this title.

Service, see section 1101 (a) (34) of this title.

Deputy Under Secretaries of State, see sections 2652 and 2653 of Title 22, Foreign Relations and Intercourse.

Legal Adviser of the Department of State, establishment of office, appointment and rank, see section 2653 of Title 22.

§ 1105. Liaison with internal security officers.

The Commissioner and the administrator shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this chapter in the interest of the internal security of the United States. The Commissioner and the administrator shall maintain direct and continuous liaison with each other with a view to a coordinated, uniform, and efficient administration of this chapter, and all other immigration and nationality laws. (June 27, 1952, ch. 477, title I, § 105, 66 Stat. 175.)

CROSS REFERENCES

Central Intelligence Agency, see section 403 et seq. of Title 50, War and National Defense.

Definition of the term—

Administrator, see section 1101 (a) (1) of this title.

Commissioner, see section 1101 (a) (8) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

Internal security, see chapter 23 of Title 50, War and National Defense.

§ 1105a. Judicial review of orders of deportation and exclusion.

(a) Exclusiveness of procedure.

The procedure prescribed by, and all the provisions of sections 1031 to 1042 of Title 5, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 1252(b) of this title or comparable provisions of any prior Act, except that—

Time for filing petition.

(1) a petition for review may be filed not later than six months from the date of the final deportation order or from the effective date of this section, whichever is the later.

Venue.

(2) the venue of any petition for review under this section shall be in the judicial circuit in which the administrative proceedings before a special inquiry officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this chapter, of the petitioner, but not in more than one circuit;

Respondent; service of petition; stay of deportation.

(3) the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs;

Determination upon administrative record.

(4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;

Claim of nationality; determination or transfer to district court for hearing de novo.

(5) whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is presented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of Title 28. Any such petitioner shall not be entitled to have such issue determined under section 1503(a) of this title or otherwise;

Challenge of validity of deportation order in criminal proceedings; motion for judicial review before trial; hearing de novo on nationality claim; determination of motion; dismissal of indictment upon invalidity of order; appeal.

(6) if the validity of a deportation order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (d) or (e) of section 1252 of this title only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality is made in such motion, and in the opinion of the court, a genuine issue of material fact as to the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of Title 28. Any such

alien shall not be entitled to have such issue determined under section 1503(a) of this title or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive. If the deportation order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within thirty days. The procedure on such appeals shall be as provided in the Federal rules of criminal procedure. No petition for review under this section may be filed by any alien during the pendency of a criminal proceeding against such alien for violation of subsection (d) or (e) of section 1252 of this title;

Deferment of deportation; compliance of alien with other provisions of law; detention or taking into custody of alien.

(7) nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 1252 of this title. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 1252 of this title at any time after the issuance of a deportation order;

Typewritten record and briefs.

(8) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs; and

Habeas corpus.

(9) any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.

(b) Limitation of certain aliens to habeas corpus proceedings.

Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 1226 of this title or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.

(c) Exhaustion of administrative remedies or departure from United States; disclosure of prior judicial proceedings.

An order of deportation or of exclusion shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations or if he has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order. (June 27, 1952, ch. 477, title I, § 106, as added Sept. 26, 1961, Pub. L. 87-301, § 5(a), 75 Stat. 651.)

REFERENCES IN TEXT

Sections 1031 to 1042 of Title 5, referred to in subsec. (a), were repealed in the general revision of Title 5 by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and the provisions are now covered by section 2341 et seq. of Title 28, Judiciary and Judicial Procedure.

"Effective date of this section", referred to in subsec. (a)(1), means the effective date of Pub. L. 87-301. See effective date note below.

EFFECTIVE DATE; PENDING PROCEEDINGS; SEPARABILITY OF PROVISIONS

Section 5(b) of Pub. L. 87-301 provided that: "This section shall take effect on the thirtieth day after its approval [Sept. 26, 1961] and, notwithstanding the provisions of any other law, including section 405 of the Immigration and Nationality Act [set out as a note under section 1101 of this title], shall then be applicable to all administrative proceedings involving deportation or exclusion of aliens notwithstanding (1) that the person involved entered the United States prior to the effective date of this section or of the Immigration and Nationality Act [this chapter] or (2) that the administrative proceeding was commenced or conducted prior to the effective date of this section or of the Immigration and Nationality Act [this chapter]. Any judicial proceeding to review an order of deportation which is pending unheard in any district court of the United States on the effective date of this section (other than a habeas corpus or criminal proceeding in which the validity of the deportation order has been challenged) shall be transferred for determination in accordance with this section to the court of appeals having jurisdiction to entertain a petition for review under this section. Any judicial proceeding to review an order of exclusion which is pending unheard on the effective date of this section shall be expedited in the same manner as is required in habeas corpus. All laws or parts of laws inconsistent with this section are, to the extent of such inconsistency, repealed. If any particular provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby."

§ 1106. Repealed. Pub. L. 91-510, title IV, § 422(a), Oct. 26, 1970, 84 Stat. 1189.

Section, act June 27, 1952, ch. 477, title IV, § 401, 66 Stat. 274, provided for establishment of Joint Committee on Immigration and Nationality, including its composition, necessity of membership on House or Senate Committee on the Judiciary, vacancies and election of chairman, functions, reports, submission of regulations to Committee, hearings and subpena, travel expenses, employment of personnel, payment of Committee expenses, and effective date.

EFFECTIVE DATE OF REPEAL

Repeal effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91-510, set out as a note under section 72a of Title 2, The Congress.

ABOLITION OF JOINT COMMITTEE ON IMMIGRATION AND NATIONALITY

Pub. L. 91-510, title IV, § 421, Oct. 26, 1970, 84 Stat. 1189, abolished the Joint Committee on Immigration and Nationality established by former subsec. (a) of this section.

SUBCHAPTER II.—IMMIGRATION

PART I.—SELECTION SYSTEM

§ 1151. Numerical limitations on total lawful admissions.

(a) Quarterly and yearly limitations.

Exclusive of special immigrants defined in section 1101(a)(27) of this title, and of the immediate relatives of United States citizens specified in subsection (b) of this section, the number of aliens who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 1153(a)(7) of this title enter conditionally, (i) shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and (ii) shall not in any fiscal year exceed a total of 170,000.

(b) Immediate relatives defined.

The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided,* That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this chapter.

(c) Determination of unused quota numbers.

During the period from July 1, 1965, through June 30, 1968, the annual quota of any quota area shall be the same as that which existed for that area on June 30, 1965. The Secretary of State shall, not later than on the sixtieth day immediately following October 3, 1965, and again on or before September 1, 1966, and September 1, 1967, determine and proclaim the amount of quota numbers which remain unused at the end of the fiscal year ending on June 30, 1965, June 30, 1966, and June 30, 1967, respectively, and are available for distribution pursuant to subsection (d) of this section.

(d) Immigration pool; limitation on total numbers; allocations.

Quota numbers not issued or otherwise used during the previous fiscal year, as determined in accordance with subsection (c) hereof, shall be transferred to an immigration pool. Allocation of numbers from the pool and from national quotas shall not together exceed in any fiscal year the numerical limitations in subsection (a) of this section. The immigration pool shall be made available to immigrants otherwise admissible under the provisions of this chapter who are unable to obtain prompt issuance of a preference visa due to oversubscription of their quotas, or subquotas as determined by the Secretary of State. Visas and conditional entries shall be allocated from the immigration pool within the percentage limitations and in the order of priority specified in section 1153 of this title without regard to the quota to which the alien is chargeable.

(e) Termination of immigration pool; carryover of admissible immigrants.

The immigration pool and the quotas of quota areas shall terminate June 30, 1968. Thereafter immigrants admissable under the provisions of this chapter who are subject to the numerical limitations of subsection (a) of this section shall be admitted in accordance with the percentage limitations and in the order of priority specified in section 1153 of this title. (June 27, 1952, ch. 477, title II, ch. 1, § 201, 66 Stat. 175; Oct. 3, 1965, Pub. L. 89-236, § 1, 79 Stat. 911.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-236 substituted provisions setting up a 170,000 maximum on total annual immigration and 45,000 maximum on total quarterly immigration without regard to national origins, for provisions setting an annual quota for quota areas which allowed admission of one-sixth of one per centum of the portion of the national population of the continental United States in 1920 attributable by national origin of that quota area and setting a minimum quota of 100 for each quota area.

Subsec. (b). Pub. L. 89-236 substituted provisions defining "immediate relatives", for provisions calling for a determination of the annual quota for each quota area by the Secretaries of State and Commerce and the Attorney General, and the proclamation of the quotas by the President.

Subsec. (c). Pub. L. 89-236 substituted provisions allowing the carryover through June 30, 1968, of the quotas for quota areas in effect on June 30, 1965, and the redistribution of unused quota numbers, for provisions which limited the issuance of immigrant visas.

Subsec. (d). Pub. L. 89-236 substituted provisions creating an immigration pool and allocating its numbers without reference to the quotas to which an alien is chargeable, for provisions allowing the issuance of an immigrant visa to an immigrant as a quota immigrant even though he might be a nonquota immigrant.

Subsec. (e). Pub. L. 89-236 substituted provisions terminating the immigration pool on June 30, 1968, for provisions permitting the reduction of annual quotas based on national origins pursuant to Act of Congress prior to the effective date of proclaimed quotas.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 20 of Pub. L. 89-236 provided that: "This Act [which amended this section and sections 1101, 1152—1156, 1181, 1182, 1201, 1202, 1204, 1251, 1253, 1254, 1255, 1259, 1322, and 1351 of this title, repealed section 1157 of this title, and enacted provisions set out as a note under this section] shall become effective on the first day of the first month after the expiration of thirty days following the date of its enactment [October 3, 1965] except as provided herein."

SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION

Section 21 of Pub. L. 89-236 established a Select Commission on Western Hemisphere Immigration to study the following matters:

(1) Prevailing and projected demographic, technological, and economic trends, particularly as they pertain to Western Hemisphere nations;

(2) Present and projected unemployment in the United States, by occupations, industries, geographic areas and other factors, in relation to immigration from the Western Hemisphere:

(3) The interrelationships between immigration, present and future, and existing and contemplated national and international programs and projects of Western Hemisphere nations, including programs and projects for economic and social development;

(4) The operation of the immigration laws of the United States as they pertain to Western Hemisphere nations, including the adjustment of status for Cuban refugees, with emphasis on the adequacy of such laws from the standpoint of fairness and from the standpoint of the impact of such laws on employment and working conditions within the United States;

(5) The implications of the foregoing with respect to the security and international relations of Western Hemisphere nations; and

(6) Any other matters which the Commission believes to be germane to the purposes for which it was established.

The Commission was directed to make a final report to the President on or before January 15, 1968.

TERMINATION OF QUOTA DEDUCTIONS

Section 10 of Pub. L. 85-316, Sept. 11, 1957, 71 Stat. 642, provided that the quota deductions required under the provisions of former subsec. (e) of this section, the Displaced Persons Act of 1948, as amended, the act of June 30, 1950, and the act of April 9, 1952 were terminated effective July 1, 1957.

CROSS REFERENCES

Definition of the term—

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

National, see section 1101 (a) (21) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1152, 1153, 1154, 1202, 1254 of this title.

§ 1152. Numerical limitations on individual foreign states.

(a) Prohibition against preference or priority because of race, sex, nationality, place of birth, or place of residence.

No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in sections 1101(a)(27), 1151(b), and 1153 of this title: *Provided*, That the total number of immigrant visas and the number of conditional entries made available to natives of any single foreign state under paragraphs (1) through (8) of section 1153(a) of this title shall not exceed 20,000 in any fiscal year: *Provided further*, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968.

(b) Determination of individual foreign states by Secretary of State; charging immigrant to proper foreign state.

Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions shall be treated as a separate foreign state for the purposes of the numerical limitation set forth in the proviso to subsection (a) of this section when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this chapter the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by his alien parent or parents, may be charged to the same foreign state as the accompanying parent or of either accompanying parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the accompanying parent or parents, and if the foreign state to which such parent has been or would be chargeable has not exceeded the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his accompanying spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the accompanying spouse, if such spouse has received or would be qualified for an immigrant visa and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country then in the last foreign country in which he had his residence as determined by the consular officer; (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Immigrants born in colonies of foreign states.

Any immigrant born in a colony or other component or dependent area of a foreign state unless a special immigrant as provided in section 1101(a)(27) of this title or an immediate relative of a United States citizen as specified in section 1151(b) of this title, shall be chargeable, for the purpose of limitation set forth in subsection (a) of this section, to the foreign state, except that the number of persons born in any such colony or other component or dependent area overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state.

(d) Changes in territorial limits of foreign states.

In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change issue appropriate instructions to all diplomatic and consular offices. (June 27, 1952, ch. 477, title II, ch. 1, § 202, 66 Stat. 176; Sept. 26, 1961, Pub. L. 87-301, § 9, 75 Stat. 654; Oct. 3, 1965, Pub. L. 89-236, § 2, 79 Stat. 911.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-236 substituted provisions prohibiting preferences or priorities or discrimination in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence, setting a limit of 20,000 per year on the total number of entries available to natives of any single foreign state, and prohibiting the 20,000 limitation from reducing the number of immigrants under the quota of any quota area before June 30, 1968, for provisions calling for the charging of immigrants, with certain exceptions, to the annual quota of the quota area of his birth.

Subsec. (b). Pub. L. 89-236 substituted provisions calling for treatment of each independent country, self-governing dominion, mandated territory, and trusteeship territory as a separate foreign state for purposes of determining the numerical limitation imposed on each foreign state, and chargeability of immigrants to the country of their birth except where such chargeability would cause the family unit to be divided, for provisions setting up the Asia-Pacific triangle and providing for the special treatment of quota chargeability thereunder on the basis of racial ancestry.

Subsec. (c). Pub. L. 89-236 substituted provisions making immigrants born in colonies or other component or dependent areas of a foreign state chargeable to the foreign state and placing a limitation on the number of such immigrants of 1 per centum of the maximum

number of visas available to the foreign state, for provisions making immigrants born in colonies for which no specific quota are set chargeable to the governing country and placing a limit of 100 on such immigrants from each governing country each year, with special application to the Asia-Pacific triangle.

Subsec. (d). Pub. L. 89-236 substituted provisions requiring the Secretary of State, upon a change in the territorial limits of foreign states, to issue appropriate instructions to all diplomatic and consular offices, for provisions that the terms of an immigration quota for a quota area do not constitute recognition of the transfer of territory or of a government not recognized by the United States.

Subsec. (e). Pub. L. 89-236 repealed subsec. (e) which allowed revision of quotas.

1961—Subsec. (e). Pub. L. 87-301 provided that if an area undergoes a change of administrative arrangements, boundaries, or other political change, the annual quota of the newly established area, or the visas authorized to be issued shall not be less than the total of quotas in effect or visas authorized for the area immediately preceding the change, and deleted provisions which in the event of an increase in minimum quota areas above twenty in the Asia-Pacific triangle, would proportionately decrease each quota of the area so the sum of all area quotas did not exceed two thousand.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Outlying possessions of the United States, see section 1101 (a) (29) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

Spouse, wife, or husband, see section 1101 (a) (35) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1153. Allocation of immigrant visas.

(a) Categories of preference priorities; per centum limitations; conditional entries; waiting lists.

Aliens who are subject to the numerical limitations specified in section 1151(a) of this title shall be allotted visas or their conditional entry authorized, as the case may be, as follows:

(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in section 1151(a)(ii) of this title, plus any visas not required for the classes specified in paragraph (1) of this subsection, to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States.

(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a)(ii) of this title, plus any visas not required for the classes specified in paragraphs (1) through (3) of this subsection, to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 1151(a)(ii) of this title, plus any visas not required for the classes specified in paragraphs (1) through (4) of this subsection, to qualified immigrants who are the brothers or sisters of citizens of the United States.

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in a number not to exceed 6 per centum of the number specified in section 1151(a)(ii) of this title, to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: *Provided,* That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

(8) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6) and less the number of conditional entries and visas made available pursuant to paragraph (7), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(14) of this title.

(9) A spouse or child as defined in section 1101(b)(1) (A), (B), (C), (D), or (E) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa or to conditional entry under paragraphs (1) through (8) of this subsection, be entitled to the same status, and the same order of consideration provided in subsection (b) of this section, if accompanying, or following to join, his spouse or parent.

(b) Order of consideration given applications for immigrant visas.

In considering applications for immigrant visas under subsection (a) of this section consideration shall be given to applicants in the order in which the classes of which they are members are listed in subsection (a) of this section.

(c) Order of issuance of immigrant visas.

Immigrant visas issued pursuant to paragraphs (1) through (6) of subsection (a) of this section shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 1154 of this title.

(d) Presumption of nonpreference status; grant of status by consular officers.

Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a preference status under paragraphs (1) through (7) of subsection (a) of this section, or to a special immigrant status under section 1101(a)(27) of this title, or that he is an immediate relative of a United States citizen as specified in section 1151(b) of this title. In the case of any alien claiming in his application for an immigrant visa to be an immediate relative of a United States citizen as specified in section 1151(b) of this title or to be entitled to preference immigrant status under paragraphs (1) through (6) of subsection (a) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 1154 of this title.

(e) Estimates of anticipated numbers of visas to be issued; termination of registration of aliens failing to evidence continued intention to apply for a visa; rules and regulations.

For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a) of this section and to rely upon such estimates in authorizing the issuance of such visas. The Secretary of State, in his discretion, may terminate the registration on a waiting list of any alien who fails to evidence his continued intention to apply for a visa in such manner as may be by regulation prescribed.

(f) Report to Congress on refugees conditionally entering the United States.

The Attorney General shall submit to the Congress a report containing complete and detailed statement of facts in the case of each alien who conditionally entered the United States pursuant to subsection (a)(7) of this section. Such reports shall be submitted on or before January 15 and June 15 of each year.

(g) Inspection and examination of refugees after two years.

Any alien who conditionally entered the United States as a refugee, pursuant to subsection (a)(7) of this section, whose conditional entry has not been terminated by the Attorney General pursuant to such regulations as he may prescribe, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service and shall thereupon be inspected and examined for admission into the United States, and his case dealt with in accordance with the provisions of sections 1225, 1226, and 1227 of this title.

(h) Retroactive readjustment of refugee status to that of alien lawfully admitted for permanent residence.

Any alien who, pursuant to subsection (g) of this section, is found, upon inspection by the immigration officer or after hearing before a special inquiry officer, to be admissible as an immigrant under this chapter at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 1182(a)(20) of this title, shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival. (June 27, 1952, ch. 477, title II, ch. 1, § 203, 66 Stat. 178; Sept. 11, 1957, Pub. L. 85–316, § 3, 71 Stat. 639; Sept. 22, 1959, Pub. L. 86–363, §§ 1—3, 73 Stat. 644; Oct. 3, 1965, Pub. L. 89–236, § 3, 79 Stat. 912.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–236 substituted provisions setting up preference priorities and percentage allocations of the total numerical limitation for the admission of qualified immigrants, consisting of unmarried sons or daughters of U.S. citizens (20 percent), husbands, wives, and unmarried sons or daughters of alien residents (20 percent plus any unused portion of class 1), members of professions, scientists, and artists (10 percent), married sons or daughters of U.S. citizens (10 percent plus any unused portions of classes 1—3), brothers or sisters of U.S. citizens (24 percent plus any unused portions of classes 1 through 4), skilled or unskilled persons capable of filling labor shortages in the United States (10 percent), refugees (6 percent), otherwise qualified immigrants (portion not used by classes 1 through 7), and

allowing a spouse or child to be given the same status and order of consideration as the spouse or parent, for provisions spelling out the preferences under the quotas based on the previous national origins quota systems.

Subsec. (b). Pub. L. 89-236 substituted provisions requiring that consideration be given applications for immigrant visas in the order in which the classes of which they are members are listed in subsec. (a), for provisions allowing issuance of quota immigrant visas under the previous national origins quota system in the order of filing in the first calendar month after receipt of notice of approval for which a quota number was available.

Subsec. (c). Pub. L. 89-236 substituted provisions requiring issuance of immigrant visas pursuant to paragraphs (1) through (6) of subsection (a) of this section in the order of filing of the petitions therefor with the Attorney General, for provisions which related to issuance of quota immigrant visas in designated classes in the order of registration in each class on quota waiting lists.

Subsec. (d). Pub. L. 89-236 substituted provisions requiring each immigrant to establish his preference as claimed and prohibiting consular officers from granting status of immediate relative of a United States citizen or preference until authorized to do so, for provisions spelling out the order for consideration of applications for quota immigrant visas under the various prior classes.

Subsec. (e). Pub. L. 89-236 substituted provisions authorizing the Secretary of State to make estimates of anticipated members of visas issued and to terminate the waiting-list registration of any registrant failing to evidence a continued intention to apply for a visa, for provisions establishing a presumption of quota status for immigrants and requiring the immigrant to establish any claim to a preference.

Subsecs. (f)—(h). Pub. L. 89-236 added subsecs. (f)—(h).

1959—Subsec. (a)(2). Pub. L. 86-363, § 1, accorded adult unmarried sons or daughters of United States citizens second preference in the allocation of immigrant visas within quotas.

Subsec. (a)(3). Pub. L. 86-363, § 2, substituted "unmarried sons or daughters" for "children".

Subsec. (a)(4). Pub. L. 86-363, § 3, substituted "married sons or married daughters" for "sons, or daughters", increased the percentage limitation from 25 to 50 per centum, and made the preference available to spouses and children of qualified quota immigrants if accompanying them.

1957—Subsec. (a)(1). Pub. L. 85-316 substituted "or following to join him" for "him".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

NONQUOTA IMMIGRANT STATUS OF CERTAIN RELATIVES OF UNITED STATES CITIZENS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JAN. 1, 1962

Pub. L. 87-885, § 1, Oct. 24, 1962, 76 Stat. 1247, provided that certain alien relatives of United States citizens registered on a consular waiting list under priority date earlier than March 31, 1954, and eligible for a quota immigrant status on a basis of a petition filed with the Attorney General prior to January 1, 1962, and the spouse and children of such alien, be held to be nonquota immigrants and be issued nonquota immigrant visas.

NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APR. 1, 1962

Pub. L. 87-885, § 2, Oct. 24, 1962, 76 Stat. 1247, provided that certain alien skilled specialists eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to April 1, 1962, be held to be nonquota immigrants and be issued nonquota immigrant visas.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JULY 1, 1961

Section 25 of Pub. L. 87-301 provided that certain alien relatives of United States citizens eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to July 1, 1961, be held to be a nonquota immigrant and, if otherwise admissible under the provisions of this chapter, be issued a nonquota immigrant visa; and that at any time prior to the expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, a special nonquota immigrant visa be issued to an eligible orphan as defined in section 4 of the act of September 11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat. 490, 74 Stat. 505 [former section 1205 of this title]), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition.

ADOPTED SONS OR ADOPTED DAUGHTERS, PREFERENCE STATUS

Section 5(c) of Pub. L. 86-363 provided that aliens granted a preference pursuant to petitions approved by the Attorney General on the ground that they were the adopted sons or adopted daughters of United States citizens were to remain in that status notwithstanding the provisions of section 1 of Pub. L. 86-363, unless they acquired a different immigrant status pursuant to a petition approved by the Attorney General.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1958

Section 12A of Pub. L. 85-316, as added by section 2 of Pub. L. 85-700, Aug. 21, 1958, 72 Stat. 699, providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1958, shall be held to be nonquota immigrants and issued visas, was repealed by Pub. L. 87-301, § 24(a)(6), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12A of Pub. L. 85-316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1957

Section 12 of Pub. L. 85-316 providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1957, shall be held to be nonquota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub. L. 87-301, § 24(a)(5), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12 of Pub. L. 85-316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

SPECIAL NONQUOTA IMMIGRANT VISAS FOR REFUGEES

Section 6 of Pub. L. 86-363 authorizing issuance of nonquota immigrant visas to aliens eligible to enter for permanent residence if the alien was the beneficiary of a visa petition approved by the Attorney General, and such petition was filed by a person admitted under former section 1971 et seq., of Title 50, Appendix, was repealed by Pub. L. 87-301, § 24(a)(7), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 6 of Pub. L. 86-363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

NONQUOTA IMMIGRANT STATUS OF SPOUSES AND CHILDREN OF CERTAIN ALIENS

Section 4 of Pub. L. 86-363 providing that an alien registered on a consular waiting list was eligible for quota immigrant status on basis of a petition approved prior to Jan. 1, 1959, along with the spouse and children of such alien, was repealed by Pub. L. 87-301, § 24(a)(7), Sept. 26, 1961.

Repeal of section 4 of Pub. L. 86-363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87-301, set out as a note under former section 1255a of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Application for admission, see section 1101 (a) (4) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and in subchapter I of this chapter, see section 1101(b)(1) of this title.

Consular officer, see section 1101 (a), (9) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Spouse, see section 1101 (a) (35) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1152, 1154, 1182, 1254, 1255 of this title; title 42 section 2949.

§ 1154. Procedure for granting immigrant status.

(a) Petition for preference status or immediate relative status; form; oath.

Any citizen of the United States claiming that an alien is entitled to a preference status by reason of the relationships described in paragraphs (1), (4), or (5) of section 1153(a) of this title, or to an immediate relative status under section 1151(b) of this title, or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 1153(a)(2) of this title, or any alien desiring to be classified as a preference immigrant under section 1153(a)(3) of this title (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 1153(a)(6) of this title, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.

(b) Investigation; consultation; approval; authorization to grant preference status.

After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 1153(a)(3) or 1153(a)(6) of this title, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 1151(b) of this title, or is eligible for a preference status under section 1153(a) of this title, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws.

Notwithstanding the provisions of subsection (b) of this section no more than two petitions may be approved for one petitioner in behalf of a child as defined in section 1101(b)(1)(E) or 1101(b)(1)(F) of this title unless necessary to prevent the separation of brothers and sisters and no petition shall be approved if the alien has previously been accorded a nonquota or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws.

(d) Report to Congress covering approved petitions for professional or occupational preferences.

The Attorney General shall forward to the Congress a report on each approved petition for immigrant status under sections 1153(a)(3) or 1153(a)(6) of this title stating the basis for his approval and such facts as were by him deemed to be pertinent in establishing the beneficiary's qualifications for the preferential status. Such reports shall be submitted to the Congress on the first and fifteenth day of each calendar month in which the Congress is in session.

(e) Subsequent finding of non-entitlement to preference classification.

Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to enter the United States as a preference immigrant under section 1153(a) of this title or as an immediate relative under section 1151(b) of this title if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification. (June 27, 1952, ch. 477, title II, ch. 1, § 204, 66 Stat. 179; Oct. 24, 1962, Pub. L. 87-885, § 3, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89-236, § 4, 79 Stat. 915.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-236 substituted provisions spelling out the statutory grounds for filing a petition for preference status and prescribing the authority of the Attorney General to require documentary evidence in support and the form of the petition, for provisions prohibiting consular officers from granting preference status before being authorized to do so in cases of applications based on membership in the ministry of a religious denomination or high education, technical training, or specialized experience which would be substantially beneficial to the United States.

Subsec. (b). Pub. L. 89-236 substituted provisions authorizing investigation of petitions by the Attorney General, consultation with the Secretary of Labor, and authorization to consular officers, for provisions specifying the form of application for preference status on the basis of membership in the ministry of a religious denomination

or high education, technical training, or specialized experience which would be substantially beneficial to the United States and the circumstances making an application appropriate.

Subsec. (c). Pub. L. 89-236 substituted provisions limiting the number of orphan petitions which may be approved for one petitioner and prohibiting approval of any petition of an alien whose prior marriage was determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, for provisions which related to investigation of facts by the Attorney General and submission of reports to Congress covering the granting of preferential status.

Subsec. (d). Pub. L. 89-236 substituted provisions requiring the Attorney General to submit reports to Congress on each approved petition for professional or occupational preference, for provisions prohibiting a statutory construction of the section which would entitle an immigrant to preferential classification if, upon arrival at the port of entry, he was found not to be entitled to such classification.

Subsec. (e). Pub. L. 89-236 added subsec. (e).

1962—Subsec. (c). Pub. L. 87-885 provided for submission of reports to Congress.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

ALIEN SHEEPHERDERS

Act Sept. 3, 1954, ch. 1254, §§ 1—3, 68 Stat. 1145, provided for the importation of skilled alien sheepherders upon approval by the Attorney General, certification to the Secretary of State by the Attorney General of names and addresses of sheepherders whose applications for importation were approved, and issuance of not more than 385 special nonquota immigrant visas. Provisions of said act expired on Sept. 3, 1955, by terms of section 1 thereof.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Organization, see section 1101 (a) (28) of this title.

Person, as used in this subchapter and subchapter I of this title, see section 1101 (b) (3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1153, 1155 of this title.

§ 1155. Revocation of approval of petitions; notice of revocation; effective date.

The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition. In no case, however, shall such revocation have effect unless there is mailed to the petitioner's last known address a notice of the revocation and unless notice of the revocation is communicated through the Secretary of State to the beneficiary of the petition before such beneficiary commences his journey to the United States. If notice of revocation is not so given, and the beneficiary applies for admission to the United States, his admissibility shall be determined in the manner provided for by sections 1225 and 1226 of this title. (June 27, 1952, ch. 477, title II, ch. 1, § 205, 66 Stat. 180; Sept. 22, 1959, Pub. L. 86-363, § 5(a), (b), 73 Stat. 644; Sept. 26, 1961, Pub. L. 87-301, §§ 3, 10, 75 Stat. 650, 654; Oct. 3, 1965, Pub. L. 89-236, § 5, 79 Stat. 916.)

AMENDMENTS

1965—Pub. L. 89-236 struck out the entire section which had set out, in subsecs. (a)—(d), the procedure for granting non-quota status or preference by reason of relationship and inserted in its place, with minor changes, provisions formerly contained in section 1156 of this title authorizing the Attorney General to revoke his approval of petitions for good and sufficient cause.

1961—Subsec. (b). Pub. L. 87-301, § 3(a), provided that no petition for quota immigration status or a preference shall be approved if the beneficiary is an alien defined in section 1101(b)(1)(F) of this title, established requirements to be met by petitioners before a petition for nonquota immigrant status for a child as defined in section 1101(b)(1)(F) can be approved by the Attorney General, and authorized the administration of oaths by immigration officers when the petition is executed outside the United States.

Subsec. (c). Pub. L. 87-301, §§ 3(b), 10, substituted "section 1101(b)(1) (E) or (F)" for "section 1101(b)(1)(E)", and provided that no petition shall be approved if the alien had previously been accorded a nonquota status under section 1101(a)(27)(A) of this title or a preference quota status under section 1153(a)(3) of this title, by reason of marriage entered into to evade the immigration laws.

1959—Subsec. (b). Pub. L. 86-363, § 5(a), authorized the filing of petitions by any United States citizen claiming that an immigrant is his unmarried son or unmarried daughter, by any alien lawfully admitted for permanent residence claiming that an immigrant is his unmarried son or unmarried daughter instead of child, or by any United States citizen claiming that an immigrant is his married son or married daughter instead of son or daughter, and prohibited approval of petition for quota immigrant status or preference of alien without proof of parent relationship of the petitioner to such alien.

Subsec. (c). Pub. L. 86-363, § 5(b), limited approval to two petitions for one petitioner in behalf of a child as defined in section 1101(b)(1)(E) of this title unless necessary to prevent separation of brothers and sisters.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month, after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Entry see section 1101 (a) (13) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Spouse, see section 1101 (a) (35) of this title.

§ 1156. Unused immigrant visas.

If an immigrant having an immigrant visa is excluded from admission to the United States and deported, or does not apply for admission before the

expiration of the validity of his visa, or if an alien having an immigrant visa issued to him as a preference immigrant is found not to be a preference immigrant, an immigrant visa or a preference immigrant visa, as the case may be, may be issued in lieu thereof to another qualified alien. (June 27, 1952, ch. 477, title II, ch. 1, § 206, 66 Stat. 181; Oct. 3, 1965, Pub. L. 89-236, § 6, 79 Stat. 916.)

AMENDMENTS

1965—Pub. L. 89-236 substituted provisions allowing immigrant visas or preference immigrant visas to be issued to another qualified alien in lieu of immigrants excluded or deported, immigrants failing to apply for admission, or immigrants found not to be preference immigrants, for provisions relating to revocation of approval of petitions which, with minor amendments, were transferred to section 1155 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Application for admission, see section 1101 (a) (4) of this title .

Attorney General, see section 1101 (a) (5) of this title.

§ 1157. Repealed. Pub. L. 89-236, § 7, Oct. 3, 1965, 79 Stat. 916.

Section, act June 27, 1952, ch. 477, title II, ch. 1, § 207, 66 Stat. 181, prohibited issuance of immigrant visas to other immigrants in lieu of immigrants excluded from admission, immigrants deported, immigrants failing to apply for admission to the United States, or immigrants found to be non-quota immigrants after having previously been found to be quota immigrants. See section 1156 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

PART II.—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

§ 1181. Admission of immigrants into the United States.

(a) Documents required; admission under quotas before June 30, 1968.

Except as provided in subsection (b) of this section no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. With respect to immigrants to be admitted under quotas of quota areas prior to June 30, 1968, no immigrant visa shall be deemed valid unless the immigrant is properly chargeable to the quota area under the quota of which the visa is issued.

(b) Readmission without required documents; Attorney General's discretion.

Notwithstanding the provisions of section 1182(a)(20) of this title in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (June 27, 1952, ch. 477, title II, ch. 2, § 211, 66 Stat. 181; Oct. 3, 1965, Pub. L. 89-236, § 9, 79 Stat. 917.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-236 restated the requirement of an unexpired visa and passport for every immigrant arriving in the United States to conform to the changes with respect to the classification of immigrant visas.

Subsec. (b). Pub. L. 89-236 substituted "returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible", for "otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily".

Subsec. (c). Pub. L. 89-236 repealed subsec. (c) which gave the Attorney General discretionary authority to admit aliens who arrive in the United States with defective visas under specified conditions.

Subsec. (d). Pub. L. 89-236 repealed subsec. (d) which imposed restrictions on the exercise of the Attorney General's discretion to admit aliens arriving with defective visas.

Subsec. (e). Pub. L. 89-236 repealed subsec. (e) which required every alien making application for admission as an immigrant to present the documents required under the regulations issued by the Attorney General.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Application for admission, see section 1101 (a) (4) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

National, see section 1101 (a) (21) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Passport, see section 1101 (a) (30) of this title.

United States, see section 1101 (a) (38) of this title.

Re-entry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1230 of this title.

§ 1182. Excludable aliens.

(a) General classes.

Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(1) Aliens who are mentally retarded;

(2) Aliens who are insane;

(3) Aliens who have had one or more attacks of insanity;

(4) Aliens afflicted with psychopathic personality, sexual deviation, or a mental defect;

(5) Aliens who are narcotic drug addicts or chronic alcoholics;

(6) Aliens who are afflicted with any dangerous contagious disease;

(7) Aliens not comprehended within any of the foregoing classes who are certified by the examining surgeon as having a physical defect, disease, or disability, when determined by the consular or immigration officer to be of such a nature that it may affect the ability of the alien to earn a living, unless the alien affirmatively establishes that he will not have to earn a living;

(8) Aliens who are paupers, professional beggars, or vagrants;

(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa or other documentation, and more than five years prior to date of application for admission, to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the date of the application for a visa or other documentation, and for admission, to the United States. Any alien who would be ex-excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of Title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of Title 18, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense;

(10) Aliens who have been convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were five years or more;

(11) Aliens who are polygamists or who practice polygamy or advocate the practice of polygamy;

(12) Aliens who are prostitutes or who have engaged in prostitution, or aliens coming to the United States solely, principally, or incidentally to engage in prostitution; aliens who directly or indirectly procure or attempt to procure, or who have procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution or for any other immoral purpose; and aliens who are or have been supported by, or receive or have received, in whole or in part, the proceeds of prostitution or aliens coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution;

(13) Aliens coming to the United States to engage in any immoral sexual act;

(14) Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to special immigrants defined in section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to preference immigrant aliens described in sections 1153(a)(3) and 1153(a)(6) of this title, and to nonpreference immigrant aliens described in section 1153(a)(8) of this title;

(15) Aliens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges;

(16) Aliens who have been excluded from admission and deported and who again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a place outside the United States or their attempt to be admitted from foreign contiguous territory the Attorney General has consented to their reapplying for admission;

(17) Aliens who have been arrested and deported, or who have fallen into distress and have been removed pursuant to this chapter or any prior act, or who have been removed as alien enemies, or who have been removed at Government expense in lieu of deportation pursuant to section 1252 (b) of this title, unless prior to their embarkation or reembarkation at a place outside the United States or their attempt to be admitted from foreign contiguous territory the Attorney General has consented to their applying or reapplying for admission;

(18) Aliens who are stowaways;

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other

documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;

(20) Except as otherwise specifically provided in this chapter, any immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General pursuant to section 1181 (a) of this title;

(21) Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission whose visa has been issued without compliance with the provisions of section 1153 of this title;

(22) Aliens who are ineligible to citizenship, except aliens seeking to enter as nonimmigrants; or persons who have departed from or who have remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, except aliens who were at the time of such departure nonimmigrant aliens and who seek to reenter the United States as nonimmigrants;

(23) Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative, or preparation of opium or coca leaves, or insonipecaine or any addiction-forming or addiction-sustaining opiate; or any alien who the consular officer or immigration officer know or have reason to believe is or has been an illicit trafficker in any of the aforementioned drugs;

(24) Aliens (other than aliens described in section 1101(a)(27) (A) and (B)) who seek admission from foreign continguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line, or if signatory, a noncomplying transportation line under section 1228(a) of this title and who have not resided for at least two years subsequent to such arrival in such territory or adjacent islands;

(25) Aliens (other than aliens who have been lawfully admitted for permanent residence and who are returning from a temporary visit abroad) over sixteen years of age, physically capable of reading, who cannot read and understand some language or dialect;

(26) Any nonimmigrant who is not in possession of (A) a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and (B) at the time of application for admission a valid nonimmigrant visa or border crossing identification card;

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

(28) Aliens who are, or at any time have been, members of any of the following classes:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided,* That nothing in this paragraph, or in any other provision of this chapter, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of World communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 786 of Title 50, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization

(and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character, or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (G) of this paragraph;

(I) Any alien who is within any of the classes described in subparagraphs (B)—(H) of this paragraph because of membership in or affiliation with a party or organization or a section, subsidiary, branch, affiliate, or subdivision thereof, may, if not otherwise ineligible, be issued a visa if such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for a visa, actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. Any such alien to whom a visa has been issued under the provisions of this subparagraph may, if not otherwise inadmissible, be admitted into the United States if he shall establish to the satisfaction of the Attorney General when applying for admission to the United States and the Attorney General finds that (i) such membership or affiliation is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and when necessary for such purposes, or (ii) (a) since the termination of such membership or affiliation, such alien is and has been, for at least five years prior to the date of the application for admission actively opposed to the doctrine, program, principles, and ideology of such party or organization or the section, subsidiary, branch, or affiliate or subdivision thereof, and (b) the admission of such alien into the United States would be in the public interest. The Attorney General shall promptly make a detailed report to the Congress in the case of each alien who is or shall be admitted into the United States under (ii) of this subparagraph;

(29) Aliens with respect to whom the consular officer or the Attorney General knows or has reasonable ground to believe probably would, after entry, (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, (B) engage in any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means, or (C) join, affiliate with, or participate in the activities of any organization which is registered or required to be registered under section 786 of Title 50;

(30) Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 1227 (e) of this title, whose protection or guardianship is required by the alien ordered excluded and deported;

(31) Any alien who at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(b) Nonapplicability of subsection (a) (25).

The provisions of paragraph (25) of subsection (a) of this section shall not be applicable to any alien who (1) is the parent, grandparent, spouse, daughter, or son of an admissible alien, or any alien lawfully admitted for permanent residence, or any citizen of the United States, if accompanying such admissible alien, or coming to join such citizen or alien lawfully admitted, and if otherwise admissible, or (2) proves that he is seeking admission to the United States to avoid religious persecution in the country of his last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against such alien or any group to which he belongs because of his religious faith. For the purpose of ascertaining whether an alien can read under paragraph (25) of subsection (a) of this section, the consular officers and immigration officers shall be furnished with slips of uniform size, prepared under direction of the Attorney General each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type, in one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made and shall be required to read and understand the words printed on the slip in such language or dialect.

(c) Nonapplicability of subsection (a)(1)-(25), (30), and (31).

Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraphs (1)—(25), (30), and (31) of subsection (a) of this section. Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 1181 (b) of this title.

(d) Nonapplicability of subsection (a) (11), (25), and (28); temporary admission of nonimmigrants; waiver of subsection (a) (26) requirements; parole; bond and conditions for temporary admissions, report to Congress; applicability to aliens leaving territories; reciprocal admission of officials of foreign governments, etc.

(1) The provisions of paragraphs (11) and (25) of subsection (a) of this section shall not be applicable to any alien who in good faith is seeking to enter the United States as a nonimmigrant.

(2) The provisions of paragraph (28) of subsection (a) of this section shall not be applicable to any alien who is seeking to enter the United States temporarily as a nonimmigrant under paragraph (15) (A) (iii) or (G) (v) of section 1101 (a) of this title.

(3) Except as provided in this subsection, an alien (A) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under one or more of the paragraphs enumerated in subsection (a) of this section (other than paragraphs (27) and (29)), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (B) who is inadmissible under one or more of the paragraphs enumerated in subsection (a) of this section (other than paragraphs (27) and (29)), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General.

(4) Either or both of the requirements of paragraph (26) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 1228 (d) of this title.

(5) The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(6) The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this subsection. The Attorney General shall make a detailed report to the Congress in any case in which he exercises his authority under paragraph (3) of this subsection on behalf of any alien excludable under paragraphs (9), (10), and (28) of subsection (a) of this section.

(7) The provisions of subsection (a) of this section, except paragraphs (20), (21), and (26) of said subsection, shall be applicable to any alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this proviso. Any alien described in this paragraph, who is excluded from admission to the United States, shall be immediately deported in the manner provided by section 1227(a) of this title.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families,

attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (26), (27), and (29) of subsection (a) of this section.

(e) Educational visitor status; foreign residence requirement; waiver.

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission whose (i) participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, or (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Secretary of State, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 1101(a)(15)(H) or section 1101(a)(15)(L) of this title until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: *Provided,* That upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further,* That the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Suspension of entry or imposition of restrictions by President.

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrant or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

(g) Bond and condition for admission for permanent residence of mentally retarded, tubercular, and mentally ill but cured aliens.

Any alien who is excludable from the United States under paragraph (1) of subsection (a) of this section, or any alien afflicted with tuberculosis in any form who (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence in accordance with such terms, conditions, and controls, if any, including the giving of a bond, as the Attorney General, in his discretion after consultation with the Surgeon General of the United States Public Health Service, may by regulations prescribe. Any alien excludable under paragraph (3) of subsection (a) of this section because of past history of mental illness who has one of the same family relationships as are prescribed in this subsection for aliens afflicted with tuberculosis and whom the Surgeon General of the United States Public Health Service finds to have been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery shall be eligible for a visa in accordance with the terms of this subsection.

(h) Nonapplicability of subsection (a) (9), (10), or (12).

Any alien, who is excludable from the United States under paragraphs (9), (10), or (12) of subsection (a) of this section, who (A) is the spouse or child, including a minor unmarried adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence (1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and (2) if the Attorney General, in his discretion, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa and for admission to the United States.

(i) Admission for permanent residence of alien spouse, parent, or child excludable for fraud, misrepresentation, or perjury.

Any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry

into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, may be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States. (June 27, 1952, ch. 477, title II, ch. 2, § 212, 66 Stat. 182; July 18, 1956, ch. 629, title III, § 301(a), 70 Stat. 575; July 7, 1958, Pub. L. 85-508, § 23, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86-3, § 20(b), 73 Stat. 13; July 14, 1960, Pub. L. 86-648, § 8, 74 Stat. 505; Sept. 21, 1961, Pub. L. 87-256, § 109(c), 75 Stat. 535; Sept. 26, 1961, Pub. L. 87-301, § § 11—15, 75 Stat. 654, 655; Oct. 3, 1965, Pub. L. 89-236, § § 10, 15, 79 Stat. 917, 919; Apr. 7, 1970, Pub. L. 91-225, § 2, 84 Stat. 116.)

REFERENCES IN TEXT

Section 786 of Title 50, referred to in subsec. (a) (28) (E) and (29), which required registration and annual reports of Communist organizations, was repealed by Pub. L. 90-237, § 5, Jan. 2, 1968, 81 Stat. 766.

AMENDMENTS

1970—Subsec. (e). Pub. L. 91-225 inserted cls. (i) and (ii) and reference to eligibility for nonimmigrant visa under section 1101(a)(15)(L) of this title, provided for waiver of requirement of two-year foreign residence abroad where alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion or where the foreign country of alien's nationality or last residence has furnished a written statement that it has no objection to such waiver for such alien, and deleted alternative provision for residence and physical presence in another foreign country and former first and final provisos reading "Provided, That such residence in another foreign country shall be considered to have satisfied the requirements of this subsection if the Secretary of State determines that it has served the purpose and the intent of the Mutual Educational and Cultural Exchange Act of 1961" and "And provided further, That the provisions of this subchapter shall apply also to those persons who acquired exchange visitor status under the United States Information and Educational Exchange Act of 1948, as amended."

1965—Subsec. (a)(1). Pub. L. 89-236, § 15(a), substituted "mentally retarded" for "feebleminded".

Subsec. (a)(4). Pub. L. 89-236, § 15(b), substituted "or sexual deviation" for "epilepsy".

Subsec. (a)(4). Pub. L. 89-236, § 10(a), added the requirement that the Secretary of Labor make an affirmative finding that any alien seeking to enter the United States as a worker, skilled or otherwise, will not replace a worker in the United States nor will the employment of the alien adversely affect the wages and working conditions of individuals in the United States similarly employed, and made the requirement applicable to special immigrants (other than the parents, spouses, and minor children of U.S. citizens or permanent resident aliens) preference immigrants described in sections 1153(a)(3) and 1153(a)(6) of this title, and nonpreference immigrants.

Subsec. (a)(20). Pub. L. 89-236, § 10(b), substituted "1181(a)" for "1181(e)".

Subsec. (a)(21). Pub. L. 89-236, § 10(c), struck out "quota" preceding "immigrant".

Subsec. (a)(24). Pub. L. 89-236, § 10(d), substituted "other than aliens described in section 1101(a)(27) (A) and (B)" for "other than those aliens who are native-born citizens of countries enumerated in section 1101(a)(27) of this title and aliens described in section 1101(a)(27)(B) of this title" as the material contained within the parentheses following "Aliens".

Subsec. (g). Pub. 89-236, § 15(c), redesignated subsec. (f) of sec. 212 of the Immigration and Nationality Act as subsec. (g) thereof, which for purposes of codification had already been designated as subsec. (g) of this section and granted the Attorney General authority to admit any alien who is the spouse, unmarried son or daughter, minor adopted child, or parent of a citizen or lawful permanent resident and who is mentally retarded or has a past history of mental illness under the same conditions as authorized in the case of such close relatives afflicted with tuberculosis.

Subsecs. (h), (i). Pub. L. 89-236, § 15(c), redesignated subsecs. (g) and (h) of sec. 212 of the Immigration and Nationality Act as subsecs. (h) and (i) respectively thereof, which for purposes of codification had already been designated as subsecs. (h) and (i) of this section.

1961—Subsec. (a)(6). Pub. L. 87-301, § 11, eliminated references to tuberculosis and leprosy.

Subsec. (a)(9). Pub. L. 87-301, § 13, authorized admission of aliens who would be excluded because of conviction of a violation classifiable as an offense under section 1(3) of Title 18, by reason of punishment actually imposed, or who admit commission of an offense classifiable as a misdemeanor under section 1(2) of Title 18, by reason of punishment which might have been imposed, if otherwise admissible and provided the alien has committed, or admits to commission of, only one such offense.

Subsec. (e). Pub. L. 87-256 added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 87-256 redesignated former subsec. (e) as (f).

Subsecs. (g)—(i). Pub. L. 87-301, §§ 12, 14, 15 added subsecs. (f)—(h), which for purposes of codification have been designated as (g)—(i).

1960—Subsec. (a). Pub. L. 86-648 inserted "or marihuana" following "narcotic drugs" in cl. (23).

1959—Subsec. (d). Pub. L. 86-3 eliminated provisions from cl. (7) which related to aliens who left Hawaii and to persons who were admitted to Hawaii under section 8(a)(1) of the act of March 24, 1934, or as nationals of the United States.

1958—Subsec. (d)(7). Pub. L. 85-508 eliminated provisions which related to aliens who left Alaska.

1956—Subsec. (a)(23). Act July 18, 1956, included conspiracy to violate a narcotic law, and the illicit possession of narcotics, as additional grounds for exclusion.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956, set out as a note under section 1401 of Title 18, Crimes and Criminal Procedure.

ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of the Surgeon General was abolished by section 3 of 1966 Reorg. Plan No. 3 eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of 1966 Reorg. Plan No. 3, set out in the Appendix to Title 5, Government Organization and Employees.

RESETTLEMENT OF REFUGEE-ESCAPEE; REPORTS; FORMULA; TERMINATION DATE; PERSONS DIFFICULT TO RESETTLE; CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE

Pub. L. 86-648, §§ 1—4, 11, July 14, 1960, 74 Stat. 504, as amended by Pub. L. 87-510, § 6, June 28, 1962, 76 Stat. 124; Pub. L. 89-236, § 16, Oct. 3, 1965, 79 Stat. 919, provided:

"[SECTION 1. Repealed. Pub. L. 89-236, § 16, Oct. 3, 1965, 79 Stat. 919.]

"[SEC. 2. Repealed. Pub. L. 89-236, § 16, Oct. 3, 1965, 79 Stat. 919.]

"SEC. 3. Any alien who was paroled into the United States as a refugee-escapee, pursuant to section 1 of the Act, whose parole has not theretofore been terminated by the Attorney General pursuant to such regulations as he may prescribe under the authority of section 212(d)(5) of the Immigration and Nationality Act [subsec. (d)(5) of this section]; and who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service and shall thereupon be inspected and examined for admission into the United States, and his case dealt with in accordance with the provisions of sections 235, 236, and 237 of the Immigration and Nationality Act [sections 1225, 1226 and 1227 of this title].

"SEC. 4. Any alien who, pursuant to section 3 of this Act, is found, upon inspection by the immigration officer or after hearing before a special inquiry officer, to be admissible as an immigrant under the Immigration and Nationality Act [this chapter] at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the said Act [subsec. (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

* * * * *

"[Sec. 11. Repealed. Pub. L. 89-236, § 16, Oct. 3, 1965, 79 Stat. 919.]"

CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN HUNGARIAN REFUGEES

Pub. L. 85-559, July 25, 1958, 72 Stat. 419, provided:

"That any alien who was paroled into the United States as a refugee from the Hungarian revolution under section 212 (d) (5) of the Immigration and Nationality Act [subsection (d) (5) of this section] subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with the provisions of sections 235, 236 and 237 of that Act [sections 1225, 1226 and 1227 of this title].

"SEC. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212 (a) (20) of the Immigration and Nationality Act [subsection (a) (20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

"SEC. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization."

CROSS REFERENCES

Alien enemies, see chapter 3, of Title 50, War and National Defense.

Alien women, prevention of transportation in foreign commerce under international agreement, see section 1557 of this title.

Atomic weapons information, waiver of admission requirements, see section 47c of Title 50, War and National Defense.

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 (a) of this title.

Bond or undertaking as prerequisite to admission of aliens likely to become public charge or with certain physical disabilities, see section 1183 of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 (g) of this title.

Forms to be prescribed by Attorney General, see section 1103 (a) of this title.

Definition of the term—

Adjacent islands, as used in this subchapter, see section 1101 (b) (5) of this title.

Advocating a doctrine, see section 1101 (e) (1) of this title.

Affiliation, see section 1101 (e) (2) of this title.

Alien, see section 1101 (a) (3) of this title.

Application for admission, see section 1101 (a) (4) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Border crossing identification card, see section 1101 (a) (6) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Doctrine, see section 1101 (a) (12) of this title.

Entry, see section 1101 (a) (13) of this title.

Foreign state, see section 1101 (a) (14) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Ineligible to citizenship, see section 1101 (a) (19) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

National, see section 1101 (a) (21) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Nonimmigrant visa, see section 1101 (a) (26) of this title.

Organization, see section 1101 (a) (28) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Passport, see section 1101 (a) (30) of this title.

Permanent, see section 1101 (a) (31) of this title.

Person of good moral character, see section 1101 (f) of this title.

Profession, see section 1101(a)(32) of this title.

Residence, see section 1101 (a) (33) of this title.

Special immigrant, see section 1101(a)(27) of this title.

Spouse, see section 1101 (a) (35) of this title.

Totalitarian party and totalitarian dictatorship, see section 1101 (a) (37) of this title.

United States, see section 1101 (a) (38) of this title.

World communism, see section 1101 (a) (40) of this title.

Deportation for offenses committed after entry into United States, see section 1251 of this title.

Detention of aliens for observation and examination, see section 1222 of this title.

Diplomatic and semidiplomatic immunities, see section 1102 of this title.

Espionage and censorship, see chapter 37 of Title 18, Crimes and Criminal Procedure.

Internal security, see chapter 23 of Title 50, War and National Defense.

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

Passports and visas, see chapter 75 of Title 18, Crimes and Criminal Procedure.

Principals, see section 2 of Title 18, Crimes and Criminal Procedure.

Readmission without documentation after temporary departure, see section 1181 of this title.

Reentry permit, see section 1203 of this title.

Sabotage, see chapter 105 of Title 18, Crimes and Criminal Procedure.

Stowaways on vessels or aircraft, see section 2199 of Title 18, Crimes and Criminal Procedure.

Submission of alien seeking—

Immigrant visa to physical and mental examination required, see section 1201 (d) of this title.

Nonimmigrant visa to physical or mental examination, or both, required when necessary to ascertain eligibility for visa, see section 1201 (d) of this title.

Treason, sedition and subversive activities, see chapter 115 of Title 18, Crimes and Criminal Procedure.

White slave traffic, see chapter 117 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1153, 1181, 1183, 1201, 1222, 1223, 1224, 1225, 1226, 1259, 1282, 1284, 1322, 1327 of this title; title 42 sections 2714, 2734, 2949.

§§ 1182a to 1182c. Repealed. Pub. L. 87-301, § 24(a)(1), (3), Sept. 26, 1961, 75 Stat. 657.

Section 1182a, act Sept. 3, 1954, ch. 1254, § 4, 68 Stat. 1145, related to the admission of aliens who were either convicted, or who admitted the commission, of a misdemeanor, and is now covered by section 1182(a)(9) of this title.

Section 1182b, Pub. L. 85-316, § 5, Sept. 11, 1957, 71 Stat. 640, permitted the admission of an alien spouse, child or parent excludable for crime involving moral turpitude in cases of hardship, when not contrary to national welfare or security, and with the Attorney General's consent, and under conditions and procedures prescribed by him, and is now covered by section 1182(h) of this title.

Section 1182c, Pub. L. 85-316, § 6, Sept. 11, 1957, 71 Stat. 640; Pub. L. 86-253, § 1, Sept. 9, 1959, 73 Stat. 490, authorized the admission of an alien spouse, child, or parent of a United States citizen afflicted with tuberculosis under terms, conditions and controls prescribed by the Attorney General, and is now covered by section 1182(g) of this title.

§ 1183. Admission of aliens on giving bond or undertaking; return upon permanent departure.

An alien excludable under paragraph (7) or (15) of section 1182(a) of this title may, if otherwise admissible, be admitted in the discretion of the Attorney General upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe, to the United States, and to all States, territories, counties, towns, municipalities, and districts thereof holding the United States and all States, territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. Such bond or undertaking shall terminate upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives. Suit may be brought thereon in the name and by the proper law officers of the United States for the use of the United States, or of any State, territory, district, county, town, or municipality in which such alien becomes a public charge. (June 27, 1952, ch. 477, title II, ch. 2, § 213, 66 Stat. 188; July 10, 1970, Pub. L. 91-313, § 1, 84 Stat. 413.)

AMENDMENTS

1970—Pub. L. 91-313 substituted provisions admitting, under the specified conditions, an alien excludable under pars. (7) or (15) of section 1182(a) of this title, for provisions admitting, under the specified conditions, any alien excludable because of the likelihood of becoming a public charge or because of physical disability other than tuberculosis in any form, leprosy, or a dangerous contagious disease, and struck out provisions authorizing a cash deposit with the Attorney General in lieu of a bond, such amount to be deposited in the United States Postal Savings System, and provisions that the admission of the alien be consideration for the giving of the bond, undertaking, or cash deposit.

CROSS REFERENCES

Appeal from decision excluding alien because of existence of physical and mental defects, invocation of provisions of this section, see section 1227 of this title.

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 (a) of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or those likely to become public charges, see section 1201 (g) of this title.

Exaction from excludable aliens applying for temporary admission, see section 1182 (d) (6) of this title.

Forms to be prescribed by Attorney General, see section 1103 (a) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Nationality and naturalization, see subchapter III of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1226 of this title.

§ 1184. Admission of nonimmigrants.

(a) Regulations.

The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(b) Presumption of status; written waiver.

Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101 (a) (15) of this title. An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 1257 (b) of this title.

(c) Petition of importing employer.

The question of importing any alien as a nonimmigrant under section 1101 (a) (15) (H) or (L) of this title in any specific case or specific cases shall be

determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition, shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

(d) Issuance of visa to fiancée or fiancé of citizen.

A visa shall not be issued under the provisions of section 1101(a)(15)(K) of this title until the consular officer has received a petition filed in the United States by the fiancée and fiancé of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have a bona fide intention to marry and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. In the event the marriage with the petitioner does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 1252 and 1253 of this title. In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees. (June 27, 1952, ch. 477, title II, ch. 2, § 214, 66 Stat. 189; Apr. 7, 1970, Pub. L. 91–225, § 3, 84 Stat. 117.)

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (b), is classified to sections 288—288f of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1970—Subsec. (c). Pub. L. 91–225, § 3(a), inserted reference to subpar. (L) of section 1101(a)(15) of this title.

Subsec. (d). Pub. L. 91–225, § 3(b), added subsec. (d).

IMPORTATION OF SHEEPHERDERS; TERMINATION OF QUOTA DEDUCTIONS

Quota deductions authorized by acts June 30, 1950, ch. 423, 64 Stat. 306; Apr. 9, 1952, ch. 171, 66 Stat. 50, terminated effective July 1, 1957.

CANCELLATION OF CERTAIN NONIMMIGRANT DEPARTURE BONDS

Pub. L. 85–531, July 18, 1958, 72 Stat. 375, authorized the Attorney General, upon application made not later than July 18, 1963, to cancel any departure bond posted pursuant to the Immigration Act of 1924, as amended, or the Immigration and Nationality Act [this chapter], on behalf of any refugee who entered the United States as a nonimmigrant after May 6, 1945, and prior to July 1, 1953, and who had his immigration status adjusted to that of an alien admitted for permanent residence pursuant to any public or private law.

CROSS REFERENCES

Bonds—

Bond or undertaking as prerequisite to admission of aliens likely to become public charges or with certain disabilities, see section 1183 of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 (g) of this title.

Exaction from excludable aliens applying for temporary admission, see section 1182 (d) (6) of this title.

Forms to be prescribed by Attorney General, see section 1103 (a) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1351 of this title; title 42 sections 2714, 2734, 2949.

§ 1184a. Philippine Traders as nonimmigrants.

Upon a basis of reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines, a national of the Philippines, and the spouse and children of any such national if accompanying or following to join him, may, if otherwise eligible for a visa and if otherwise admissible into the United States under this chapter, be considered to be classifiable as a nonimmigrant under section 1101 (a) (15) (E) of this title if entering solely for the purposes specified in clause (i) or (ii) of said section 1101 (a) (15) (E). (June 18, 1954, ch. 323, 68 Stat. 264.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

§ 1185. Travel control of citizens and aliens during war or national emergency.

(a) Restrictions and prohibitions on aliens.

When the United States is at war or during the existence of any national emergency proclaimed by the President, or, as to aliens, whenever there exists a state of war between or among two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this section be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or the Congress, be unlawful—

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

(2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

(3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

(b) Citizens.

After such proclamation as is provided for in subsection (a) of this section has been made and published and while such proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport.

(c) Penalties.

Any person who shall willfully violate any of the provisions of this section, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle, vessel, or aircraft together with its appurtenances, equipment, tackle, apparel, and furniture concerned in any such violation, shall be forfeited to the United States.

(d) Definitions.

The term "United States" as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term "person" as used in this section shall be deemed to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

(e) Nonadmission of certain aliens.

Nothing in this section shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible under any of the provisions of this chapter, or any other law, relative to the entry of aliens into the United States.

(f) Revocation of proclamation as affecting penalties.

The revocation of any proclamation, rule, regulation, or order issued in pursuance of this section shall not prevent prosecution for any offense committed, or the imposition of any penalties or forfeitures, liability for which was incurred under this section prior to the revocation of such proclamation, rule, regulation, or order.

(g) Permits to enter.

Passports, visas, reentry permits, and other documents required for entry under this chapter may be considered as permits to enter for the purposes of this section. (June 27, 1952, ch. 477, title II, ch. 2, § 215, 66 Stat. 190.)

CROSS REFERENCES

Counterfeiting and forgery, see chapter 25 of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Entry, see section 1101 (a) (13) of this title.

Passport, see section 1101 (a) (30) of this title.

Person, as used in this subchapter and subchapter I of this chapter, see section 1101 (b) (3) of this title.

State, see section 1101 (a) (36) of this title.

United States, see section 1101 (a) (38) of this title.

False personation, see chapter 43 of Title 18, Crimes and Criminal Procedure.

Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Fines, penalties and forfeitures, see chapter 163 of Title 28, Judiciary and Judicial Procedure.

Fraud and false statements, see chapter 47 of Title 18, Crimes and Criminal Procedure.

Passports and visas, see chapter 75 of Title 18, Crimes and Criminal Procedure.

Repeal of statutes as affecting existing liabilities, see section 109 of Title 1, General Provisions.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

PART III.—ISSUANCE OF ENTRY DOCUMENTS

§ 1201. Issuance of visas.

(a) Immigrants; nonimmigrants.

Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue (1) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of one copy of the application provided for in section 1202 of this title, visaed by such consular officer, and shall specify the quota, if any, to which the immigrant is charged, the immigrant's particular status under such quota, the preference, nonpreference, immediate relative, or special immigration classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and (2) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 1101 (a) (15) of this title of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.

(b) Registration and fingerprinting; photographs; waiver of requirement.

Each alien who applies for a visa shall be registered and fingerprinted in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required. The requirements of this subsection may be waived in the discretion of the Secretary of

State in the case of any alien who is within that class of nonimmigrants enumerated in section 1101 (a) (15) (A) and (G) of this title, or in the case of any alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof.

(c) Period of validity; requirement of visa.

An immigrant visa shall be valid for such period, not exceeding four months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class. An immigrant visa may be replaced under the original number during the year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: *Provided,* the consular officer is in possession of the duplicate signed copy of the original visa, the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fee for an application and an immigrant visa.

(d) Physical examination.

Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in accordance with such regulations as may be prescribed. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer may require such alien to submit to a physical or mental examination, or both, if in his opinion such examination is necessary to ascertain whether such alien is eligible to receive a visa.

(e) Surrender of visa.

Each immigrant shall surrender his immigrant visa to the immigration officer at the port of entry, who shall endorse on the visa the date and the port of arrival, the identity of the vessel or other means of transportation by which the immigrant arrived, and such other endorsements as may be by regulations required.

(f) Surrender of documents.

Each nonimmigrant shall present or surrender to the immigration officer at the port of entry such documents as may be by regulation required. In the case of an alien crewman not in possession of any individual documents other than a passport and until such time as it becomes practicable to issue individual documents, such alien crewman may be admitted, subject to the provisions of this part, if his name appears in the crew list of the vessel or aircraft on which he arrives and the crew list is visaed by a consular officer, but the consular officer shall have the right to exclude any alien crewman from the crew list visa.

(g) Non-issuance of visas or other documents.

No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law: *Provided,* That a visa or other documentation may be issued to an alien who is within the purview of subsection (a) (7) or (15) of section 1182 of this title, if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney General of the giving of a bond or undertaking providing indemnity as in the case of aliens admitted under section 1183 of this title: *Provided further,* That a visa may be issued to an alien defined in section 1101(a) (15) (B) or (F) of this title, if such alien is otherwise entitled to receive a visa, upon receipt of a notice by the consular officer from the Attorney General of the giving of a bond with sufficient surety in such sum and containing such conditions as the consular officer shall prescribe, to insure that at the expiration of the time for which such alien has been admitted by the Attorney General, as provided in section 1184(a) of this title, or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(h) Nonadmission upon arrival.

Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to enter the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law. The substance of this subsection shall appear upon every visa application.

(i) Revocation of visas or documents.

After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: *Provided,* That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 1323 (b) of this title for action taken in reliance on such visas or other documentation, unless they received due notice of such

revocation prior to the alien's embarkation. (June 27, 1952, ch. 477, title II, ch. 3, § 221, 66 Stat. 191; Sept. 26, 1961, Pub. L. 87–301, § 4, 75 Stat. 651; Oct. 3, 1965, Pub. L. 89–236, §§ 11(a), (b), 17, 79 Stat. 919.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–236, § 11(a), substituted a reference to preference, nonpreference, immediate relative, and special immigration classification, for a reference to nonquota categories to which immigrants are classified.

Subsec. (c). Pub. L. 89–236, § 11(b), struck out references to "quota" wherever appearing.

Subsec. (g). Pub. L. 89–236, § 17, added proviso permitting issuance of student or visitors visas in cases where the alien gives a bond so as to allow resolution of doubts in borderline cases in which the consular officer is uncertain as to the bona fides of the nonimmigrant's intention to remain in the United States temporarily.

1961—Subsec. (c). Pub. L. 87–301 provided that an immigrant visa issued to a child adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces or employed abroad by our Government, or temporarily abroad on business, shall remain valid to such time, but not exceeding three years, as the adoptive parent returns to the United States in due course of service, employment or business.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 (a) of this title.

Bond or undertaking as prerequisite to admission of aliens likely to become public charges or with certain physical disabilities, see section 1183 of this title.

Exaction from excludable aliens applying for temporary admission, see section 1182 (d) (6) of this title.

Forms to be prescribed by Attorney General, see section 1103 (a) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Crewman, see section 1101 (a) (10) of this title.

Diplomatic visa, see section 1101 (a) (11) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Nonimmigrant visa, see section 1101 (a) (26) of this title.

Passport, see section 1101 (a) (30) of this title.

United States, see section 1101 (a) (38) of this title.

Passports, see section 211a et seq. of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201a, 1204, 1230, 1301, 1302 of this title.

§ 1201a. Waiver of fingerprinting requirements for nonimmigrant aliens.

The Secretary of State and the Attorney General are authorized, in their discretion and on a basis of reciprocity, pursuant to such regulations as they may severally prescribe, to waive the requirement of fingerprinting specified in sections 1201 (b) and 1302 of this title, respectively, in the case of any nonimmigrant alien. (Pub. L. 85–316, § 8, Sept. 11, 1957, 71 Stat. 641.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

DEFINITIONS; APPLICABILITY OF SECTION 1101 (a) AND (b) OF THIS TITLE

Section 14 of Pub. L. 85–316 provided that: "Except as otherwise specifically provided in this Act [enacting sections 1182b, 1182c, 1201a, 1205, 1251a, 1255a, 1255b, and 1401b of this title, amending sections 1101 (b) (1), 1153 (a) (1), and 1434 (c) of this title, and enacting notes formerly set out under sections 1151, 1153, and 1205 of this title, and section 1971a of Appendix to Title 50], the definitions contained in subsections (a) and (b) of section 101 of the Immigration and Nationality Act [section 1101 (a) and (b) of this title] shall apply to sections 4, 5, 6, 7, 8, 9, 12, 13, and 15 of this Act [sections 1182b, 1182c, 1205, 1251, 1255a, and 1255b of this title, and notes under section 1153 of this title and section 1971a of Appendix to Title 50]."

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

§ 1202. Application for visas.

(a) Immigrant visas.

Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the immigrant shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; present address and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living then the name and address of his next of kin in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and, if so, the name and complete address of such relative or friend; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not be[1] intends to remain in the United States permanently; whether he was ever arrested, convicted or was ever in prison or almshouse; whether he has ever been the beneficiary of a pardon or an amnesty; whether he has ever been treated in an institution or hospital or other place for insanity or other mental disease; if he claims to be an immediate relative within the meaning of section 1151(b) of this title or a preference or special immigrant, the facts on which he bases such claim; whether or not

[1] So in original. Probably should read "he".

he is a member of any class of individuals excluded from admission into the United States, or whether he claims to be exempt from exclusion under the immigration laws; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

(b) Same; other documentary evidence.

Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application two copies of a certification by the appropriate police authorities stating what their records show concerning the immigrant; two certified copies of any existing prison record, military record, and record of his birth; and two certified copies of all other records or documents concerning him or his case which may be required by the consular officer. One copy of each document so furnished shall be permanently attached to each copy of the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain.

(c) Nonimmigrant visas; immigrant registration; form, manner and contents of application.

Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, the date and place of birth, his nationality, the purpose and length of his intended stay in the United States; personal description (including height, complexion, color of hair and eyes, and marks of identification); his marital status; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

(d) Same; other documentary evidence.

Every alien applying for a nonimmigrant visa and alien registration shall furnish to the consular officer, with his application, a certified copy of such documents pertaining to him as may be by regulations required.

(e) Signing and verification of application.

Except as may be otherwise prescribed by regulations, each copy of an application required by this section shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. One copy of the application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa, and the other copy shall be disposed of as may be by regulations prescribed. The application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as may be by regulations prescribed. The issuance of a nonimmigrant visa shall, except as may be otherwise by regulations prescribed, be evidenced by a stamp placed by the consular officer in the alien's passport.

(f) Confidential nature of records.

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court. (June 27, 1952, ch. 477, title II, ch. 3, § 222, 66 Stat. 193; Sept. 26, 1961, Pub. L. 87-301, § 6, 75 Stat. 653; Oct. 3, 1965, Pub. L. 89-236, § 11(c), 79 Stat. 918.)

AMENDMENTS

1965—Subsec. (a). Pub L. 89-236 substituted "an immediate relative within the meaning of section 1151(b) of this title or a preference or special immigrant", for "preference quota or a nonquota immigrant".

1961—Subsecs. (a), (c). Pub. L. 87-301 eliminated the requirement to state applicant's race and ethnic classification.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

National, see section 1101 (a) (21) of this title.

Nonimmigrant visas, see section 1101 (a) (26) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this title, see section 1101(b)(2) of this title.

Passport, see section 1101 (a) (30) of this title.

Permits to enter, as used in section 1185, see section 1185 (g) of this title.

Residence, see section 1101 (a) (33) of this title.

Special immigrant, see section 1101(a)(27) of this title.

Spouse, see section 1101 (a) (35) of this title.

Unmarried, see section 1101 (a) (39) of this title.

Detention of aliens for observation and examination, see section 1222 of this title.

Registration and fingerprinting of alien applying for a visa, see section 1201 (b) of this title.

Submission of alien seeking—

Immigrant visa to physical and mental examination required, see section 1201 (a) of this title.

Nonimmigrant visa to physical or mental examination, or both, required when necessary to ascertain eligibility for visa, see section 1201 (d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1201 of this title

§ 1203. Re-entry permit.

(a) Application; contents.

(1) Any alien lawfully admitted for permanent residence, or (2) any alien lawfully admitted to the United States pursuant to clause 6 of section 3 of the Immigration Act of 1924, between July 1, 1924, and July 5, 1932, both dates inclusive, who intends to depart temporarily from the United States may make application to the Attorney General for a permit to reenter the United States, stating the length of his intended absence or absences, and the reasons therefor. Such applications shall be made under oath, and shall be in such form, contain such information, and be accompanied by such photographs of the applicant as may be by regulations prescribed.

(b) Issuance of permit; extension.

If the Attorney General finds (1) that the applicant under subsection (a) (1) of this section has been lawfully admitted to the United States for permanent residence, or that the applicant under subsection (a) (2) of this section has since admission maintained the status required of him at the time of his admission and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit, (2) that the application is made in good faith, and (3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, the Attorney General may, in his discretion, issue the permit, which shall be valid for not more than one year from the date of issuance: *Provided,* That the Attorney General may in his discretion extend the validity of the permit for a period or periods not exceeding one year in the aggregate. The permit shall be in such form as shall be by regulations prescribed for the complete identification of the alien.

(c) Multiple reentries.

During the period of validity, such permit may be used by the alien in making one or more applications for reentry into the United States.

(d) Presented and surrendered.

Upon the return of the alien to the United States the permit shall be presented to the immigration officer at the port of entry, and upon the expiration of its validity, the permit shall be surrendered to the Service.

(e) Permit in lieu of visa.

A permit issued under this section in the possession of the person to whom issued, shall be accepted in lieu of any visa which otherwise would be required from such person under this chapter. Otherwise a permit issued under this section shall have no effect under the immigration laws except to show that the alien to whom it was issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning. (June 27, 1952, ch. 477, title II, ch. 3, § 223, 66 Stat. 194.)

REFERENCES IN TEXT

Clause (6) of section 3 of the Immigration Act of 1924, referred to in subsec. (a), was formerly classified to section 203 (6) of this title, was repealed by section 403 (a) (2) of act June 27, 1952, and is now covered by section 1101 (a) (15) (E) of this title.

CROSS REFERENCES

Cost of maintenance not to be assessed upon arrival of alien with unexpired reentry permit, see section 1227 (a) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

United States, see section 1101 (a) (38) of this title.

Detention expenses not to be assessed upon arrival of alien with unexpired reentry permit, see section 1223 (c) of this title.

Readmission without reentry permit of certain aliens who depart from United States temporarily, see section 1181 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1352 of this title.

§ 1204. Immediate relative and special immigrant visas.

A consular officer may, subject to the limitations provided in section 1201 of this title, issue an immigrant visa to a special immigrant or immediate relative as such upon satisfactory proof, under regulations prescribed under this chapter that the applicant is entitled to special immigrant or immediate relative status. (June 27, 1952, ch. 477, title II, ch. 3, § 224, 66 Stat. 195; Oct. 3, 1965, Pub. L. 89-236, § 11(d), 79 Stat. 918.)

AMENDMENTS

1965—Pub. L. 89-236 eliminated reference to sections 1154 and 1155 of this title and substituted "special immigrant or immediate relative" for "nonquota immigrant".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Consular officer, see section 1101 (a) (9) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Special immigrant, see section 1101 (a) (27) of this title.

§ 1205. Repealed. Pub. L. 87-301, § 24(a)(2), Sept. 26, 1961, 75 Stat. 657.

Section, Pub. L. 85-316, § 4, Sept. 11, 1957, 71 Stat. 639; Pub. L. 86-253, § 2, Sept. 9, 1959, 73 Stat. 490; Pub. L. 86-648, § 7, July 14, 1961, 74 Stat. 505, related to nonquota immigrant visas for eligible orphans. See sections 1101(b)(6), 1155(b), and 1201(c) of this title.

PART IV.—PROVISIONS RELATING TO ENTRY AND EXCLUSION

§ 1221. Lists of alien and citizen passengers arriving and departing.

(a) Shipment or aircraft manifest; arrival; form and contents; exclusions.

Upon the arrival of any person by water or by air at any port within the United States from any place outside the United States, it shall be the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any such person on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests of the persons on board such vessel or aircraft. Such lists or manifests shall be prepared at such time, be in such form and shall contain such information as the Attorney General shall prescribe by regulation as being necessary for the identification of the persons transported and for the enforcement of the immigration laws. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person arriving by air on a trip originating in foreign contiguous territory, except (with respect to such arrivals by air) as may be required by regulations issued pursuant to section 1229 of this title.

(b) Departure; shipment or aircraft manifest; form and contents; exclusions.

It shall be the duty of the master or commanding officer or authorized agent of every vessel or aircraft taking passengers on board at any port of the United States, who are destined to any place outside the United States, to file with the immigration officers before departure from such port a list of all such persons taken on board. Such list shall be in such form, contain such information, and be accompanied by such documents, as the Attorney General shall prescribe by regulation as necessary for the identification of the persons so transported and for the enforcement of the immigration laws. No master or commanding officer of any such vessel or aircraft shall be granted clearance papers for his vessel or aircraft until he or the authorized agent has deposited such list or lists and accompanying documents with the immigration officer at such port and made oath that they are full and complete as to the information required to be contained therein, except that in the case of vessels or aircraft which the Attorney General determines are making regular trips to ports of the United States, the Attorney General may, when expedient, arrange for the delivery of lists of outgoing persons at a later date. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person departing by air on a trip originating in the United States who is destined to foreign contiguous territory, except (with respect to such departure by air) as may be required by regulations issued pursuant to section 1229 of this title.

(c) Record of citizens and resident aliens leaving permanently for foreign countries.

The Attorney General may authorize immigration officers to record the following information regarding every resident person leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Names, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen or national, the facts on which claim to that status is based.

(d) Penalties against noncomplying shipments or aircraft.

If it shall appear to the satisfaction of the Attorney General that the master or commanding officer, owner, or consignee of any vessel or aircraft, or the agent of any transportation line, as the case may be, has refused or failed to deliver any list or manifest required by subsection (a) or (b) of this section, or that the list or manifest delivered is not accurate and full, such master or commanding officer, owner, or consignee, or agent, as the case may be, shall pay to the collector of customs at the port of arrival or departure the sum of $10 for each person concerning whom such accurate and full list or manifest is not furnished, or concerning whom the manifest or list is not prepared and sworn to as prescribed by this section or by regulations issued pursuant thereto. No vessel or aircraft shall be granted clearance pending determination of the question of the liability to the payment of such penalty, or while it remains unpaid, and no such penalty shall be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such penalty.

(e) Waiver of requirements.

The Attorney General is authorized to prescribe the circumstances and conditions under which the list or manifest requirements of subsections (a) and (b) of this section may be waived. (June 27, 1952, ch. 477, title II, ch. 4, § 231, 66 Stat. 195.)

CROSS REFERENCES

Bonds—

Bond from nonimmigrant alien as prerequisite to admission to the United States, see section 1184 (a) of this title.

Bond or undertaking as prerequisite to admission of aliens likely to become public charges or with certain physical disabilities, see section 1183 of this title.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, see section 1201 (g) of this title.

Exaction from excludable aliens applying for temporary admission, see section 1182 (d) (6) of this title.

Forms to be prescribed by Attorney General, see section 1103 (a) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigration laws, see section 1101 (a) (10) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Permanent, see section 1101 (a) (31) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

Unmarried, see section 1101 (a) (39) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1222. Detention of aliens for observation and examination upon arrival.

For the purpose of determining whether aliens (including alien crewmen) arriving at ports of the United States belong to any of the classes excluded by this chapter, by reason of being afflicted with any of the diseases or mental or physical defects or disabilities set forth in section 1182 (a) of this title, or whenever the Attorney General has received information showing that any aliens are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic, such aliens shall be detained on board the vessel or at the airport of arrival of the aircraft bringing them, unless the Attorney General directs their detention in a United States immigration station or other place specified by him at the expense of such vessel or aircraft except as otherwise provided in this chapter, as circumstances may require or justify, for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to the excluded classes. (June 27, 1952, ch. 477, title II, ch. 4, § 232, 66 Stat. 196.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1223 of this title.

§ 1223. Examination upon arrival.

(a) Temporary removal.

Upon the arrival at a port of the United States of any vessel or aircraft bringing aliens (including alien crewmen) the immigration officers may order a temporary removal of such aliens for examination and inspection at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve vessels or aircraft, the transportation lines, or the masters, commanding officers, agents, owners, or consignees of the vessel or aircraft upon which such aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would, under the provisions of this chapter bind such vessels or aircraft, transportation lines, masters, commanding officers, agents, owners, or consignees. A temporary removal of aliens from such vessels or aircraft ordered pursuant to this subsection shall be made by an immigration officer at the expense of the vessels or aircraft or transportation lines, or the masters, commanding officers, agents, owners, or consignees of such vessels. aircraft or transportation lines, as provided in subsection (b) of this section and such vessels, aircraft, transportation lines, masters, commanding officers, agents, owners, or consignees, shall, so long as such removal lasts, be relieved of responsibility for the safekeeping of such aliens: *Provided,* That such vessels, aircraft, transportation lines, masters, commanding officers, agents, owners, or consignees may with the approval of the Attorney General assume responsibility for the safekeeping of such aliens during their removal to a designated place for examination and inspection, in which event, such removal need not be made by an immigration officer.

(b) Expenses of removal; coverage.

Whenever a temporary removal of aliens is made under this section, the vessels or aircraft or transportation lines which brought them, and the masters, commanding officers, owners, agents, and consignees of the vessel, aircraft, or transportation line upon which they arrived shall pay all expenses of such removal to a designated place for examination and inspection or other place of detention and all expenses arising during subsequent detention, pending a decision on the aliens' eligibility to enter the United States and until they are either allowed to land or returned to the care of the transportation line or to the vessel or aircraft which brought them. Such expenses shall include maintenance, medical treatment in hospital or elsewhere, burial in the event of death, and transfer to the vessel, aircraft, or transportation line in the event of deportation, except where such expenses arise under section 1227 (d) of this title or in such cases as the Attorney General may prescribe in the case of aliens paroled into the United States temporarily under the provisions of section 1182 (d) (5) of this title.

(c) Detention expenses.

Any detention expenses and expenses incident to detention incurred (but not including expenses of removal to the place of detention) pursuant to this section and section 1222 of this title shall not be assessed under this chapter against the vessel or aircraft or transportation line or the master, commanding officer, owner, agent, or consignee of the vessel, aircraft, or transportation line in the case of (1) any alien who arrived in possession of a valid unexpired immigrant visa, or (2) any alien who was finally admitted to the United States pursuant to this chapter after such detention, or (3) any alien other than an alien crewman, who arrived in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) application for admission was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event application for admission was made later than one hundred and twenty days of the date of issuance of the visa or other document or such

examination and admission, if the vessel, aircraft, or transportation line or the master, commanding officer, owner, agent, or consignee of the vessel, aircraft, or transportation line establishes to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (4) any person claiming United States nationality or citizenship and in possession of an unexpired United States passport issued to him by competent authority, or (5) any person claiming United States nationality or citizenship and in possession of a certificate of identity issued pursuant to section 1503 (b) of this title, or any other document of identity issued or verified by a consular officer which shows on its face that it is currently valid for travel to the United States and who was allowed to land in the United States after such detention.

(d) Penalties.

Any refusal or failure to comply with the provisions of this section shall be punished in the manner specified in section 1227 (b) of this title. (June 27, 1952, ch. 477, title II, ch. 4, § 233, 66 Stat. 198.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Crewman, see section 1101 (a) (10) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Nonimmigrant visas, see section 1101 (a) (26) of this title.

Passport, see section 1101 (a) (30) of this title.

Service, see section 1101 (a) (34) of this title.

Reentry permit—

Generally, see section 1203 of this title.

Readmission without reentry permit of certain aliens who depart from United States temporarily, see section 1181 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1227 of this title.

§ 1224. Physical and mental examinations; appeal of findings.

The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the special inquiry officers, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under paragraphs (1) to (4) or (5) of section 1182 (a) of this title, and the services of interpreters shall be provided for such examination. Any alien certified under paragraphs (1) to (4) or (5) of section 1182 (a) of this title, may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Surgeon General of the United States Public Health Service, and any such alien may introduce before such board one expert medical witness at his own cost and expense. (June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198.)

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Special inquiry officer, see section 1101 (b) (4) of this title.

Public Health Service, see section 201 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1226 of this title.

§ 1225. Inspection by Immigration Officers.

(a) Powers of officers.

The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and, where such action may be necessary, to make a writ-

ten record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 1182 of this title. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) Detention for further inquiry; challenge of favorable decision.

Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 1323 (d) of this title, who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer for further inquiry.

(c) Temporary exclusion; permanent exclusion by Attorney General.

Any alien (including an alien crewman) who may appear to the examining immigration officer or to the special inquiry officer during the examination before either of such officers to be excludable under paragraphs (27), (28), or (29) of section 1182 (a) of this title shall be temporarily excluded, and no further inquiry by a special inquiry officer shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may desire to submit in connection therewith and such an inquiry or further inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by a special inquiry officer. Nothing in this subsection shall be regarded as requiring an inquiry before a special inquiry officer in the case of an alien crewman. (June 27, 1952, ch. 477, title II, ch. 4, § 235, 66 Stat. 198.)

CROSS REFERENCES

Contempts, see chapter 21 of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Service, see section 1101 (a) (34) of this title.

Special inquiry officer, see section 1101 (b) (4) of this title.

United States, see section 1101 (3) (38) of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1155, 1226, 1323 of this title.

§ 1226. Exclusion of aliens.

(a) Proceedings.

A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien or witnesses. He shall have authority in any case to determine whether an arriving alien who has been detained for further inquiry under section 1225 of this title shall be allowed to enter or shall be excluded and deported. The determination of such special inquiry officer shall be based only on the evidence produced at the inquiry. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer under this section shall be conducted in accordance with this section, the applicable provisions of sections 1225 and 1357 (b) of this title, and such regulations as the Attorney General shall prescribe, and shall be the sole and exclusive procedure for determining admissibility of a person to the United States under the provisions of this section. At such inquiry, which shall be kept separate and apart from the public, the alien may have one friend or relative present, under such conditions as may be prescribed by the Attorney General. A complete record of the proceedings and of all testimony and evidence produced at such inquiry, shall be kept.

(b) Appeal.

From a decision of a special inquiry officer excluding an alien, such alien may take a timely appeal to the Attorney General, and any such alien shall be advised of his right to take such appeal. No appeal may be taken from a temporary exclusion under section 1225 (c) of this title. From a decision of the special inquiry officer to admit an alien, the immigration officer in charge at the port where the inquiry is held may take a timely appeal to the Attorney General. An appeal by the alien, or such officer in charge, shall operate to stay any final action with respect to any alien whose case is so appealed until the final decision of the Attorney General is made. Except as provided in section 1225 (c) of this title such decision shall be rendered solely upon the evidence adduced before the special inquiry officer.

(c) Finality of decision of special inquiry officers.

Except as provided in subsections (b) or (d) of this section, in every case where an alien is excluded from admission into the United States, under this chapter or any other law or treaty now existing or hereafter made, the decision of a special inquiry officer shall be final unless reversed on appeal to the Attorney General.

(d) Physical and mental defects.

If a medical officer or civil surgeon or board of medical officers has certified under section 1224 of this title that an alien is afflicted with a disease specified in section 1182 (a) (6) of this title, or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1) to (4) or (5) of section 1182 (a) of this title, the decision of the special inquiry officer shall be based solely upon such certification. No alien shall have a right to appeal from such an excluding decision of a special inquiry officer. If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 1182 (a) (6) of this title, the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 1183 of this title may be invoked. (June 27, 1952, ch. 477, title II, ch. 4, § 236, 66 Stat. 200.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Special inquiry officer, see section 1101 (b) (4) of this title.

Judicial review of orders of exclusion, see section 1105a of this title.

Revocation of approval of certain petitions, notice, see section 1155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1155, 1323 of this title.

§ 1227. Immediate deportation of aliens excluded from admission or entering in violation of law.

(a) Maintenance expenses.

Any alien (other than an alien crewman) arriving in the United States who is excluded under this chapter, shall be immediately deported to the country whence he came, in accommodations of the same class in which he arrived, on the vessel or aircraft bringing him, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained, as well as the transportation expense of his deportation from the United States, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) if the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel or aircraft established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (3) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority.

(b) Unlawful practice of transportation lines.

It shall be unlawful for any master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft (1) to refuse to receive any alien (other than an alien crewman), ordered deported under this section back on board such vessel or aircraft or another vessel or aircraft owned or operated by the same interests; (2) to fail to detain any alien (other than an alien crewman) on board any such vessel or at the airport of arrival of the aircraft when required by this chapter or if so ordered by an immigration officer, or to fail or refuse to deliver him for medical or other inspection, or for further medical or other inspection, as and when so ordered by such officer; (3) to refuse or fail to remove him from the United States to the country whence he came; (4) to fail to pay the cost of his maintenance while being detained as required

by this section or section 1223 of this title; (5) to take any fee, deposit, or consideration on a contingent basis to ke[1] kept or returned in case the alien is landed or excluded; or (6) knowingly to bring to the United States any alien (other than an alien crewman) excluded or arrested and deported under any provision of law until such alien may be lawfully entitled to reapply for admission to the United States. If it shall appear to the satisfaction of the Attorney General that any such master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft has violated any of the provisions of this section or of section 1223 of this title, such master, commanding officer, purser, person in charge, agent, owner, or consignee shall pay to the collector of customs of the district in which port of arrival is situated or in which any vessel or aircraft of the line may be found, the sum of $300 for each violation. No such vessel or aircraft shall have clearance from any port of the United States while any such fine is unpaid or while the question of liability to pay any such fine is being determined, nor shall any such fine be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the collector of customs of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such fine.

(c) Recovery of maintenance expenses by United States.

If the vessel or aircraft, by which any alien who has been ordered deported under this section arrived, has left the United States and it is impracticable to deport the alien within a reasonable time by another vessel or aircraft owned by the same person, the cost of deportation may be paid from the appropriation for the enforcement of this chapter and recovered by civil suit from any owner, agent, or consignee of the vessel or aircraft.

(d) Stay of deportation; payment of maintenance expenses.

The Attorney General, under such conditions as are by regulations prescribed, may stay the deportation of any alien deportable under this section, if in his judgment the testimony of such alien is necessary on behalf of the United States in the prosecution of offenders against any provision of this chapter or other laws of the United States. The cost of maintenance of any person so detained resulting from a stay of deportation under this subsection and a witness fee in the sum of $1 per day for each day such person is so detained may be paid from the appropriation for the enforcement of this subchapter. Such alien may be released under bond in the penalty of not less than $500 with security approved by the Attorney General on condition that such alien shall be produced when required as a witness and for deportation, and on such other conditions as the Attorney General may prescribe.

(e) Deportation of alien accompanying physically disabled alien.

Upon the certificate of an examining medical officer to the effect that an alien ordered to be excluded and deported under this section is helpless from sickness or mental and physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by the alien ordered excluded and deported, such accompanying alien may also be excluded and deported, and the master, commanding officer, agent, owner, or consignee of the vessel or aircraft in which such alien and accompanying alien arrived in the United States shall be required to return the accompanying alien in the same manner as other aliens denied admission and ordered deported under this section. (June 27, 1952, ch. 477, title II, ch. 4, § 237, 66 Stat. 201.)

CROSS REFERENCES

Bond or undertaking with collector of customs as prerequisite to granting clearance prior to determination of question involving delivery of lists or manifests, see section 1221 (d) of this title.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration officer, see section 1101(a) (18) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Nonimmigrant visas, see section 1101 (a) (26) of this title.

Passport, see section 1101 (a) (30) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

Reentry permit—

Generally, see section 1203 of this title.

Readmission without reentry permit of certain aliens who depart from United States temporarily, see section 1181 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1182, 1223, 1253, 1330 of this title.

§ 1228. Entry through or from foreign contiguous territory and adjacent islands.

(a) Contracts with transportation lines; rules and regulations.

The Attorney General shall have power to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States through foreign contiguous territory or through adjacent islands. In prescribing rules and regulations and making contracts for the entry and inspection of aliens applying for admission through foreign contiguous territory or through adjacent islands, due care shall be exercised to avoid any discriminatory action in favor of transportation companies transporting to such territory or islands aliens destined to the United States, and all such transportation companies shall be required, as a condition precedent to the inspection or examination under such rules and contracts at the ports of such contiguous territory or such adjacent islands of aliens brought thereto by them, to enter into a contract which will require them to submit to and comply with all the requirements of this chapter which would apply were they bringing such aliens directly to ports of the United States.

[1] So in original. Probably should read "be".

(b) Same; necessity of transportation contract.

The Attorney General shall have power to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States from foreign contiguous territory or from adjacent islands. No such transportation line shall be allowed to land any such alien in the United States until and unless it has entered into any such contracts which may be required by the Attorney General.

(c) Landing stations.

Every transportation line engaged in carrying alien passengers for hire to the United States from foreign contiguous territory or from adjacent islands shall provide and maintain at its expense suitable landing stations, approved by the Attorney General, conveniently located at the point or points of entry. No such transportation line shall be allowed to land any alien passengers in the United States until such landing stations are provided, and unless such stations are thereafter maintained to the satisfaction of the Attorney General.

(d) Landing agreements.

The Attorney General shall have power to enter into contracts including bonding agreements with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. Notwithstanding any other provision of this chapter, such aliens may not have their classification changed under section 1258 of this title.

(e) Definitions.

As used in this section the terms "transportation line" and "transportation company" include, but are not limited to, the owner, charterer, consignee, or authorized agent operating any vessel or aircraft bringing aliens to the United States, to foreign contiguous territory, or to adjacent islands. (June 27, 1952, ch. 477, title II, ch. 4, § 238, 66 Stat. 202.)

CROSS REFERENCES

Definition of the term—

Adjacent islands, see section 1101(b) (5) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1251, 1321, 1356 of this title.

§ 1229. Designation of ports of entry for aliens arriving by aircraft.

The Attorney General is authorized (1) by regulation to designate as ports of entry for aliens arriving by aircraft any of the ports of entry for civil aircraft designated as such in accordance with law; (2) by regulation to provide such reasonable requirements for aircraft in civil air navigation with respect to giving notice of intention to land in advance of landing, or notice of landing, as shall be deemed necessary for purposes of administration and enforcement of this chapter; and (3) by regulation to provide for the application to civil air navigation of the provisions of this chapter where not expressly so provided in this chapter to such extent and upon such conditions as he deems necessary. Any person who violates any regulation made under this section shall be subject to a civil penalty of $500 which may be remitted or mitigated by the Attorney General in accordance with such proceedings as the Attorney General shall by regulation prescribe. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien upon the aircraft, and such aircraft may be libeled therefor in the appropriate United States court. The determination by the Attorney General and remission or mitigation of the civil penalty shall be final. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien upon the aircraft and may be collected by proceedings in rem which shall conform as nearly as may be to civil suits in admiralty. The Supreme Court of the United States, and under its direction other courts of the United States, are authorized to prescribe rules regulating such proceedings against aircraft in any particular not otherwise provided by law. Any aircraft made subject to a lien by this section may be summarily seized by, and placed in the custody of such persons as the Attorney General may by regulation prescribe. The aircraft may be released from such custody upon deposit of such amount not exceeding $500 as the Attorney General may prescribe, or of a bond in such sum and with such sureties as the Attorney General may prescribe, conditioned upon the payment of the penalty which may be finally determined by the Attorney General. (June 27, 1952, ch. 477, title II, ch. 4, § 239, 66 Stat. 203.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Designation of ports of entry for civil aircraft, see section 1509 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1221, 1330 of this title.

§ 1230. Records of admission.

(a) The Attorney General shall cause to be filed, as a record of admission of each immigrant, the immigrant visa required by section 1201 (e) of this title to be surrendered at the port of entry by the arriving alien to an immigration officer.

(b) The Attorney General shall cause to be filed such record of the entry into the United States of each immigrant admitted under section 1181 (b) of this title and of each nonimmigrant as the Attorney General deems necessary for the enforcement of the immigration laws. (June 27, 1952, ch. 477, title II, ch. 4, § 240, 66 Stat. 204.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

United States, see section 1001 (a) (38) of this title.

PART V.—DEPORTATION; ADJUSTMENT OF STATUS

CROSS REFERENCES

Registration provisions pertaining to persons trained in foreign espionage systems, deportation in manner provided by this part for violation of, see section 855 of Title 50, War and National Defense.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1306 of this title; title 50 section 855.

§ 1251. Deportable aliens.

(a) General classes.

Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States;

(3) hereafter, within five years after entry, becomes institutionalized at public expense because of mental disease, defect, or deficiency unless the alien can show that such disease, defect, or deficiency did not exist prior to his admission to the United States;

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

(5) has failed to comply with the provisions of section 1305 of this title unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 1306 (c) of this title, or under section 36 (c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of sections 611 to 621 of Title 22, or has been convicted under section 1546 of Title 18;

(6) is or at any time has been after entry, a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided,* That nothing in this paragraph, or in any other provision of this chapter, shall be construed as declaring that the Communist Party does not advocate the overthrow of Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 786 of Title 50, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety, of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States

or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display any written or printed matter of the character described in paragraph (G) of this subdivision;

(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in pargaraph (27) or (29) of section 1182 (a) of this title, unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of section 1182 (a) of this title, that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 786 of Title 50 have such knowledge or reason to believe) that such organization was a Communist organization;

(8) in the opinion of the Attorney General, has within five years after entry become a public charge from causes not affirmatively shown to have arisen after entry;

(9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 1258 of this title, or to comply with the conditions of any such status;

(10) entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 1228 (a) of this title and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien who is a native-born citizen of any of the countries enumerated in section 1101 (a) (27) (A) of this title and an alien described in section 1101 (a) (27) (B) of this title);

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate:

(12) by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 1182 (a) of this title; or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place;

(13) prior to, or at the time of any entry or at any time within five years after any entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;

(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun;

(15) at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940;

(16) at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940; or

(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 791, 792, 793, 794, 2388, and 3241, of Title 18; an Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918; section 1185 of this title; an Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918; sections 2151 and 2153 to 2156 of Title 18; and Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto; the

Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; an Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917, section 871 of Title 18; an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, or any amendment thereof; the Trading With the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of Title 18; has been convicted of any offense against section 13 of the Penal Code of the United States committed during the period of August 1, 1914, to April 6, 1917, or of a conspiracy occurring within said period to commit an offense under said section 13 or of any offense committed during said period against the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in aid of a belligerent in the European war; section 960 of Title 18; or

(18) has been convicted under section 1328 of this title or under section 4 of the Immigration Act of February 5, 1917.

(b) Nonapplicability of subsection (a) (4).

The provisions of subsection (a) (4) of this section respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter. The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a) (11) of this section.

(c) Fraudulent entry.

An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 1182 (a) of this title, and to be in the United States in violation of this chapter within the meaning of subsection (a) (2) of this section, if (1) hereafter he or she obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; or (2) it appears to the satisfaction of the Attorney General that he or she has failed or refused to fulfill his or her marital agreement which in the opinion of the Attorney General was hereafter made for the purpose of procuring his or her entry as an immigrant.

(d) Applicability to all aliens.

Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a) of this section, notwithstanding (1) that any such alien entered the United States prior to June 27, 1952, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a) of this section, occurred prior to June 27, 1952.

(e) Deportation of certain nonimmigrants.

An alien, admitted as a nonimmigrant under the provision of either section 1101 (a) (15) (A) (i) or 1101 (a) (15) (G) (i) of this title, and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under subsection (a) (6) or (7) of this section.

(f) Relationship to United States citizen or lawfully admitted alien as affecting deportation for fraudulent entry.

The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence. (June 27, 1952, ch. 477, title II, ch. 5, § 241, 66 Stat. 204; July 18, 1956, ch. 629, title III, § 301 (b), (c), 70 Stat. 575; July 14, 1960, Pub. L. 86–648, § 9, 74 Stat. 505; Sept. 26, 1961, Pub. L. 87–301, § 16, 75 Stat. 655; Oct. 3, 1965, Pub. L. 89–236, § 11(e), 79 Stat. 918.)

REFERENCES IN TEXT

Section 36 (c) of the Alien Registration Act, 1940, referred to in subsec. (a) (5), was formerly classified to section 457 of this title, was repealed by section 403 (a) (39) of act June 27, 1952, and is now covered by section 1306 (c) of this title.

Section 786 of Title 50, referred to in subsec. (a) (6) (E), (7), was repealed by Pub. L. 90–237, § 5, Jan. 2, 1968, 81 Stat. 766.

Title 1 of the Alien Registration Act, 1940, referred to subsec. (a) (15), (16), was formerly classified to sections 9—13 of Title 18, Crimes and Criminal Procedure, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is now covered by sections 2385 and 2387 of said Title 18 and Fed. Rules Cr. Proc. rule 41 (c), Title 18, Appendix, Crimes and Criminal Procedure.

An Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918, referred to in subsec. (a) (17), was formerly classified to Title 18, Crimes and Criminal Procedure, and was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862.

Section 791 of Title 18, referred to in subsec. (a) (17), was repealed by Pub. L. 87–369, § 1, Oct. 4, 1961, 75 Stat. 795.

An Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918, referred to in subsec. (a) (17), was formerly classified to

sections 223—226b of Title 22, Foreign Relations and Intercourse, was repealed by section 403 (a) (15) of act June 27, 1952, and is now covered by section 1185 of this title.

An Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918, referred to in subsec. (a) (17), was formerly classified to sections 101—106 of Title 50, War and National Defense, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is now covered by sections 2151 and 2153—2156 of Title 18, Crimes and Criminal Procedure.

An Act entitled "An Act to authorize the President to increase temporarily the Military establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto, referred to in subsec. (a) (17), was formerly classified to sections 201 –211 of Appendix to Title 50, War and National Defense, and has been omitted as obsolete.

The Selective Training and Service Act of 1940, referred to in subsec. (a) (17), was formerly classified to sections 301—318 of Appendix to said Title 50, and has been omitted as obsolete.

The Selective Service Act of 1948 and the Universal Military Training Act, referred to in subsec. (a) (17), are classified to sections 3072, 3037, 3209, 3210 and 3292 of Title 10, Armed Forces, and section 451 et seq. of Appendix to Title 50, War and National Defense.

An Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917, referred to in subsec. (a) (17), was formerly classified to section 89 of Title 18, Crimes and Criminal Procedure, was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat, 862, and is now covered by section 871 of Title 18.

The Trading With The Enemy Act, referred to in subsec. (a) (17) is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Appendix to Title 50.

Sections 6 and 13 of the Penal Code of the United States, referred to in subsec. (a) (17), were formerly classified to sections 6 and 13 of Title 18, Crimes and Criminal Procedure, were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and are now covered by sections 2384 and 960, respectively, of Title 18.

An Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies, approved July 2, 1890, referred to in subsec. (a) (17), is classified to sections 1—7 of Title 15, Commerce and Trade.

Section 4 of the Immigration Act of February 5, 1917, referred to in subsec. (a) (18), was formerly classified to section 138 of this title, was repealed by section 403 (a) (13) of act June 27, 1952, and is now covered by sections 1326, 1328 and 1329 of this title.

AMENDMENTS

1965—Subsec. (a)(10). Pub. L. 89-236 substituted "section 1101(a) (27) (A) of this title" for "section 1101(a) (27) (C) of this title".

1961—Subsec. (f). Pub. L. 87-301 added subsec. (f).

1960—Subsec. (a). Pub. L. 86-648 inserted "or marihuana" following "narcotic drugs" in cl. (11).

1956—Subsec. (a) (11). Act July 18, 1956, § 301 (b), included conspiracy to violate any narcotic law, and the illicit possession of narcotices, as additional grounds for deportation.

Subsec. (b). Act July 18, 1956, § 301 (c), inserted "The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a) (11) of this section."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956, set out as a note under section 1401 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see note set out under section 1101 of this title.

CROSS REFERENCES

Conspiracy, see chapter 19 of Title 18, Crimes and Criminal Procedure.

Convicted aliens, deportation after imprisonment, see section 1252 (h) of this title.

Definition of the term—

Adjacent islands, see section 1101 (b) (5) of this title.

Advocates, see section 1101 (a) (2) of this title.

Advocating a doctrine, see section 1101 (e) (1) of this title.

Advocating the doctrines of world communism, see section 1101 (e) (3) of this title.

Affiliation, see section 1101 (e) (2) of this title.

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Doctrine, see section 1101 (a) (12) of this title.

Entry, see section 1101 (a) (13) of this title.

Foreign state, see section 1101 (a) (14) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Organization, see section 1101 (a) (28) of this title.

Service, see section 1101 (a) (34) of this title.

Totalitarian party and totalitarian dictatorship, see section 1101 (a) (37) of this title.

United States, see section 1101 (a) (38) of this title.

Unmarried, see section 1101 (a) (39) of this title.

World communism, see section 1101 (a) (40) of this title.

Diplomatic and semidiplomatic immunities, see section 1102 of this title.

Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

Principals, see section 2 of Title 18, Crimes and Criminal Procedures.

Reprieves and pardons, power of President to grant, see Const. Art. 2, § 2, cl. 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1254 of this title; title 22 sections 618, 2508; title 42 section 402.

§ 1251a. Repealed. Pub. L. 87-301, § 24(a)(3), Sept. 26, 1961, 75 Stat. 657.

Section, Pub. L. 85-316, § 7, Sept. 11, 1957, 71 Stat. 640, excepted the spouse, child or parent of a United States citizen, and aliens admitted between Dec. 22, 1945 and Nov. 1, 1954, inclusive, who misrepresented their nationality, place of birth, identity or residence, provided this latter group did so misrepresent because of fear of persecution because of race, religion or politics if repatriated and not to evade quota restrictions, or an investigation of themselves, from the deportation provisions of section 1251 of this title which declared excludable, those aliens who sought to procure or procured entry into the United States by fraud and misrepresentation, or who were not of the nationality specified in their visas, and authorized the admission, after Sept. 11, 1957, of any alien spouse, parent or child of a United States citizen or of an alien admitted for permanent residence who sought, or had procured fraudulent entry into the United States or admitted committing perjury in connection therewith, if otherwise admissable and the Attorney General consented, and is now covered by subsec. (h) of section 1182 of this title, and subsec. (f) of section 1251 of this title.

§ 1252. Apprehension and deportation of aliens.

(a) Arrest and custody; review of determination by court.

Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody; or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole. But such bond or parole, whether heretofore or hereafter authorized, may be revoked at any time by the Attorney General, in his discretion, and the alien may be returned to custody under the warrant which initiated the proceedings against him and detained until final determination of his deportability. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability.

(b) Proceedings to determine deportability; removal expenses.

A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case such additional immigration officer shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon reasonable substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this chapter, or of any other law or treaty, the decision of the Attorney General shall be final. In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 1251 of this title if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraphs (4) to (7), (11), (12), (14) to (17), or (18) of section 1251 (a) of this title. If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter.

(c) Final order of deportation; place of detention.

When a final order of deportation under administrative processes is made against any alien, the Attorney General shall have a period of six months from the date of such order, or, if judicial review is had, then from the date of the final order of the court, within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other condition as the

Attorney General may prescribe. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or other release during such six-month period upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to effect such alien's departure from the United States within such six-month period. If deportation has not been practicable, advisable, or possible, or departure of the alien from the United States under the order of deportation has not been effected, within such six-month period, the alien shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section. The Attorney General is authorized and directed to arrange for appropriate places of detention for those aliens whom he shall take into custody and detain under this section. Where no Federal buildings are available or buildings adapted or suitably located for the purpose are available for rental, the Attorney General is authorized, notwithstanding section 5 of Title 41 or section 278a of Title 40 to expend, from the appropriation provided for the administration and enforcement of the immigration laws, such amounts as may be necessary for the acquisition of land and the erection, acquisition, maintenance, operation, remodeling, or repair of buildings, sheds, and office quarters (including living quarters for officers where none are otherwise available), and adjunct facilities, necessary for the detention of aliens. For the purposes of this section an order of deportation heretofore or hereafter entered against an alien in legal detention or confinement, other than under an immigration process, shall be considered as being made as of the moment he is released from such detention or confinement, and not prior thereto.

(d) Supervision of deportable alien; violation by alien.

Any alien, against whom a final order of deportation as defined in subsection (c) of this section, heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both.

(e) Penalty for willful failure to depart; suspension of sentence.

Any alien against whom a final order of deportation is outstanding by reason of being a member of any of the classes described in paragraphs (4) to (7), (11), (12), (14) to (17), or (18) of section 1251 (a) of this title, who shall willfully fail or refuse to depart from the United States within a period of six months from the date of the final order of deportation under administrative processes, or, if judicial review is had, then from the date of the final order of the court, or September 23, 1950, whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, or who shall connive or conspire, or take any other action, designed to prevent or hamper or with the purpose of preventing or hampering his departure pursuant to such order of deportation, or who shall willfully fail or refuse to present himself for deportation at the time and place required by the Attorney General pursuant to such order of deportation, shall upon conviction be guilty of a felony, and shall be imprisoned not more than ten years: *Provided*, That this subsection shall not make it illegal for any alien to take any proper steps for the purpose of securing cancellation of or exemption from such order of deportation or for the purpose of securing his release from incarceration or custody: *Provided further*, That the court may for good cause suspend the sentence of such alien and order his release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as (1) the age, health, and period of detention of the alien; (2) the effect of the alien's release upon the national security and public peace or safety; (3) the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable; (4) the character of the efforts made by such alien himself and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the United States; (5) the reason for the inability of the Government of the United States to secure passports, other travel documents, or deportation facilities from the country or countries to which the alien has been ordered deported; and (6) the eligibility of the alien for discretionary relief under the immigration laws.

(f) Unlawful reentry.

Should the Attorney General find that any alien has unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation, whether before or after June 27, 1952, on any ground described in any of the paragraphs enumerated in subsection (e) of this section, the previous order of deportation shall be deemed to be reinstated from its original date

and such alien shall be deported under such previous order at any time subsequent to such reentry. For the purposes of subsection (e) of this section the date on which the finding is made that such reinstatement is appropriate shall be deemed the date of the final order of deportation.

(g) Voluntary deportation; payment of expenses.

If any alien, subject to supervision or detention under subsections (c) or (d) of this section, is able to depart from the United States under the order of deportation, except that he is financially unable to pay his passage, the Attorney General may in his discretion permit such alien to depart voluntarily, and the expense of such passage to the country to which he is destined may be paid from the appropriation for the enforcement of this chapter, unless such payment is otherwise provided for under this chapter.

(h) Service of prison sentence prior to deportation.

An alien sentenced to imprisonment shall not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation. (June 27, 1952, ch. 477, title II, ch. 5, § 242, 66 Stat. 208; Sept. 3, 1954, ch. 1263, § 17, 68 Stat. 1232.)

AMENDMENTS

1954—Subsec. (d). Act Sept. 3, 1954, deleted phrase "shall upon conviction be guilty of a felony."

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Alien deported in pursuance of law, see section 1101 (g) of this title.

Conspiracy, see chapter 19 of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Immigration laws, see section 1101 (a) (17) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

National, see section 1101 (a) (21) of this title.

Passport, see section 1101 (a) (30) of this title.

Special inquiry officer, see section 1101 (b) (4) of this title.

United States, see section 1101 (a) (38) of this title.

Felony classified as an offense punishable by death or imprisonment for a term not exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Habeas corpus, see chapter 153 of Title 28, Judiciary and Judicial Procedure.

Judicial review of orders of deportation, see section 1105a of this title.

Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

Sentence—

Sentence, judgment and execution, see chapter 227 of Title 18, Crimes and Criminal Procedure.

Suspension of sentence and probation, see section 3651 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1282 of this title; title 22 sections 618, 2508; title 40 section 613.

§ 1253. Countries to which aliens shall be deported.

(a) Acceptance by designated country; deportation upon nonacceptance by country.

The deportation of an alien in the United States provided for in this chapter, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. No alien shall be permitted to make more than one such designation, nor shall any alien designate, as the place to which he wishes to be deported, any foreign territory contiguous to the United States or any island adjacent thereto or adjacent to the United States unless such alien is a native, citizen, subject, or national of, or had a residence in such designated foreign contiguous territory or adjacent island. If the government of the country designated by the alien fails finally to advise the Attorney General within three months following original inquiry whether that government will or will not accept such alien into its territory, such designation may thereafter be disregarded. Thereupon deportation of such alien shall be directed to any country of which such alien is a subject national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particular case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either—

(1) to the country from which such alien last entered the United States;

(2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;

(3) to the country in which he was born;

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided prior to entering the country from which he entered the United States;

(6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or

(7) if deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.

(b) Deportation during war.

If the United States is at war and the deportation, in accordance with the provisions of subsection (a) of this section, of any alien who is deportable under any law of the United States shall be found by the Attorney General to be impracticable, inadvisable,

inconvenient, or impossible because of enemy occupation of the country from which such alien came or wherein is located the foreign port at which he embarked for the United States or because of reasons connected with the war, such alien may, in the discretion of the Attorney General, be deported as follows:

(1) if such alien is a citizen or subject of a country whose recognized government is in exile, to the country in which is located that government in exile if that country will permit him to enter its territory; or

(2) if such alien is a citizen or subject of a country whose recognized government is not in exile, then to a country or any political or territorial subdivision thereof which is proximate to the country of which the alien is a citizen or subject, or, with the consent of the country of which the alien is a citizen or subject, to any other country.

(c) Payment of deportation costs; within five years.

If deportation proceedings are instituted at any time within five years after the entry of the alien for causes existing prior to or at the time of entry, the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this chapter, and the deportation from such port shall be at the expense of the owner or owners of the vessels, aircraft, or other transportation lines by which such alien came to the United States, or if in the opinion of the Attorney General that is not practicable, at the expense of the appropriation for the enforcement of this chapter: *Provided,* That the costs of the deportation of any such alien from such port shall not be assessed against the owner or owners of the vessels, aircraft, or other transportation lines in the case of any alien who arrived in possession of a valid unexpired immigrant visa and who was inspected and admitted to the United States for permanent residence. In the case of an alien crewman, if deportation proceedings are instituted at any time within five years after the granting of the last conditional permit to land temporarily under the provisions of section 1282 of this title, the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this chapter and the deportation from such port shall be at the expense of the owner or owners of the vessels or aircraft by which such alien came to the United States, or if in the opinion of the Attorney General that is not practicable, at the expense of the appropriation for the enforcement of this chapter.

(d) Same; subsequent to five years.

If deportation proceedings are instituted later than five years after the entry of the alien, or in the case of an alien crewman later than five years after the granting of the last conditional permit to land temporarily, the cost thereof shall be payable from the appropriation for the enforcement of this chapter.

(e) Same; refusal of transportation lines to pay.

A failure or refusal on the part of the master, commanding officer, agent, owner, charterer, or consignee of a vessel, aircraft, or other transportation line to comply with the order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this chapter, or a failure or refusal by any such person to comply with an order of the Attorney General to pay deportation expenses in accordance with the requirements of this section, shall be punished by the imposition of a penalty in the sum and manner prescribed in section 1227 (b) of this title.

(f) Payment of expenses of physically incapable deportees.

When in the opinion of the Attorney General the mental or physical condition of an alien being deported is such as to require personal care and attendance, the Attorney General shall, when necessary, employ a suitable person for that purpose who shall accompany such alien to his final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of deporting the accompanied alien is defrayed, and any failure or refusal to defray such expenses shall be punished in the manner prescribed by subsection (e) of this section.

(g) Countries delaying acceptance of deportees.

Upon the notification by the Attorney General that any country upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject, or resident thereof, the Secretary of State shall instruct consular officers performing their duties in the territory of such country to discontinue the issuance of immigrant visas to nationals, citizens, subjects, or residents of such country, until such time as the Attorney General shall inform the Secretary of State that such country has accepted such alien.

(h) Withholding of deportation.

The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason. (June 27, 1952, ch. 477, title II, ch. 5, § 243, 66 Stat. 214; Oct. 3, 1965, Pub. L. 89-236, § 11(f), 79 Stat. 918.)

AMENDMENTS

1965—Subsec. (h). Pub. L. 89-236 substituted "persecution on account of race, religion, or political opinion" for "physical persecution".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Adjacent islands, section 1101 (b) (5) of this title.

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

National, see section 1101 (a) (21) of this title.

Permanent, see section 1101 (a) (31) of this title.

Residence, see section 1101 (a) (33) of this title.
United States, see section 1101 (a) (38) of this title.
Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1282, 1330 of this title; title 22 sections 618, 2508.

§ 1254. Suspension of deportation.

(a) Adjustment of status for permanent residence; contents.

As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and—

(1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

(2) is deportable under paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 1251(a) of this title; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) Continuous physical presence not required because of honorable service in Armed Forces and presence upon entry into service.

The requirement of continuous physical presence in the United States specified in paragraphs 1 and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

(c) Fulfillment of requirements of subsection (a); report to Congress.

(1) Upon application by any alien who is found by the Attorney General to meet the requirements of subsection (a) of this section the Attorney General may in his discretion suspend deportation of such alien. If the deportation of any alien is suspended under the provisions of this subsection, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension. Such reports shall be submitted on the first day of each calendar month in which Congress is in session.

(2) In the case of an alien specified in paragraph (1) of subsection (a) of this section—

if during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien or authorize the alien's voluntary departure at his own expense under the order of deportation in the manner provided by law. If, within the time above specified, neither the Senate nor the House of Representatives shall pass such a resolution, the Attorney General shall cancel deportation proceedings.

(3) In the case of an alien specified in paragraph (2) of subsection (a) of this section—

if during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel deportation proceedings. If within the time above specified the Congress does not pass such a concurrent resolution, or if either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the suspension of the deportation of such alien, the Attorney General shall thereupon deport such alien in the manner provided by law.

(d) Record of cancellation of deportation.

Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made, and unless the alien is entitled to a special immigrant classification under section 1101(a)(27)(A) of this title, or is an immediate relative within the meaning of section 1151(b) of this title, the Secretary of State shall reduce by one the number of nonpreference immigrant visas authorized to be issued under section 1153(a)(8) of this title for the fiscal year then current.

(e) Voluntary departure.

The Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 1251(a) of this title (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (2) of subsection (a) of this section), to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and

has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

(f) Application of provisions to alien crewmen; students, scholars, etc.; natives of contiguous country or adjacent island.

No provision of this section shall be applicable to an alien who (1) entered the United States as a crewman subsequent to June 30, 1964; or (2) was admitted to the United States pursuant to section 1101(a)(15)(J) of this title or has acquired such status after admission to the United States; or (3) is a native of any country contiguous to the United States or of any adjacent island named in section 1101(b)(5) of this title: *Provided,* That the Attorney General may in his discretion agree to the granting of suspension of deportation to an alien specified in clause (3) of this subsection if such alien establishes to the satisfaction of the Attorney General that he is ineligible to obtain a nonquota immigrant visa. (June 27, 1952, ch. 477, title II, ch. 5, § 244, 66 Stat. 214; Oct. 24, 1962, Pub. L. 87-885, § 4, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89-236, § 12, 79 Stat. 918.)

AMENDMENTS

1965—Subsec. (d). Pub. L. 89-236, § 12(a), removed all references to quotas and provided that in each case where an alien, other than a special immigrant or an immediate relative, has his deportation suspended, a number is deducted from the nonpreference immigrant visas authorized for the current fiscal year.

Subsec. (f). Pub. L. 89-236, § 12(b), inserted "subsequent to June 30, 1964" following "entered the United States as a crewman".

1962—Subsec. (a). Pub. L. 87-885 inserted "applies to the Attorney General for suspension of deportation and" in the introductory paragraph; substituted "except the provisions specified in paragraph (2) of this subsection" and "extreme hardship" for "and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended" and "exceptional and extremely unusual hardship", respectively, and deleted "applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952" preceding "is deportable under any law", in par. (1); redesignated former par. (5) as (2), eliminating from the former provisions "for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after June 27, 1962, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted" following "section 1251(a) of this title" and "has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation" following "good moral character"; and eliminated former pars. (2)—(4), which authorized the Attorney General to suspend deportation and adjust status for permanent residence of aliens deportable for act committed or status existing prior to or at time of entry into the United States, deportable for act committed or status acquired subsequent to entry, and deportable for being a criminal, prostitute, or other immoral person, subversive, violator of narcotic laws, and similar class of persons, and person who entered without inspection, at time and place other than designated by the Attorney General, or without proper documents, respectively.

Subsec. (b). Pub. L. 87-885 substituted provisions declaring the requirement of continuous physical presence in the United States inapplicable to aliens who served honorably in the Armed Forces of the United States and were in the United States at the time of entry into service for provisions respecting the fulfillment of requirements of pars. (1)—(3) of former subsec. (a) and the making of reports to Congress, now incorporated in subsecs. (c)(1), (2) and (f) of this section.

Subsec. (c)(1). Pub. L. 87-885 incorporated the first three sentences of former subsecs. (b) and (c) in par. (1), eliminating from former subsec. (b) "paragraphs (1), (2), or (3)" and from former subsec. (c) "paragraph (4) or (5)" preceding "of subsection (a) of this section" in the first sentence, and from such former subsecs. (b) and (c) the requirement respecting the submission of reports on the fifteenth day of each calendar month in the third sentence.

Subsec. (c)(2). Pub. L. 87-885 incorporated the fourth and fifth sentences of former subsec. (b) in par. (2), prefacing the provisions with the introductory phrase reading "In the case of an alien specified in paragraph (1) of subsection (a) of this section."

Subsec. (c)(3). Pub. L. 87-885 incorporated the fourth and fifth sentences of former subsec. (c) in par. (3), prefacing the provisions with the introductory phrase reading "In the case of an alien specified in paragraph (2) of subsection (a) of this section."

Subsec. (d). Pub. L. 87-885 eliminated the word "area" from the phrase "reduce by one the quota of the quota area."

Subsec. (e). Pub. L. 87-885 substituted "paragraph (2) of subsection (a)" for "paragraph (4) or (5) of subsection (a)."

Subsec. (f). Pub. L. 87-885 added subsec. (f), which incorporates the last sentence of former subsec. (b) reading "The provisions of this subsection relating to the granting of suspension of deportation shall not be applicable to any alien who is a native of any country contiguous to the United States or of any adjacent island, unless he establishes to the satisfaction of the Attorney General that he is ineligible to obtain a nonquota immigrant visa."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Adjacent islands, see section 1101 (b) (5) of this title.

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Child, as used in subchapter III of this chapter, see section 1101(c)(1) of this title.

Child, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(1) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c)(2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.

Person of good moral character, see section 1101 (f) of this title.

Special immigrant, see section 1101 (a) (27) of this title.

Spouse, see section 1101 (a) (35) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1256 of this title.

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence; record; natives of contiguous country or adjacent island.

(a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the

Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved.

(b) Upon the approval of an application for adjustment made under subsection (a) of this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under section 1153(a) of this title within the class to which the alien is chargeable, for the fiscal year then current.

(c) The provisions of this section shall not be applicable to any alien who is a native of any country of the Western Hemisphere, or of any adjacent island named in section 1101 (b) (5) of this title. (June 27, 1952, ch. 477, title II, ch. 5, § 245, 66 Stat. 217; Aug. 21, 1958, Pub. L. 85–700, § 1, 72 Stat. 699; July 14, 1960, Pub. L. 86–648, § 10, 74 Stat. 505; Oct. 3, 1965, Pub. L. 89–236, § 13, 79 Stat. 918.)

AMENDMENTS

1965—Subsec. (b). Pub. L. 89–236, § 13(a), struck out the reference to the quota area to which the alien is chargeable under section 1152 of this title and substituted therefor a reference to the number of the preference of nonpreference visas authorized to be issued under section 1153(a) of this title within the class to which the alien is chargeable.

Subsec. (c). Pub. L. 89–236, § 13(b), substituted "any country of the Western Hemisphere" for "any country contiguous to the United States".

1960—Subsec. (a). Pub. L. 86–648 substituted "alien, other than an alien crewman, who was inspected and admitted or paroled into the United States" for "alien who was admitted to the United States as a bona fide nonimmigrant", deleted former cl. (3) reading "an immigrant visa was immediately available to him at the time of his application", redesignated cl. (4) as (3), and deleted the concluding sentence reading "A quota immigrant visa shall be considered immediately available for the purposes of this subsection only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a consular waiting list."

1958—Pub. L. 85–700 among other changes, substituted provisions allowing adjustment of status of alien who was admitted as a bona fide nonimmigrant to that of an alien lawfully admitted for permanent residence, for provisions allowing adjustment of status of alien who was lawfully admitted as a bona fide nonimmigrant and continued to maintain that status, to that of a permanent resident either as a quota immigrant or as a nonquota immigrant claiming nonquota status as the spouse or child of a citizen under certain specified conditions, by eliminating provision terminating nonimmigrant quota status of alien who files application for adjustment of status, and by adding subsec. (c).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Permanent, see section 1101 (a) (31) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

CUBAN REFUGEES; ADJUSTMENT OF STATUS

Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, provided: "That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act [subsec. (c) of this section], the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

"SEC. 2. In the case of any alien described in section 1 of this Act who prior to the effective date thereof [Nov. 2, 1966], has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act [Nov. 2, 1966], whichever date is later.

"SEC. 3. Section 13 of the Act entitled 'An Act to amend the Immigration and Nationality Act, and for other purposes', approved October 3, 1965 (Public Law 89–236) [amending subsecs. (b) and (c) of this section] is amended by adding at the end thereof the following new subsection:

"'(c) Nothing contained in subsection (b) of this section [amending subsec. (c) of this section] shall be construed to affect the validity of any application for adjustment under section 245 [this section] filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act [Pub. L. 89–236] are, unless otherwise specifically provided therein, continued in force and effect.'

"SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in section 101(a) and (b) of the Immigration and Nationality Act [section 1101(a), (b) of this title] shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1256 of this title.

§ 1255a. Repealed. Pub. L. 87–301, § 24(a)(5), Sept. 26, 1961, 75 Stat. 657.

Section, Pub. L. 85–316, § 9, Sept. 11, 1957, 71 Stat. 641, provided for the adjustment of status of certain resident

aliens to that of a person admitted for permanent residence, the recording by the Attorney General of the alien's lawful admission for permanent residence, and for granting of nonquota status to spouse and children.

EFFECTIVE DATE OF REPEAL

Section 24(b) of Pub. L. 87-31 provided that: "Paragraphs (4), (5), (6), and (7) of subsection (a) of this section [repealing this section and provisions set out as notes under section 1153 of this title, and section 1971a of Title 50, Appendix] shall take effect upon the expiration of the one hundred and eightieth day immediately following the date of enactment of this Act [Sept. 26, 1961]."

§ 1255b. Adjustment of status of certain nonimmigrants to that of persons admitted for permanent residence.

Notwithstanding any other provision of law—

(a) Application.

Any alien admitted to the United States as a nonimmigrant under the provisions of either section 1101 (a) (15) (A) (i) or (ii) or 1101 (a) (15) (G) (i) or (ii) of this title, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) Record of admission.

If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien is a person of good moral character, that he is admissible for permanent residence under this chapter, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date of the order of the Attorney General approving the application for adjustment of status is made.

(c) Report to the Congress; resolution not favoring adjustment of status; reduction of quota.

A complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. Such reports shall be submitted on the first day of each calendar month in which Congress is in session. If, during the session of the Congress at which a case is reported, or prior to the close of the session of Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the adjustment of status of such alien, the Attorney General shall thereupon require the departure of such alien in the manner provided by law. If neither the Senate nor the House of Representatives passes such a resolution within the time above specified, the Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of his entry, reduce by one the quota of the quota area to which the alien is chargeable under section 1152 of this title for the fiscal year then current or the next following year in which a quota is available. No quota shall be so reduced by more than 50 per centum in any fiscal year.

(d) Limitations.

The number of aliens who may be granted the status of aliens lawfully admitted for permanent residence in any fiscal year, pursuant to this section, shall not exceed fifty. (Pub. L. 85-316, § 13, Sept. 11, 1957, 71 Stat. 642.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

DEFINITIONS; APPLICABILITY OF SECTION 1101 (a) AND (b) OF THIS TITLE

Definitions contained in subsecs. (a) and (b) of section 1101 of this title as applicable to this section, see note set out under section 1201a of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Person of good moral character, see section 1101 (f) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1256. Rescission of adjustment of status; report to Congress; effect upon naturalized citizen.

(a) If, at any time within five years after the status of a person has been adjusted under the provisions of section 1254 of this title or under section 19 (c) of the Immigration Act of February 5, 1917, to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall submit to the Congress a complete and detailed statement of the facts and pertinent provisions of law in the case. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session. If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution withdrawing suspension of deportation, the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made. If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 1255 or 1259 of this title or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made.

(b) Any person who has become a naturalized citizen of the United States upon the basis of a record of a lawful admission for permanent residence, created as a result of an adjustment of status for which such person was not in fact eligible, and which is subsequently rescinded under subsection (a) of this section, shall be subject to the provisions of section 1451 of this title as a person whose natu-

ralization was procured by concealment of a material fact or by willful misrepresentation. (June 27, 1952, ch. 477, title II, ch. 5, § 246, 66 Stat. 217.)

REFERENCES IN TEXT

Section 19 (c) of the Immigration Act of February 5, 1917, referred to in subsec. (a), was formerly classified to section 155 (c) of this title, was repealed by section 403 (a) (13) of act June 27, 1952.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

§ 1257. Adjustment of status of certain resident aliens to nonimmigrant status; exceptions.

(a) The status of an alien lawfully admitted for permanent residence shall be adjusted by the Attorney General, under such regulations as he may prescribe, to that of a nonimmigrant under paragraph (15) (A), (E), or (G) of section 1101 (a) of this title, if such alien had at the time of entry or subsequently acquires an occupational status which would, if he were seeking admission to the United States, entitle him to a nonimmigrant status under such paragraphs. As of the date of the Attorney General's order making such adjustment of status, the Attorney General shall cancel the record of the alien's admission for permanent residence, and the immigrant status of such alien shall thereby be terminated.

(b) The adjustment of status required by subsection (a) of this section shall not be applicable in the case of any alien who requests that he be permitted to retain his status as an immigrant and who, in such form as the Attorney General may require, executes and files with the Attorney General a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order which would otherwise accrue to him because of the acquisition of an occupational status entitling him to a nonimmigrant status under paragraph (15) (A), (E), or (G) of section 1101 (a) of this title. (June 27, 1952, ch. 477, title II, ch. 5, § 247, 66 Stat. 218.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant, see section 1101 (a) (15) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Issuance of immigrant visa to alien entitled to nonimmigrant status upon waiver of rights accruing from such status, see section 1184 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1184 of this title.

§ 1258. Change of nonimmigrant classification.

The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except an alien's admission for permanent residence, and the alien classified as a nonimmigrant under paragraph (15) (D) of section 1101(a) of this title, or an alien classified as a nonimmigrant under paragraph (15) (C) or (J) of section 1101(a) of this title, unless he applies to have his classification changed from a classification under paragraph (15) (C) or (J) to a classification under paragraph (15) (A) or (G) of section 1101 of this title. (June 27, 1952, ch. 477, title II, ch. 5, § 248, 66 Stat. 218; Sept. 21, 1961, Pub. L. 87-256, § 109(d), 75 Stat. 535.)

AMENDMENTS

1961—Pub. L. 87-256 inserted references to paragraph (15)(J) of section 1101(a) of this title in two instances.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1228, 1251 of this title.

§ 1259. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to June 30, 1948.

A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 1182 (a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to June 30, 1948;

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship.

(June 27, 1952, ch. 477, title II, ch. 5, § 249, 66 Stat. 219; Aug. 8, 1958, Pub. L. 85-616, 72 Stat. 546; Oct. 3, 1965, Pub. L. 89-236, § 19, 79 Stat. 920.)

AMENDMENTS

1965—Pub. L. 89-236 substituted "June 30, 1948" for "June 28, 1940".

1958—Pub. L. 85-616 permitted record of lawful admission to be made in the case of aliens who entered the United States prior to June 28, 1940, authorized the record to be made as of the date of the approval of the application for those who entered subsequent to July 1, 1924, and prior to June 28, 1940, and substituted provisions requiring the alien to satisfy the Attorney General that he is not inadmissible under section 1182 (a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens for provisions which required the alien to satisfy the Attorney General that he was not subject to deportation.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89-236 effective, except as otherwise provided, on the first day of the first

month after the expiration of thirty days following the date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Ineligible to citizenship, see section 1101 (a) (19) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Permanent, see section 1101 (a) (31) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1444 of this title.

§ 1260. Removal of aliens falling into distress.

The Attorney General may remove from the United States any alien who falls into distress or who needs public aid from causes arising subsequent to his entry, and is desirous of being so removed, to the native country of such alien, or to the country from which he came, or to the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him, at the expense of the appropriation for the enforcement of this chapter. Any alien so removed shall be ineligible to apply for or receive a visa or other documentation for readmission, or to apply for admission to the United States except with the prior approval of the Attorney General. (June 27, 1952, ch. 477, title II, ch. 5, § 250, 66 Stat. 219.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Application for admission, see section 1101 (a) (4) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

United States, see section 1101 (a) (38) of this title.

PART VI.—SPECIAL PROVISIONS RELATING TO ALIEN CREWMEN

§ 1281. Alien crewmen.

(a) Arrival; submission of list; exceptions.

Upon arrival of any vessel or aircraft in the United States from any place outside the United States it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof to deliver to an immigration officer at the port of arrival (1) a complete, true, and correct list containing the names of all aliens employed on such vessel or aircraft, the positions they respectively hold in the crew of the vessel or aircraft, when and where they were respectively shipped or engaged, and those to be paid off or discharged in the port of arrival; or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(b) Reports of illegal landings.

It shall be the duty of any owner, agent, consignee, master, or commanding officer of any vessel or aircraft to report to an immigration officer, in writing, as soon as discovered, all cases in which any alien crewman has illegally landed in the United States from the vessel or aircraft, together with a description of such alien and any information likely to lead to his apprehension.

(c) Departure; submission of list; exceptions.

Before the departure of any vessel or aircraft from any port in the United States, it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof, to deliver to an immigration officer at that port (1) a list containing the names of all alien employees who were not employed thereon at the time of the arrival at that port but who will leave such port thereon at the time of the departure of such vessel or aircraft and the names of those, if any, who have been paid off or discharged, and of those, if any, who have deserted or landed at that port, or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(d) Violations.

In case any owner, agent, consignee, master, or commanding officer shall fail to deliver complete, true, and correct lists or reports of aliens, or to report cases of desertion or landing, as required by subsections (a), (b), and (c) of this section, such owner, agent, consignee, master, or commanding officer, shall, if required by the Attorney General, pay to the collector of customs of any customs district in which the vessel or aircraft may at any time be found the sum of $10 for each alien concerning whom such lists are not delivered or such reports are not made as required in the preceding subsections. No such vessel or aircraft shall be granted clearance from any port at which it arrives pending the determination of the question of the liability to the payment of such fine, and if such fine is imposed, while it remains unpaid. No such fine shall be remitted or refunded. Clearance may be granted prior to the determination of such question upon deposit of a bond or a sum sufficient to cover such fine.

(e) Regulations.

The Attorney General is authorized to prescribe by regulations the circumstances under which a vessel or aircraft shall be deemed to be arriving in, or departing from the United States or any port thereof within the meaning of any provision of this Part. (June 27, 1952, ch. 477, title II, ch. 6, § 251, 66 Stat. 219.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1282. Conditional permits to land temporarily.

(a) Period of time.

No alien crewman shall be permitted to land temporarily in the United States except as provided in this section and sections 1182 (d) (3), (5) and 1283 of this title. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant under paragraph (15) (D) of section 1101 (a) of this title and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b) of this section, and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

(b) Revocation; expenses of detention.

Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a) (1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection.

(c) Penalties.

Any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit issued under subsection (a) of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or shall be imprisoned for not more than six months, or both. (June 27, 1952, ch. 477, title II, ch. 6, § 252, 66 Stat. 220.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

United States, see section 1101 (a) (36) of this title.

Misdemeanor, offense punishable by imprisonment for a term not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1253, 1883, 1284 of this title.

§ 1283. Hospital treatment of alien crewmen afflicted with certain diseases.

An alien crewman, including an alien crewman ineligible for a conditional permit to land under section 1282 (a) of this title, who is found on arrival in a port of the United States to be afflicted with any of the disabilities or diseases mentioned in section 1285 of this title, shall be placed in a hospital designated by the immigration officer in charge at the port of arrival and treated, all expenses connected therewith, including burial in the event of death, to be borne by the owner, agent, consignee, commanding officer, or master of the vessel or aircraft, and not to be deducted from the crewman's wages. No such vessel or aircraft shall be granted clearance until such expenses are paid, or their payment appropriately guaranteed, and the collector of customs is so notified by the immigration officer in charge. An alien crewman suspected of being afflicted with any such disability or disease may be removed from the vessel or aircraft on which he arrived to an immigration station, or other appropriate place, for such observation as will enable the examining surgeons to determine definitely whether or not he is so afflicted, all expenses connected therewith to be borne in the manner hereinbefore prescribed. In cases in which it appears to the satisfaction of the immigration officer in charge that it will not be possible within a reasonable time to effect a cure, the return of the alien crewman shall be enforced on, or at the expense of, the transportation line on which he came, upon such conditions as the Attorney General shall prescribe, to insure that the alien shall be properly cared for and protected, and that the spread of contagion shall be guarded against. (June 27, 1952, ch. 477, title II, ch. 6, § 253, 66 Stat. 221.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1284, 1330 of this title.

§ 1284. Control of alien crewmen.

(a) Penalties for failure.

The owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof who fails (1) to detain on board the vessel, or in the case of an aircraft to detain at a place specified by an immigration officer at the expense of the airline, any alien crewman employed thereon until an immigration officer has completely inspected such alien crewman, including a physical examination by the medical examiner, or (2) to detain any alien crewman on board the vessel, or in the case of an aircraft at a place specified by an immigration officer at the expense of the airline, after such inspection unless a conditional permit to land temporarily has been granted such alien crewman under section 1282 of this title or unless an alien crewman has been permitted to land temporarily under section 1182 (d) (5) or 1283 of this title for medical or hospital treatment, or (3) to deport such alien crewman if required to do so by an immigration officer, whether such deportation requirement is imposed before or after the crewman is permitted to land temporarily under section 1182(d) (5), 1282, or 1283 of this title, shall pay to the collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of $1,000 for each alien crewman in respect to whom any such failure occurs. No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The Attorney General may, upon application in writing therefor, mitigate such penalty to not less than $200 for each alien crewman in respect of whom such failure occurs, upon such terms as he shall think proper.

(b) Prima facie evidence against transportation line.

Except as may be otherwise prescribed by regulations issued by the Attorney General, proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived in the United States from any place outside thereof, or that he was reported by the master or commanding officer of such vessel or aircraft as a deserter, shall be prima facie evidence of a failure to detain or deport such alien crewman.

(c) Deportation on other than arriving vessel or aircraft; expenses.

If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States. (June 27, 1952, ch. 477, title II, ch. 6, § 254, 66 Stat. 221.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1321, 1330 of this title.

§ 1285. Employment on passenger vessels of aliens afflicted with certain disabilities.

It shall be unlawful for any vessel or aircraft carrying passengers between a port of the United States and a port outside thereof to have employed on board upon arrival in the United States any alien afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis in any form, leprosy, or any dangerous contagious disease. If it appears to the satisfaction of the Attorney General, from an examination made by a medical officer of the United States Public Health Service, and is so certified by such officer, that any such alien was so afflicted at the time he was shipped or engaged and taken on board such vessel or aircraft and that the existence of such affliction might have been detected by means of a competent medical examination at such time, the owner, commanding officer, agent, consignee, or master thereof shall pay for each alien so afflicted to the collector of customs of the customs district in which the port of arrival is located the sum of $50. No vessel or aircraft shall be granted clearance pending the determination of the question of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums or of a bond approved by the collector of customs with sufficient surety to secure the payment thereof. Any such fine may, in the discretion of the Attorney General, be mitigated or remitted. (June 27, 1952, ch. 477, title II, ch. 6, § 255, 66 Stat. 222.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1283, 1330 of this title.

§ 1286. Discharge of alien crewmen; penalties.

It shall be unlawful for any person, including the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft, to pay off or discharge any alien crewman, except an alien lawfully admitted for permanent residence, employed on board a vessel or aircraft arriving in the United States without first having obtained the consent of the Attorney General. If it shall appear to the satisfaction of the Attorney General that any alien crewman has been paid off or discharged in the United States in violation of the provisions of this section, such owner, agent, consignee, charterer, master, commanding officer, or other person, shall pay to the collector of customs of the customs district in which the violation occurred the sum of $1,000 for each such violation. No vessel or aircraft shall be granted clearance pending the determination of the question of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond approved by the collector of customs with sufficient surety to secure the payment thereof. Such fine may, in the discretion of the Attorney General, be mitigated to not less than $500 for each violation, upon such terms as he shall think proper. (June 27, 1952, ch. 477, title II, ch. 6, § 256, 66 Stat. 223.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Crewman, see section 1101 (a) (10) of this title.
Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.
United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1287. Alien crewmen brought into the United States with intent to evade immigration laws; penalties.

Any person, including the owner, agent, consignee, master, or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof, who shall knowingly sign on the vessel's articles, or bring to the United States as one of the crew of such vessel or aircraft, any alien, with intent to permit or assist such alien to enter or land in the United States in violation of law, or who shall falsely and knowingly represent to a consular officer at the time of application for visa, or to the immigration officer at the port of arrival in the United States, that such alien is a bona fide member of the crew employed in any capacity regularly required for normal operation and services aboard such vessel or aircraft, shall be liable to a penalty not exceeding $5,000 for each such violation, for which sum such vessel or aircraft shall be liable and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense. (June 27, 1952, ch. 477, title II, ch. 6, § 257, 66 Stat. 223.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Consular officer, see section 1101 (a) (9) of this title.
Crewman, see section 1101 (a) (10) of this title.
Entry, see section 1101 (a) (13) of this title.
Immigration laws, see section 1101 (a) (17) of this title.
Immigration officer, see section 1101 (a) (18) of this title.
United States, see section 1101 (a) (38) of this title.

PART VII.—REGISTRATION OF ALIENS

§ 1301. Alien seeking entry; contents.

No visa shall be issued to any alien seeking to enter the United States until such alien has been registered and fingerprinted in accordance with section 1201 (b) of this title, unless such alien has been exempted from being fingerprinted as provided in that section. (June 27, 1952, ch. 477, title II, ch. 7, § 261, 66 Stat. 223.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Entry, see section 1101 (a) (13) of this title.
United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304 of this title.

§ 1302. Registration of aliens.

(a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201 (b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.

(b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 1201 (b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted. (June 27, 1952, ch. 477, title II, ch. 7, § 262, 66 Stat. 224.)

REFERENCES IN TEXT

Sections 30 and 31 of the Alien Registration Act of 1940, referred to subsecs. (a) and (b), were formerly classified to sections 451 and 452 of this title and were repealed by section 403 (a) (39) of act June 27, 1952.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

WAIVER OF FINGERPRINTING REQUIREMENTS FOR NONIMMIGRANT ALIENS

Authority of the Secretary of State and the Attorney General to waive the requirement of fingerprinting specified in this section, in the case of any nonimmigrant alien, see section 1201a of this title.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Parent, as used in subchapter III of this chapter, see section 1101(c) (2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b)(2) of this title.
United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304 of this title.

§ 1303. Registration of special groups.

(a) Notwithstanding the provisions of sections 1301 and 1302 of this title, the Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of deportation, and (5) aliens of any other class not lawfully admitted to the United States for permanent residence.

(b) The provisions of section 1302 of this title and of this section shall not be applicable to any alien who is in the United States as a nonimmigrant under section 1101 (a) (15) (A) or (a) (15) (G) of this title until the alien ceases to be entitled to such a nonimmigrant status. (June 27, 1952, ch. 477, title II, ch. 7, § 263, 66 Stat. 224.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Border crossing identification card, see section 1101 (a) (6) of this title.
Crewman, see section 1101 (a) (10) of this title.
Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.
Nonimmigrant alien, see section 1101 (a) (15) of this title.

§ 1304. Forms for registration and fingerprinting.

(a) Preparation; contents.

The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 1301 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 1302 of this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.

(b) Confidential nature.

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only to such persons or agencies as may be designated by the Attorney General.

(c) Information under oath.

Every person required to apply for the registration of himself or another under this subchapter shall submit under oath the information required for such registration. Any person authorized under regulations issued by the Attorney General to register aliens under this subchapter shall be authorized to administer oaths for such purpose.

(d) Certificate of alien registration or alien receipt card.

Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General.

(e) Same; personal possession; penalties.

Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both. (June 27, 1952, ch. 477, title II, ch. 7, § 264, 66 Stat. 224.)

REFERENCES IN TEXT

The Alien Registration Act of 1940, referred to in subsec. (d), was formerly classified to sections 451 and 460 of this title, and was repealed by section 403 (a) (39) of act June 27, 1952.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Entry, see section 1101 (a) (13) of this title.
United States, see section 1101 (a) (38) of this title.
Misdemeanor, offense punishable by imprisonment for a term not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1305. Change of address.

Every alien required to be registered under this subchapter, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within the United States on the first day of January following the effective date of this chapter, or on the first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change. Any such alien who is temporarily absent from the United States on the first day of January following the effective date of this chapter, or on the first day of January of any succeeding year shall furnish his current address and other information as required by this section within ten days after his return. Any such alien in the United States in a lawful temporary residence status shall in like manner also notify the Attorney General in writing of his address at the expiration of each three-month period during which he remains in the United States regardless of whether there has been any change of address. In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notice required by this section shall be

given by such parent or legal guardian. (June 27, 1952, ch. 477, title II, ch. 7, § 265, 66 Stat. 225.)

REFERENCES IN TEXT

The Alien Registration Act of 1940, referred to in subsec. (d), was formerly classified to sections 451 and 460 of this title, and was repealed by section 403 (a) (39) of act June 27, 1952.

The effective date of this chapter, referred to in text, was 180 days after June 1952. See section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Parent, as used in subchapter III of this chapter, see section 1101(c) (2) of this title.

Parent, as used in this subchapter and subchapter I of this chapter, see section 1101(b) (2) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1306 of this title.

§ 1306. Penalties.

(a) Willful failure to register.

Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or be imprisoned not more than six months, or both.

(b) Failure to notify change of address.

Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 1305 of this title, shall be taken into custody and deported in the manner provided by Part 5 of this subchapter, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(c) Fraudulent statements.

Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000, or be imprisoned not more than six months, or both; and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be deported in the manner provided in Part 5 of this subchapter.

(d) Counterfeiting.

Any person who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any certificate of alien registration or an alien registration receipt card or any colorable imitation thereof, except when and as authorized under such rules and regulations as may be prescribed by the Attorney General, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both. (June 27, 1952, ch. 477, title II, ch. 7, § 266, 66 Stat. 225.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

PART VIII.—GENERAL PENALTY PROVISIONS

§ 1321. Prevention of unauthorized landing of aliens; failure to report; penalties; prima facie evidence.

(a) It shall be the duty of every person, including the owners, masters, officers, and agents of vessels, aircraft, transportation lines, or international bridges or toll roads, other than transportation lines which may enter into a contract as provided in section 1228 of this title, bringing an alien to, or providing a means for an alien to come to, the United States (including an alien crewman whose case is not covered by section 1284 (a) of this title) to prevent the landing of such alien in the United States at a port of entry other than as designated by the Attorney General or at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be liable to a penalty to be imposed by the Attorney General of $1,000 for each such violation, which may, in the discretion of the Attorney General, be remitted or mitigated by him in accordance with such proceedings as he shall by regulation prescribe. Such penalty shall be a lien upon the vessel or aircraft whose owner, master, officer, or agent violates the provisions of this section, and such vessel or aircraft may be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers. (June 27, 1952, ch. 477, title II, ch. 8, § 271, 66 Stat. 226.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1322. Bringing in aliens subject to disability or afflicted with disease; persons liable; clearance papers; exceptions; definition.

(a) Any person who shall bring to the United States an alien (other than an alien crewman) who is (1) feeble-minded, (2) insane, (3) afflicted with psychopathic personality, or with sexual deviation, (4) a chronic alcoholic, (5) afflicted with any dangerous contagious disease, or (6) a narcotic drug addict, shall pay to the collector of customs of the customs district in which the place of arrival is located for each and every alien so afflicted, the sum of $1,000 unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of such disease or disability could not have been detected by the exercise of due diligence prior to the alien's embarkation.

(b) Any person who shall bring to the United States an alien (other than an alien crewman) afflicted with any mental defect other than those enumerated in subsection (a) of this section, or any physical defect of a nature which may affect his ability to earn a living, as provided in section 1182 (a) (7) of this title, shall pay to the collector of customs of the customs district in which the place of arrival is located for each and every alien so afflicted, the sum of $250, unless (1) the alien was in possession of a valid, unexpired immigrant visa, or (2) the alien was allowed to land in the United States, or (3) the alien was in possession of a valid unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (A) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of such disease or disability could not have been detected by the exercise of due diligence prior to the alien's embarkation.

(c) No vessel or aircraft shall be granted clearance papers pending determination of the question of liability to the payment of any fine under this section, or while the fines remain unpaid, nor shall such fines be remitted or refunded; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fines or of a bond with sufficient surety to secure the payment thereof, approved by the collector of customs.

(d) Nothing contained in this section shall be construed to subject transportation companies to a fine for bringing to ports of entry in the United States aliens who are entitled by law to exemption from the excluding provisions of section 1182 (a) of this title.

(e) As used in this section, the term "person" means the owner, master, agent, commanding officer, charterer, or consignee of any vessel or aircraft. (June 27, 1952, ch. 477, title II, ch. 8, § 272, 66 Stat. 226; Oct. 3, 1965, Pub. L. 89–236, § 18, 79 Stat. 820.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–236 substituted "mentally retarded" for "feeble minded", struck out references to epileptics and persons afflicted with tuberculosis and leprosy, and added reference to persons afflicted with sexual deviation.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Crewman, see section 1101 (a) (10) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Nonimmigrant, visa, see section 1101 (a) (26) of this title.

Person, as used in subchapter I of this chapter and this subchapter, see section 1101(b)(3) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

Reentry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1330 of this title.

§ 1323. Unlawful bringing of aliens into United States.

(a) Persons liable.

It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have an unexpired visa, if a visa was required under this chapter or regulations issued thereunder.

(b) Evidence.

If it appears to the satisfaction of the Attorney General that any alien has been so brought, such person, or transportation company, or the master, commanding officer, agent, owner, charterer, or consignee of any such vessel or aircraft, shall pay

to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien so brought and, except in the case of any such alien who is admitted, or permitted to land temporarily, in addition, a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the alien on whose account the assessment is made. No vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such sums or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(c) Remission or refund.

Such sums shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a visa was required.

(d) Alien stowaways.

The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The provisions of section 1225 of this title for detention of aliens for examination before special inquiry officers and the right of appeal provided for in section 1226 of this title shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States. (June 27, 1952, ch. 477, title II, ch. 8, § 273, 66 Stat. 227.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

United States, see section 1101 (a) (38) of this title.

Funds collected to be held in trust, see section 725s (6) of Title 31, Money and Finance.

Revocation of visas or documents, notice prior to alien's embarkation as prerequisite to imposition of penalty, see section 1201 (i) of this title.

Stowaways on vessels and aircraft, penalties generally, see section 2199 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1225, 1330 of this title.

§ 1324. Bringing in and harboring certain aliens; persons liable; authority to arrest.

(a) Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

(b) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws. (June 27, 1952, ch. 477, title II, ch. 8, § 274, 66 Stat. 228.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Crewman, see section 1101 (a) (10) of this title.
Entry, see section 1101 (a) (13) of this title.
Immigration officer, see section 1101 (a) (18) of this title.
Residence, see section 1101 (a) (33) of this title.
Service, see section 1101 (a) (34) of this title.
United States, see section 1101 (a) (38) of this title.
Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1325. Entry of alien at improper time or place; misrepresentation and concealment of facts.

Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000, or both. (June 27, 1952, ch. 477, title II, ch. 8, § 275, 66 Stat. 229.)

CROSS REFERENCES

Definition of the term—
Entry, see section 1101 (a) (13) of this title.
Immigration officer, see section 1101 (a) (18) of this title.
United States, see section 1101 (a) (38) of this title.
Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title.

§ 1326. Reentry of deported alien.

Any alien who—

(1) has been arrested and deported or excluded and deported, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously excluded and deported, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000, or both. (June 27, 1952, ch. 477, title II, ch. 8, § 276, 66 Stat. 229.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Entry, see section 1101 (a) (13) of this title.
United States, see section 1101 (a) (38) of this title.
Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title.

§ 1327. Aiding or assisting subversive alien to enter.

Any person who knowingly aids or assists any alien excludable under section 1182 (a) (27), (28), or (29) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment for not more than five years, or both. (June 27, 1952, ch. 477, title II, ch. 8, § 277, 66 Stat. 229.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Entry, see section 1101 (a) (13) of this title.
United States, see section 1101 (a) (38) of this title.
Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1328. Importation of alien for immoral purpose.

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall, in every such case, be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than $5,000 and by imprisonment for a term of not more than ten years. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other. (June 27, 1952, ch. 477, title II, ch. 8, § 278, 66 Stat. 230.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
United States, see section 1101 (a) (38) of this title.
Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

§ 1329. Jurisdiction of district courts.

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when

brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under sections 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor. (June 27, 1952, ch. 477, title II, ch. 8, § 279, 66 Stat. 230.)

CROSS REFERENCES

Jurisdiction of all offenses against the laws of the United States, see section 3231 of Title 18, Crimes and Criminal Procedure.

United States defined, see section 1101 (a) (38) of this title.

§ 1330. Collection of penalties and expenses.

Notwithstanding any other provisions of this subchapter, the withholding or denial of clearance of or a lien upon any vessel or aircraft provided for in sections 1221, 1227, 1229, 1253, 1281, 1283, 1248, 1285, 1286 and 1321, 1322, or 1323 of this title shall not be regarded as the sole and exclusive means or remedy for the enforcement of payments of any fine, penalty or expenses imposed or incurred under such sections, but, in the discretion of the Attorney General, the amount thereof may be recovered by civil suit, in the name of the United States, from any person made liable under any of such sections. (June 27, 1952, ch. 477, title II, ch. 8, § 280, 66 Stat. 230.)

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

United States, see section 1101 (a) (38) of this title.

PART IX.—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees.

The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided,* That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis. (June 27, 1952, ch. 477, title II, ch. 9, § 281, 66 Stat. 230; Oct. 3, 1965, Pub. L. 89–236, § 14, 79 Stat. 919; Oct. 21, 1968, Pub. L. 90–609, § 1, 82 Stat. 1199.)

REFERENCES IN TEXT

The Headquarters Agreement, referred to in the text, is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1968—Pub. L. 90–609 struck out provisions fixing statutory fees for specified immigration and nationality benefits and services rendered, including those pertaining to immigrant visas, reentry permits, adjustments of status to permanent residence, creation of record of admission for permanent residence, suspension of deportation, extension of stay to nonimmigrants, and application for admission to practice as attorney or representative before the Service.

1965—Subsec. (a). Pub. L. 89–236, § 14 (a), (b), designated the opening existing material beginning "The following fees shall be charged:" and ending with the end of par. (7) as subsec. (a) and substituted reference to section 1154 of this title for sections 1154(b) and 1155(b) of this title in par. (6).

Subsec. (b). Pub. L. 89–236, § 14(c), added subsec. (b).

Subsec. (c). Pub. L. 89–236, § 14(d), designated the closing existing material consisting of the paragraph beginning "The fees for the furnishing" as subsec. (c).

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment of section by Pub. L. 89–236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub. L. 89–236, which was approved on Oct. 3, 1965, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

AGREEMENTS ON PASSPORT VISA FEES

The United States has entered into various bilateral agreements with foreign countries reciprocally waiving or reducing passport fees for non-immigrants.

Country	Date signed	Entered into force	Citation
Albania	May 7, 1926	June 1, 1926	
Argentina	April 15, 1942	June 1, 1942	56 Stat. 1578.
Australia	Feb. 10, 1950	Feb. 10, 1950	1 UST 457.
Austria	June 10, 28, July 12, 1949.	July 12, 1949	63 Stat. 2730.
Belgium	Mar. 27, 1946	Feb. 17, 1947	61 Stat. 4117.
Brazil	Dec. 17, 1937	Jan. 1, 1938	186 LNTS 413.
	May 26, 1965	July 25, 1965	16 UST 1006.
Ceylon	Aug. 25, 1956	Sept. 7, 1956	8 UST 83.
	Sept. 7, 1956		
Chile	Aug. 29, 1950	Sept. 1, 1950	1 UST 719.
China	Feb. 20, 1956	Apr. 1, 1956	TIAS 3539.
Colombia	Dec. 19, 1930	Mar. 16, 1931	
Costa Rica	June 29, 1925	July 25, 1925	
Czechoslovakia	Dec. 22, 1931	Feb. 1, 1932	
Denmark	July 2, 1925	Aug. 6, 1925	
	June 9, 1947	July 8, 1947	
Ecuador	July 2, 4, 1936	July 20, 1936	62 Stat. 4068.
	Dec. 11, 1962	Jan. 7, 1963	14 UST 757.
	Jan. 7, 1963		
El Salvador	Dec. 7, 15, 1953	Jan. 14, 1954	5 UST 859.
Estonia	Apr. 8, 1925	July 28, 1925	
Finland	Oct. 22, 1925	Dec. 7, 1925	
	July 7, 1955	Dec. 14, 1955	9 UST 1175.
	Aug. 26, 1955		
France	Aug. 19, 1947	Sept. 16, 1947	61 Stat. 3776.
	Mar. 16, 31, 1949	Mar. 31, 1949	63 Stat. 2737.
Germany	Dec. 12, 30, 1952, Jan. 9, 1953.	Feb. 1, 1953	4 UST 156
Greece	Jan. 7, 29, 1949	Jan. 29, 1949	63 Stat. 2905.
Guatemala	June 10, 1925	June 10, 1925	
	May 30, 1956	May 30, 1956	TIAS 3589.
Honduras	May 20, 27, 1925	June 1, 1925	
Iceland	Nov. 3, 1925	June 21, 1926	
	June 4, 1956	June 4, 1956	TIAS 3584.
India	July 19, 1948	Aug. 11, 1948	5 UST 193.
Indonesia	Jan. 21, 1946	Mar. 13, 1946	61 Stat. 3834.
Iran	Mar. 27, 1926	Apr. 21, 1926	
Iraq	Feb. 27, 1939	Feb. 27, 1939	
	June 6, 1956	June 6, 1956	TIAS 3587.
Ireland	Aug. 1, 1949	Aug. 1, 1949	63 Stat. 2807.
Israel	Mar. 27, 1951	June 1, 1951	3 UST 4796.
	Mar. 2, 1955	Oct. 28, 1947	TIAS 3614.
Italy	Sept. 28, 1948	Sept. 29, 1948	62 Stat. 3480.
	Feb. 11, 21, 26, 1929.	Mar. 1, 1929	
Japan	May 21, 1952	Sept. 18, 1952	5 UST 363.
	Mar. 5, 22, 1957	Apr. 21, 1957	8 UST 532.
Korea	May 25, 1962	May 25, 1962	13 UST 1479.
Kuwait	Dec. 11, 27, 1960	Dec. 27, 1960	11 UST 2650.
Latvia	Feb. 18, 1935	Mar. 27, 1935	
Liberia	Aug. 31, 1925	Aug. 31, 1925	
	Oct. 27, 28, 1947	Oct. 28, 1947	62 Stat. 3930.
Liechtenstein	Oct. 22, 1947	Nov. 13, 1947	TIAS 3172.
Lithuania	Apr. 17, 1937	Apr. 17, 1937	
Luxembourg	Apr. 25, 1936	May 26, 1936	
Mexico	Oct. 28, 1953	Nov. 12, 1953	5 UST 174.
Monaco	Mar. 31, 1952	Mar. 21, 1952	3 UST 3942.
Morocco	Mar. 16, 1949	Mar. 31, 1949	63 Stat. 2737.
Netherlands	Jan. 21, 1946	Apr. 15, 1946	61 Stat. 3834, 3838.

Country	Date signed	Entered into force	Citation
New Zealand	Mar. 14, 1949	Apr. 11, 1949	63 Stat. 2538.
	Dec. 16, 1957	May 5, 1958	9 UST 913.
	May 2, 5, 1958		
Nicaragua	July 10, 1925	July 18, 1925	
	July 6, Sept. 30, 1955.	Oct. 22, 1955	10 UST 1696.
Norway	July 7, 1947	July 29, 1947	61 Stat. 3101.
Pakistan	Oct. 10, 1949	Oct. 18, 1949	3 UST 365.
Panama	May 11, 13, 1925	May 13, 1925	
	May 22, 25, 1956	June 1, 1956	TIAS 3573.
Peru	May 20, 1929	July 2, 1929	
	Apr. 6, 1956	Sept. 26, 1956	8 UST 468.
Philippines	Nov. 24, 1952	Nov. 24, 1952	3 UST 5196.
Poland	Dec. 17, 1962	Jan. 21, 1963	14 UST 118.
	Jan. 21, 1963		
Portugal	Feb. 22, 1950	Apr. 1, 1950	1 UST 461.
Rumania	Aug. 25, 1939	Sept. 1, 1939	54 Stat. 2487.
Spain	Jan. 21, 1952	Jan. 21, 1952	3 UST 2927.
Sweden	Apr. 10, 1947	Apr. 30, 1947	61 Stat. 4050.
Switzerland	Oct. 22, 1947	Nov. 13, 1947	TIAS 3172.
Thailand	Sept. 19, 1925	Sept. 19, 1925	
Trinidad and Tobago.	Mar. 12, 1937	Apr. 1, 1937	
	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Tunis	Mar. 16, 1949	Mar. 31, 1949	63 Stat. 2737.
Turkey	Oct. 11, 1955	Oct. 11, 1955	TIAS 3508.
Union of South Africa.	Mar. 24, 1937	Apr. 1, 1937	189 LNTS 113.
	Apr. 3, 1956	May 1, 1956	
Union of Soviet Socialist Republics.	Mar. 26, Aug. 11, 20, 1958.	Aug. 20, 1958	9 UST 1413.
United Arab Republic.	June 3, Aug. 1, 1963.	Aug. 1, 1963	14 UST 1191.
United Kingdom	Nov. 9, 12, 1948	Nov. 12, 1948	62 Stat. 3824.
Uruguay	Nov. 3, 8, 1949	Nov. 10, 1949	64 Stat. B 122.
Venezuela	Jan. 5, 12, 1937	Jan. 12, 1937	
Yugoslavia	Dec. 24, 1925	Feb. 1, 1925	
	Mar. 23, 25, 1950	Mar. 25, 1950	1 UST 471.
	Dec. 30, 1963	Apr. 15, 1964	15 UST 355.
	Mar. 27, Apr. 4, 1964.		

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

National of the United States, see section 1101 (a) (22) of this title.

National, see section 1101 (a) (21) of this title.

Nonimmigrant alien, see section 1101 (a) (15) of this title.

Nonimmigrant visa, see section 1101 (a) (26) of this title.

Residence, see section 1101 (a) (33) of this title.

Service, see section 1101 (a) (34) of this title.

Reentry permit, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1356 of this title.

§ 1352. Printing of reentry permits and blank forms of manifest and crew lists; sale to public.

(a) Reentry permits issued under section 1203 of this title shall be printed on distinctive safety paper and shall be prepared and issued under regulations prescribed by the Attorney General.

(b) The Public Printer is authorized to print for sale to the public by the Superintendent of Documents, upon prepayment, copies of blank forms of manifests and crew lists and such other forms as may be prescribed and authorized by the Attorney General to be sold pursuant to the provisions of this subchapter. (June 27, 1952, ch. 477, title II, ch. 9, § 282, 66 Stat. 231.)

CROSS REFERENCES

Definition of the term Attorney General, see section 1101 (a) (5) of this title.

§ 1353. Travel expenses and expense of transporting remains of officers and employees dying outside of United States.

When officers, inspectors, or other employees of the Service are ordered to perform duties in a foreign country, or are transferred from one station to another, in the United States or in a foreign country, or while performing duties in any foreign country become eligible for voluntary retirement and return to the United States, they shall be allowed their traveling expenses in accordance with such regulations as the Attorney General may deem advisable, and they may also be allowed, within the discretion and under written orders of the Attorney General, the expenses incurred for the transfer of their wives and dependent children, their household effects and other personal property, including the expenses for packing, crating, freight, unpacking, temporary storage, and drayage thereof in accordance with section 73b–1 of Title 5. The expense of transporting the remains of such officers, inspectors, or other employees who die while in, or in transit to, a foreign country in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses of such interment and of preparation for shipment, are authorized to be paid on the written order of the Attorney General. (June 27, 1952, ch. 477, title II, ch. 8, § 283, 66 Stat. 231.)

REFERENCES IN TEXT

Section 73b—1 of Title 5, referred to in the text, was repealed in the general revision of Title 5 by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and the provisions are now covered by sections 5721, 5724 to 5727, and 5730 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1353a. Officers and employees; overtime services; extra compensation; length of working day.

The Attorney General shall fix a reasonable rate of extra compensation for overtime services of immigration officers and employees of the Immigration and Naturalization Service who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform duties in connection with the examination and landing of passengers and crews of steamships, trains, airplanes, or other vehicles, arriving in the United States from a foreign port by water, land, or air, such rates to be fixed on a basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian) and two additional days' pay for Sunday and holiday duty; in those ports where the customary working hours are other than those heretofore mentioned, the Attorney General is vested with authority to regulate the hours of such employees so as to agree with the prevailing working hours in said ports, but nothing contained in

this section shall be construed in any manner to affect or alter the length of a working day for such employees or the overtime pay herein fixed. (Mar. 2, 1931, ch. 368, § 1, 46 Stat. 1467; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238; June 27, 1952, ch. 477, title IV, § 402(i)(1), 66 Stat. 278.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

Ex. Ord. No. 6166, is authority for the substitution of "Immigration and Naturalization Service" for "Immigration Service"; and 1940 Reorg. Plan No. V. is authority for the substitution of "Attorney General" for "Secretary of Labor." See note set out under section 1551 of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted "immigration officers" for "inspectors".

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance of the performance of any of his functions by any of such officers, agencies, and employees by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Payment of overtime services or for Sunday or holiday work under this section not prevented by generally applicable premium pay provisions covering government employees, see section 5549 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1353d, 1556 of this title; title 5 section 5549.

§ 1353b. Extra compensation; payment.

The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance arriving in the United States from a foreign port to the Attorney General, who shall pay the same to the several immigration officers and employees entitled thereto as provided in section 1353a of this title. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual inspection or examination of passengers or crew takes place or not: *Provided,* That this section shall not apply to the inspection at designated ports of entry of passengers arriving by international ferries, bridges, or tunnels, or by aircraft, railroad trains, or vessels on the Great Lakes and connecting waterways, when operating on regular schedules. (Mar. 2, 1931, ch. 368, § 2, 46 Stat. 1467; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

1940 Reorg. Plan No. V, is authority for the substitution of "Attorney General" for "Secretary of Labor." See note set out under section 1551 of this title.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Maximum charges for certain overtime services, notwithstanding any other provision of law, see section 1741 of Title 49, Transportation.

Payment of overtime services or for Sunday or holiday work under this section not prevented by generally applicable premium pay provisions covering government employees, see section 5549 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1353d, 1556 of this title; title 5 section 5549.

§ 1353c. Same; immigration officials.

Nothing in section 1914 of Title 18, relative to augmenting salaries of Government officials from outside sources shall prevent receiving reimbursements for services of immigration officials incident to the inspection of aliens in foreign contiguous territory and such reimbursement shall be credited to the appropriation, "Immigration and Naturalization Service—Salaries and Expenses." (Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1424; Sept. 3, 1954, ch. 1263, § 6, 68 Stat. 1227.)

REFERENCES IN TEXT

Section 1914 of Title 18, referred to in the text, was repealed and is now covered by section 209 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1954—Act Sept. 3, 1954, substituted "section 1914 of Title 18" for "section 66 of this title".

PRIOR PROVISIONS

Section constituted a part of section 1 of act Mar. 4, 1921, ch. 161, 41 Stat. 1424, which rendered act Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1106, (former section 66 of Title 5) inapplicable to immigration officials under the circumstances stated.

§ 1353d. Disposition of money received as extra compensation.

Moneys collected on or after July 1, 1941, as extra compensation for overtime service of immigration officers and employees of the Immigration Service pursuant to sections 1353a and 1353b of this title, shall be deposited in the Treasury of the United States to the credit of the appropriation for the payment of salaries, field personnel of the Immigration and Naturalization Service, and the appropriation so credited shall be available for the payment of such compensation. (Aug. 22, 1940, ch. 688, 54 Stat. 858; June 27 1958, ch. 477, title IV, §402(i)(2), 66 Stat. 278.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1952—Act June 27, 1952, substituted "immigration officers" for "inspectors".

TRANSFERS OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees

of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1354. Applicability to members of the armed forces.

Nothing contained in this subchapter shall be construed so as to limit, restrict, deny, or affect the coming into or departure from the United States of an alien member of the Armed Forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces: *Provided,* That nothing contained in this section shall be construed to give to or confer upon any such alien any other privileges, rights, benefits, exemptions, or immunities under this chapter, which are not otherwise specifically granted by this chapter. (June 27, 1952, ch. 477, title II, ch. 9, § 284, 66 Stat. 232.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
United States, see section 1101 (a) (38) of this title.

§ 1355. Disposal of privileges at immigrant stations; rentals; retail sale; disposition of receipts.

(a) Subject to such conditions and limitations as the Attorney General shall prescribe, all exclusive privileges of exchanging money, transporting passengers or baggage, keeping eating houses, or other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder (other than an alien) in accordance with the provisions of section 5 of Title 41 and for the use of Government property in connection with the exercise of such exclusive privileges a reasonable rental may be charged. The feeding of aliens, or the furnishing of any other necessary service in connection with any United States immigrant station, may be performed by the Service without regard to the foregoing provisions of this subsection if the Attorney General shall find that it would be advantageous to the Government in terms of economy and efficiency. No intoxicating liquors shall be sold at any immigrant station.

(b) Such articles determined by the Attorney General to be necessary to the health and welfare of aliens detained at any immigrant station, when not otherwise readily procurable by such aliens, may be sold at reasonable prices to such aliens through Government canteens operated by the Service, under such conditions and limitations as the Attorney General shall prescribe.

(c) All rentals or other receipts accruing from the disposal of privileges, and all moneys arising from the sale of articles through Service-operated canteens, authorized by this section, shall be covered into the Treasury to the credit of the appropriation for the enforcement of this subchapter. (June 27 1952, ch. 477, title II, ch. 9, § 285, 66 Stat. 232.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Service, see section 1101 (a) (34) of this title.
United States, see section 1101 (a) (38) of this title.

§ 1356. Disposition of monies collected under the provisions of this subchapter.

(a) All moneys paid into the Treasury to reimburse the Service for detention, transportation, hospitalization, and all other expenses of detained aliens paid from the appropriation for the enforcement of this chapter, and all moneys paid into the Treasury to reimburse the Service for expenses of landing stations referred to in section 1228 (c) of this title paid by the Service from the appropriation for the enforcement of this chapter, shall be credited to the appropriation for the enforcement of this chapter for the fiscal year in which the expenses were incurred.

(b) Except as otherwise provided in subsection (a) of this section, or in any other provision of this subchapter, all moneys received in payment of fees and administrative fines and penalties under this subchapter shall be covered into the Treasury as miscellaneous receipts: *Provided, however,* That all fees received from applicants residing in the Virgin Islands of the United States, and in Guam, required to be paid under section 1351 of this title, shall be paid over to the Treasury of the Virgin Islands and to the Treasury of Guam, respectively. (June 27, 1952, ch. 477, title II, ch. 9, § 286, 66 Stat. 232.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Service, see section 1101 (a) (34) of this title.

§ 1357. Powers of immigration officers and employees.

(a) Powers without warrant.

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands,

but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States; and

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, or expulsion of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States. Any such employee shall also have the power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens.

(b) Administration of oath; taking of evidence.

Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service; and any person to whom such oath has been administered, under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621 of Title 18.

(c) Search without warrant.

Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for exclusion from the United States under this chapter which would be disclosed by such search. (June 27, 1952, ch. 477, title II, ch. 9, § 287, 66 Stat. 233.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigration officer, see section 1101 (a) (18) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

Felony classified as an offense punishable by death or imprisonment for a term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1226 of this title.

§ 1358. Local jurisdiction over immigrant stations.

The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the States and Territories. For the purpose of this section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations. (June 27, 1952, ch. 477, title II, ch. 9, § 288, 66 Stat. 234.)

§ 1359. Application to American Indians born in Canada.

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. (June 27, 1952, ch. 477, title II, ch. 9, § 289, 66 Stat. 234.)

§ 1360. Establishment of central file; information from other departments and agencies.

(a) There shall be established in the office of the Commissioner, for the use of security and enforcement agencies of the Government of the United States, a central index, which shall contain the names of all aliens heretofore admitted to the United States, or excluded therefrom, insofar as such information is available from the existing records of the Service, and the names of all aliens hereafter admitted to the United States, or excluded therefrom, the names of their sponsors of record, if any, and such other relevant information as the Attorney General shall require as an aid to the proper enforcement of this chapter.

(b) Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States shall be made available to the Service upon request made by the Attorney General to the head of any such department or agency.

(c) The Secretary of Health, Education, and Welfare shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Secretary shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.

(d) A written certification signed by the Attorney General or by any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court. (June 27, 1952, ch. 477, title II, ch. 9, § 290, 66 Stat. 234; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F. R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health,

Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, set out in the Appendix to Title 5, Government Organization and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of said 1953 Reorg. Plan No. 1.

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Commissoner, see section 1101 (a) (8) of this title.
Entry, see section 1101 (a) (13) of this title.
Service, see section 1101 (a) (34) of this title.
United States, see section 1101 (a) (38) of this title.

§ 1361. Burden of proof upon alien.

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this chapter, and, if an alien, that he is entitled to the nonimmigrant, quota immigrant, or nonquota immigrant status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not subject to exclusion under any provision of this chapter. In any deportation proceeding under Part 5 of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof he shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service. If such burden of proof is not sustained, such person shall be presumed to be in the United States in violation of law. (June 27, 1952, ch. 477, title II, ch. 9, § 291, 66 Stat. 234.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Attorney General, see section 1101 (a) (5) of this title.
Consular officer, see section 1101 (a) (9) of this title.
Entry, see section 1101 (a) (13) of this title.
Nonimmigrant alien, see section 1101 (a) (15) of this title.
Profession, see section 1101(a) (32) of this title.
Service, see section 1101 (a) (34) of this title.
United States, see section 1101 (a) (38) of this title.

§ 1362. Right to counsel.

In any exclusion or deportation proceedings before a special inquiry officer and in any appeal proceedings before the Attorney General from any such exclusion or deportation proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose. (June 27, 1952, ch. 477, title II, ch. 9, § 292, 66 Stat. 235.)

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101 (a) (5) of this title.
Special inquiry officer, see section 1101 (b) (4) of this title.

§ 1363. Deposit of and interest on cash received to secure immigration bonds.

(a) Cash received by the Attorney General as security on an immigration bond shall be deposited in the Treasury of the United States in trust for the obligor on the bond, and shall bear interest payable at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum. Such interest shall accrue from date of deposit occurring after April 27, 1966, to and including date of withdrawal or date of breach of the immigration bond, whichever occurs first: *Provided,* That cash received by the Attorney General as security on an immigration bond, and deposited by him in the postal savings system prior to discontinuance of the system, shall accrue interest as provided in this section from the date such cash ceased to accrue interest under the system. Appropriations to the Treasury Department for interest on uninvested funds shall be available for payment of said interest.

(b) The interest accruing on cash received by the Attorney General as security on an immigration bond shall be subject to the same disposition as prescribed for the principal cash, except that interest accruing to the date of breach of the immigration bond shall be paid to the obligor on the bond. (June 27,,1952, ch. 477, title II, ch. 9, § 293, as added July 10, 1970, Pub. L. 91-313, § 2, 84 Stat. 413.)

SUBCHAPTER III.—NATIONALITY AND NATURALIZATION

PART I.—NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

§ 1401. Nationals and citizens of United States at birth.

(a) The following shall be nationals and citizens of the United States at birth:

(1) a person born in the United States, and subject to the jurisdiction thereof;

(2) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe. *Provided,* That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(3) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(4) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(5) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(6) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided,* That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of Title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of Title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a) of this section, shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such coming be continuously physically present in the United State[1] for at least five years: *Provided,* That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

(c) Subsection (b) of this section shall apply to a person born abroad subsequent to May 24, 1934: *Provided, however,* That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this chapter, has taken up a residence in the United States before attaining the age of sixteen years and thereafter, whether before or after the effective date of this chapter, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended. (June 27, 1952, ch. 477, title III, ch. 1, § 301, 66 Stat. 235; Nov. 6, 1966, Pub. L. 89–770, 80 Stat. 1322.)

[1] So in original. Probably should read "United States".

REFERENCES IN TEXT

Subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended, referred to in subsec. (c), were formerly classified to section 601 of this title, and were repealed by section 403 (a) (42) of act June 27, 1952.

AMENDMENTS

1966—Subsec. (a)(7). Pub. L. 89–770 authorized periods of employment with the United States Government or with an international organization by the citizen parent, or any periods during which the citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization, to be included in order to satisfy the physical presence requirement, and permitted the proviso to be applicable to persons born on or after December 24, 1952.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

ADMISSION OF ALASKA AS STATE

Alaska Statehood provisions as not conferring, terminating or restoring United States nationality, see section 21 of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101 (c)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

Persons born and naturalized in United States and subject to its jurisdiction as citizens of United States and State wherein they reside, see Const. Amend. 14, § 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401a, 1401b, 1408, 1409, 1452 of this title; title 26 sections 877, 2107, 2501.

§ 1401a. Birth abroad before 1952 to service parent.

Section 1401 (a) (7) of this title shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940. (Mar. 16, 1956, ch. 85, 70 Stat. 50.)

REFERENCES IN TEXT

Section 201 (g) and (i), referred to in the text, which were repealed by act June 27, 1952, ch. 477, title IV, § 403 (a) (42), 66 Stat. 280, eff. Dec. 24, 1952, provided as follows:

"The following shall be nationals and citizens of the United States at birth:

* * * * *

"(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after

attaining the age of sixteen years, the other being an alien: *Provided,* That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further,* That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

"The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation:

* * * * *

"(i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of the termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' resident in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: *Provided,* That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: *Provided further,* That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease."

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

§ 1401b. Physical presence in the United States; absences of less than twelve months in the aggregate.

In the administration of section 1401 (b) of this title, absences from the United States of less than twelve months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence. (Pub. L. 85–316, § 16, Sept. 11, 1957, 71 Stat. 644.)

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

§ 1402. Persons born in Puerto Rico on or after April 11, 1899.

All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth. (June 27, 1952, ch. 477, title III, ch. 1, § 302, 66 Stat. 236.)

CROSS REFERENCES

United States defined, see section 1101 (a) (38) of this title.

§ 1403. Persons born in the Canal Zone or Republic of Panama on or after February 26, 1904.

(a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States. (June 27, 1952, ch. 477, title III, ch. 1, § 303, 66 Stat. 236.)

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

United States defined, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1452 of this title.

§ 1404. Persons born in Alaska on or after March 30, 1867.

A person born in Alaska on or after March 30, 1867, except a noncitizen Indian, is a citizen of the United States at birth. A noncitizen Indian born in Alaska on or after March 30, 1867, and prior to June 2, 1924, is declared to be a citizen of the United States as of June 2, 1924. An Indian born in Alaska on or after June 2, 1924, is a citizen of the United States at birth. (June 27, 1952, ch. 477, title III, ch. 1, § 304, 66 Stat. 236.)

ADMISSION OF ALASKA AS STATE

Alaska Statehood provisions as not repealing, amending or modifying the provisions of this section, see section 24 of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

United States defined, see section 1101 (a) (38) of this title.

§ 1405. Persons born in Hawaii.

A person born in Hawaii on or after August 12, 1898, and before April 30, 1900, is declared to be a citizen of the United States as of April 30, 1900. A person born in Hawaii on or after April 30, 1900, is a citizen of the United States at birth. A person who was a citizen of the Republic of Hawaii on August 12, 1898, is declared to be a citizen of the United States as of April 30, 1900. (June 27, 1952, ch. 477, title III, ch. 1, § 305, 66 Stat. 237.)

CROSS REFERENCES

United States defined, see section 1101 (a) (38) of this title.

§ 1406. Persons living in and born in the Virgin Islands.

(a) The following persons and their children born subsequent to January 17, 1917, and prior to February 25, 1927, are declared to be citizens of the United States as of February 25, 1927:

(1) All former Danish citizens who, on January 17, 1917, resided in the Virgin Islands of the United States, and were residing in those islands or in the United States or Puerto Rico on February 25, 1927, and who did not make the declaration required to preserve their Danish citizenship by article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark, or who, having made such a declaration have heretofore renounced or may hereafter renounce it by a declaration before a court of record;

(2) All natives of the Virgin Islands of the United States who, on January 17, 1917, resided in those islands, and were residing in those islands or in the United States or Puerto Rico on February 25, 1927, and who were not on February 25, 1927, citizens or subjects of any foreign country;

(3) All natives of the Virgin Islands of the United States who, on January 17, 1917, resided in the United States, and were residing in those islands on February 25, 1927, and who were not on February 25, 1927, citizens or subjects of any foreign country; and

(4) All natives of the Virgin Islands of the United States who, on June 28, 1932, were residing in continental United States, the Virgin Islands of the United States, Puerto Rico, the Canal Zone, or any other insular possession or territory of the United States, and who, on June 28, 1932, were not citizens or subjects of any foreign country, regardless of their place of residence on January 17, 1917.

(b) All persons born in the Virgin Islands of the United States on or after January 17, 1917, and prior to February 25, 1927, and subject to the jurisdiction of the United States are declared to be citizens of the United States as of February 25, 1927; and all persons born in those islands on or after February 25, 1927, and subject to the jurisdiction of the United States, are declared to be citizens of the United States at birth. (June 27, 1952, ch. 477, title III, ch. 1, § 306, 66 Stat. 237.)

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1407. Persons living in and born in Guam.

(a) The following persons, and their children born after April 11, 1899, are declared to be citizens of the United States as of August 1, 1950, if they were residing on August 1, 1950, on the island of Guam or other territory over which the United States exercises rights of sovereignty:

(1) All inhabitants of the island of Guam on April 11, 1899, including those temporarily absent from the island on that date, who were Spanish subjects, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality; and

(2) All persons born in the island of Guam who resided in Guam on April 11, 1899, including those temporarily absent from the island on that date, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(b) All persons born in the island of Guam on or after April 11, 1899 (whether before or after August 1, 1950) subject to the jurisdiction of the United States, are declared to be citizens of the United States: *Provided,* That in the case of any person born after August 1, 1950, he has taken no affirmative steps to preserve or acquire foreign nationality.

(c) Any person hereinbefore described who is a citizen or national of a country other than the United States and desires to retain his present political status shall have made, prior to August 1, 1952, a declaration under oath of such desire, said declaration to be in form and executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States by virtue of this chapter. (June 27, 1952, ch. 477, title III, ch. 1, § 307, 66 Stat. 237.)

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101 (b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1408. Nationals but not citizens of the United States at birth.

Unless otherwise provided in section 1401 of this title, the following shall be nationals, but not citizens, of the United States at birth:

(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; and

(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession.

(June 27, 1952, ch. 477, title III, ch. 1, § 308, 66 Stat. 238.)

CROSS REFERENCES

Definition of the term—

National of the United States, see section 1101 (a) (22) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101 (c)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1409 of this title.

§ 1409. Children born out of wedlock.

(a) The provisions of paragraphs (3) to (5) and (7) of section 1401 (a) of this title, and of paragraph (2) of section 1408, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this chapter, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

(b) Except as otherwise provided in section 405 of this Act, the provisions of section 1401 (a) (7) of this title shall apply to a child born out of wedlock on or after January 13, 1941, and prior to the effective date of this chapter, as of the date of birth, if the paternity of such child is established before or after the effective date of this chapter and while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, on or after the effective date of this chapter, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year. (June 27, 1952, ch. 477, title III, ch. 1, § 309, 66 Stat. 238.)

REFERENCES IN TEXT

Section 405 of this Act, referred to in subsec. (b), is classified as a note under section 1101 of this title.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

PART II.—NATIONALITY THROUGH NATURALIZATION

§ 1421. Jurisdiction to naturalize.

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is conferred upon the following specified courts: District courts of the United States now existing, or which may hereafter be established by Congress in any State, District Court of the United States for the District of Columbia and for Puerto Rico, the District Court of the Virgin Islands of the United States, and the District Court of Guam; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts, except as otherwise specifically provided in this subchapter.

(b) A person who petitions for naturalization in any State court having naturalization jurisdiction may petition within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Attorney General with such blank forms as may be required in naturalization proceedings.

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this subchapter, and not otherwise.

(e) Notwithstanding the provisions of section 405(a), any petition for naturalization filed on or after September 26, 1961, shall be heard and determined in accordance with the requirements of this subchapter. (June 27, 1952, ch. 477, title III, ch. 2, § 310, 66 Stat. 239; July 7, 1958, Pub. L. 85-508, § 25, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86-3, § 20(c), 73 Stat. 13; Sept. 26, 1961, Pub. L. 87-301, § 17, 75 Stat. 656.)

REFERENCES IN TEXT

Section 405(a), referred to in subsec. (e), means section 405(a) of Act June 27, 1952, set out as a note under section 1101 of this title.

AMENDMENTS

1961—Subsec. (e). Pub. L. 87-301 added subsec. (e).

1959—Subsec. (a). Pub. L. 86-3 eliminated provisions which conferred jurisdiction on the District Court for the Territory of Hawaii. See section 91 of Title 28, Judiciary and Judicial Procedure, and notes thereunder.

1958—Subsec. (a). Pub. L. 85-508 eliminated provisions which conferred jurisdiction on the District Court for the Territory of Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which established a United States District Court for the State of Alaska.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Residence, see section 1101 (a) (33) of this title.

State, except as used in subsec. (a) of this section, see section 1101 (a) (36) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1438, 1446, 1451, 1455 of this title.

§ 1422. Eligibility for naturalization.

The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married. Notwithstanding section 405 (b) of this Act, this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this chapter. (June 27, 1952, ch. 477, title III, ch. 2, § 311, 66 Stat. 239.)

REFERENCES IN TEXT

Section 405 (b) of this Act, referred to in the text, is classified as a note under section 1101 of this title.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Naturalization, see section 1101 (a) (23) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1423. Requirements as to understanding the English language, history, principles and form of government of the United States.

No person except as otherwise provided in this subchapter shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot demonstrate—

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: *Provided,* That this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who, on the effective date of this chapter, is over fifty years of age and has been living in the United States for periods totaling at least twenty years: *Provided further,* That the requirements of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and

(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

(June 27, 1952, ch. 477, title III, ch. 2, § 312, 66 Stat. 239.)

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Naturalization defined, see section 1101 (a) (23) of this title.

§ 1424. Prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government.

(a) Notwithstanding the provisions of section 405 (b) of this Act, no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 786 of Title 50; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required to be registered under section 786 of Title 50, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly

causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5) of this subsection.

(b) The provisions of this section or of any other section of this title shall not be construed as declaring that any of the organizations referred to in this section or in any other section of this title do not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means.

(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, notwithstanding that at the time the petition is filed he may not be included within such classes.

(d) Any person who is within any of the classes described in subsection (a) of this section solely because of past membership in, or past affiliation with, a party or organization may be naturalized without regard to the provisions of subsection (c) of this section if such person establishes that such membership or affiliation is or was involuntary, or occurred and terminated prior to the attainment by such alien of the age of sixteen years, or that such membership or affiliation is or was by operation of law, or was for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes. (June 27, 1952, ch. 477, title III, ch. 2, § 313, 66 Stat. 240.)

REFERENCES IN TEXT

Section 405 (b) of this Act, referred to in subsec. (a), is classified as a note under section 1101 of this title.

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Advocates, see section 1101 (a) (2) of this title.

Advocating a doctrine, see section 1101 (e) (1) of this title.

Advocating the doctrines of world communism, see section 1101 (e) (3) of this title.

Affiliation, see section 1101 (e) (2) of this title.

Doctrine, see section 1101 (a) (12) of this title.

Foreign state, see section 1101 (a) (14) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Organization, see section 1101 (a) (28) of this title.

Totalitarian party and totalitarian dictatorship, see section 1101 (a) (37) of this title.

United States, see section 1101 (a) (38) of this title.

World Communism, see section 1101 (a) (40) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434, 1435, 1441, 1451 of this title.

§ 1425. Ineligibility to naturalization of deserters from the armed forces.

A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military, air, or naval forces of the United States, or who, having been duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or who, whether or not having been duly enrolled, went or shall go beyond the limits of the United States, with intent to avoid any draft into the military, air, or naval service, lawfully ordered, shall, upon conviction thereof by a court martial or a court of competent jurisdiction, be permanently ineligible to become a citizen of the United States; and such deserters and evaders shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof. (June 27, 1952, ch. 477, title III, ch. 2, § 314, 66 Stat. 241.)

CROSS REFERENCES

Definition of the term—

Ineligible to citizenship, see section 1101 (a) (19) of this title.

Naturalization, see section 1101 (a) (23) of this title.

United States, see section 1101 (a) (38) of this title.

Loss of nationality by deserting military, air or naval forces, see section 1481 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434 of this title.

§ 1426. Citizenship denied alien relieved of service in armed forces because of alienage; conclusiveness of records.

(a) Notwithstanding the provisions of section 405 (b) of this Act, any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien. (June 27, 1952, ch. 477, title III, ch. 2, § 315, 66 Stat. 242.)

REFERENCES IN TEXT

Section 405 (b) of this Act, referred to in subsec. (a), is classified as a note under section 1101 of this title.

The National Military Establishment, referred to in subsec. (b), was changed to the Department of Defense by act Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Ineligible to citizenship, see section 1101 (a) (19) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1433, 1434 of this title.

§ 1427. Requirements of naturalization.

(a) Residence.

No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) Absences.

Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, unless the petitioner shall establish to the satisfaction of the court that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the petition for naturalization) shall break the continuity of such residence, except that in the case of a person who has been physically present and residing in the United States, after being lawfully admitted for permanent residence, for an uninterrupted period of at least one year, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries in such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

(c) Physical presence.

The granting of the benefits of subsection (b) of this section shall not relieve the petitioner from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of this section of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing a petition for naturalization.

(d) Moral character.

No finding by the Attorney General that the petitioner is not deportable shall be accepted as conclusive evidence of good moral character.

(e) Same; determination.

In determining whether the petitioner has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the court shall not be limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period.

(f) Restrictions.

Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which the petitioner is a member

or affiliate are pending under section 792 or 793 of Title 50. (June 27, 1952, ch. 477, title III, ch. 2, § 316, 66 Stat. 242.)

CROSS REFERENCES

Central Intelligence Agency, see section 403 et seq. of Title 50, War and National Defense.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

Proof of qualifications, see section 1446 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1430, 1434, 1438, 1439, 1441, 1446 of this title.

§ 1428. Temporary absence of persons performing religious duties.

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing a petition for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 1427 (a) of this title, notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General and the naturalization court that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister. (June 27, 1952, ch. 477, title III, ch. 2, § 317, 66 Stat. 243.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Organization, see section 1101 (a) (28) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1429. Prerequisite to naturalization; burden of proof.

Except as otherwise provided in this subchapter, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this chapter. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405 (b) of this Act, and except as provided in sections 1439 and 1440 of this title no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act: *Provided,* That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this chapter, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this subchapter. (June 27, 1952, ch. 477, title III, ch. 2, § 318, 66 Stat. 244; Oct. 24, 1968, Pub. L. 90-633, § 4, 82 Stat. 1344.)

REFERENCES IN TEXT

Section 405 (b) of this Act, referred to in the text, is classified as a note under section 1101 of this title.

AMENDMENTS

1968—Pub. L. 90-633 substituted reference to exception provided in sections 1439 and 1440 of this title for reference to exception provided in sections 1438 and 1439 of this title.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Entry, see section 1101 (a) (13) of this title.

Immigrant visa, see section 1101 (a) (16) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434, 1438, 1439, 1440, 1441 of this title.

§ 1430. Married persons and employees of certain nonprofit organizations.

(a) Any person whose spouse is a citizen of the United States may be naturalized upon compliance with all the requirements of this subchapter except the provisions of paragraph (1) of section 1427 (a) of this title if such person immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his petition has been living in marital union with the citizen spouse, who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State in which he filed his petition for at least six months.

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required.

(c) Any person who (1) is employed by a bona fide United States incorporated nonprofit organization which is principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes United States interests abroad and which is recognized as such by the Attorney General, and (2) has been so employed continuously for a period of not less than five years after a lawful admission for permanent residence, and (3) who files his petition for naturalization while so employed or within six months following the termination thereof, and (4) who is in the United States at the time of naturalization, and (5) who declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon termination of such employment, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified period of physical presence within the United States or any State or within the jurisdiction of the court, or proof thereof, shall be required.

(d) Any person who is the surviving spouse of a United States citizen, whose citizen spouse dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who was living in marital union with the citizen spouse at the time of his death, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified physical presence within the United States, or within the jurisdiction of the naturalization court shall be required. (June 27, 1952, ch. 477, title III, ch. 2, § 319, 66 Stat. 214; Aug. 20, 1958, Pub. L. 85–697, § 2, 72 Stat. 687; Dec. 18, 1967, Pub. L. 90–215, § 1(a), 81 Stat. 661; June 29, 1968, Pub. L. 90–369, 82 Stat. 279.)

AMENDMENTS

1968—Subsec. (d). Pub. L. 90–369 added subsec. (d).
1967—Subsec. (c). Pub. L. 90–215 added subsec. (c).
1958—Subsec. (b). Pub. L. 85–697 inserted provision relating to persons performing religious duties.

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101 (a) (5) of this title.
Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.
Naturalization, see section 1101 (a) (23) of this title.
Naturalization court, see section 1101 (a) (24) of this title.
Residence, see section 1101 (a) (33) of this title.
Spouse, see section 1101 (a) (35) of this title.
United States, see section 1101 (a) (38) of this title.
Unmarried, see section 1101 (a) (39) of this title.

§ 1431. Children born outside United States of one alien and one citizen parent; conditions for automatic citizenship.

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when—

(1) such naturalization takes place while such child is under the age of sixteen years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of sixteen years.

(b) Subsection (a) of this section shall not apply to an adopted child. (June 27, 1952, ch. 477, title III, ch. 2, § 320, 66 Stat. 245.)

CROSS REFERENCES

Definition of the term—
Alien, see section 1101 (a) (3) of this title.
Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.
Child, as used in this subchapter, see section 1101 (c)(1) of this title.
Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101 (c)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1432. Children born outside of United States of alien parents; conditions for automatic citizenship.

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if

(4) Such naturalization takes place while such child is under the age of sixteen years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of sixteen years.

(b) Subsection (a) of this section shall not apply to an adopted child. (June 27, 1952, ch. 477, title III, ch. 2, § 321, 66 Stat. 245.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101 (c)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1433. Children born outside United States; naturalization on petition of citizen parent; requirements and exemptions.

(a) A child born outside of the United States, one or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen by reason of sections 1424, 1425, 1426, or 1429 of this title, and if residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence, on the petition of such citizen parent, upon compliance with all the provisions of this subchapter, except that no particular period of residence or physical presence in the United States shall be required. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

(b) Subsection (a) of this section shall not apply to an adopted child. (June 27, 1952, ch. 477, title III, ch. 2, § 322, 66 Stat. 246.)

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Person of good moral character, see section 1101 (f) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1448 of this title.

§ 1434. Children adopted by citizens.

(a) An adopted child may, if not otherwise disqualified from becoming a citizen by reason of sections 1424, 1425, 1426, or 1429 of this title, be naturalized before reaching the age of eighteen years upon the petition of the adoptive parent or parents, upon compliance with all the provisions of this subchapter, if the adoptive parent or parents are citizens of the United States, and the child—

(1) was lawfully admitted to the United States for permanent residence;

(2) was adopted before attaining the age of sixteen years; and

(3) subsequent to such adoption has resided continuously in the United States in legal custody of the adoptive parent or parents for two years prior to the date of filing such petition.

(b) In lieu of the residence and physical presence requirements of section 1427 (a) of this title such child shall be required to establish only two years' residence and one year's physical presence in the United States during the two-year period immediately preceding the filing of the petition. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

(c) Any such adopted child (1) one of whose adoptive parents is (A) a citizen of the United States, (B) in the Armed Forces of the United States or in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute or is authorized to perform the

ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such service or employment, and (2) who is in the United States at the time of naturalization, and (3) whose citizen adoptive parent declares before the naturalization court in good faith an intention to have such child take up residence within the United States immediately upon the termination of such service or employment abroad of such citizen adoptive parent, may be naturalized upon compliance with all the requirements of the naturalization laws except that no prior residence or specified period of physical presence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required, and paragraph (3) of subsection (a) of this section shall not be applicable. (June 27, 1952, ch. 477, title III, ch. 2, § 323, 66 Stat. 246; Sept. 11, 1957, Pub. L. 85-316, § 11, 71 Stat. 642; Aug. 20, 1958, Pub. L. 85-697, § 1, 72 Stat. 687.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-697 inserted provision relating to persons performing religious duties.

1957—Subsec. (c). Pub. L. 85-316 added subsec (c).

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1448 of this title.

§ 1435. Former citizens regaining citizenship.

(a) Requirements.

Any person formerly a citizen of the United States who (1) prior to September 22, 1922, lost United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person's spouse, or (2) on or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, may if no other nationality was acquired by an affirmative act of such person other than by marriage be naturalized upon compliance with all requirements of this subchapter, except—

(1) no period of residence or specified period of physical presence within the United States or within the State where the petition is filed shall be required;

(2) the petition need not set forth that it is the intention of the petitioner to reside permanently within the United States;

(3) the petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner;

(4) the petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner and the witnesses have appeared before such examiner for examination.

Such person, or any person who was naturalized in accordance with the provisions of section 317 (a) of the Nationality Act of 1940, shall have, from and after her naturalization, the status of a native-born or naturalized citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided,* That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317 (a) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(b) Additional requirements.

No person who is otherwise eligible for naturalization in accordance with the provisions of subsection (a) of this section shall be naturalized unless such person shall establish to the satisfaction of the naturalization court that she has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States for a period of not less than five years immediately preceding the date of filing a petition for naturalization and up to the time of admission to citizenship, and, unless she has resided continuously in the United States since the date of her marriage, has been lawfully admitted for permanent residence prior to filing her petition for naturalization.

(c) Oath of allegiance.

(1) A woman who was a citizen of the United States at birth and (A) who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, or by her marriage on or after such date to an alien ineligible to citizenship, (B) whose marriage to such alien shall have terminated subsequent to January 12, 1941, and (C) who has not acquired by an affirmative act other than by marriage any other nationality, shall, from and after taking the oath of allegiance required by section 1448 of this title, be a citizen of the United States and have the status of a citizen of the United States by birth, without filing a petition for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title: *Provided,* That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317 (b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the judge or clerk of a naturalization court.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation,

consulate, or naturalization court, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, or naturalization court, shall be delivered to such woman at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States. (June 27, 1952, ch. 477, title III, ch. 2, § 324, 66 Stat. 246.)

REFERENCES IN TEXT

Section 317 (a) and (b) of the Nationality Act of 1940, referred to in subsecs. (a) and (c) (1), was formerly classified to section 717 (a) and (b) of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by subsecs. (a) and (c) of this section.

ITALIAN ELECTIONS; NATURALIZATION OF FORMER CITIZENS WHO VOTED IN CERTAIN FORMER ELECTIONS

Section 1 of act Aug. 16, 1951, as amended by section 402(j) of act June 27, 1952, provided: "That a person who, while a citizen of the United States, has lost citizenship of the United States solely by reasons of having voted in a political election or plebiscite held in Italy between January 1, 1946, and April 18, 1948, inclusive, and who has not subsequent to such voting committed any act which, had he remained a citizen, would have operated to expatriate him, may be naturalized by taking, prior to two years from the enactment of this Act [June 27, 1952], before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, the oath required by section 337 of the Immigration and Nationality Act [Section 1448 of this title]. Certified copies of such oath shall be sent by such diplomatic or consular officer or such court to the Department of State and to the Department of Justice. Such person shall have, from and after naturalization under this section, the same citizenship status as that which existed immediately prior to its loss: Provided, That no such person shall be eligible to take the oath required by section 337 of the Immigration and Nationality Act [section 1448 of this title] unless he shall first take an oath before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, that he has done nothing to promote the cause of communism. The illegal or fraudulent procurement of naturalization under this amendment shall be subject to cancellation in the same manner as provided in section 340 of the Immigration and Nationality Act [section 1451 of this title]."

JAPANESE ELECTIONS; NATURALIZATION OF FORMER CITIZENS WHO VOTED IN CERTAIN FORMER ELECTIONS

Act July 20, 1954, ch. 553, 68 Stat. 495, 496, provided: "That a person who has lost United States citizenship solely by reason of having voted in any political election or plebiscite held in Japan between September 2, 1945, and April 16, 1952, inclusive, and who has not, subsequent to such voting, committed any act which, had he remained a citizen, would have operated to expatriate him, and is not otherwise disqualified from becoming a citizen by reason of sections 313 or 314, or the third sentence of section 318 of the Immigration and Nationality Act [sections 1424, 1425, 1429 of this title], may be naturalized by taking, prior to two years after the date of the enactment of this Act [July 20, 1954], before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title] or before any diplomatic or consular officer of the United States abroad, the applicable oath prescribed by section 337 of such Act [section 1448 of this title]. Certified copies of such oath shall be sent by such court or such diplomatic or consular officer to the Department of State and to the Department of Justice. Such oath of allegiance shall be entered in the records of the appropriate naturalization court, embassy, legation, or consulate, and upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the naturalization court, embassy, legation or consulate, shall be delivered to such person at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States. Any such person shall have, from and after naturalization under this Act, the same citizenship status as that which existed immediately prior to its loss: Provided, That no such person shall be eligible to take the oath prescribed by section 337 of the Immigration and Nationality Act [section 1448 of this title] unless he shall first take an oath before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, that he has done nothing to promote the cause of communism. Naturalization procured under this Act shall be subject to revocation as provided in section 340 of the Immigration and Nationality Act [section 1451 of this title], and subsection (f) of that section [section 1451(f) of this title] shall apply to any person claiming United States citizenship through the naturalization of an individual under this Act."

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Ineligible to citizenship, see section 1101 (a) (19) of this title.

National, see section 1101 (a) (21) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

Spouse, see section 1101 (a) (35) of this title.

United States, see section 1101 (a) (38) of this title.

Unmarried, see section 1101 (a) (39) of this title.

Former citizens losing citizenship by entering armed forces of foreign countries during World War II, see section 1438 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1449 of this title.

§ 1436. Nationals but not citizens; residence within outlying possessions.

A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified, may, if he becomes a resident of any State, be naturalized upon compliance with the applicable requirements of this subchapter, except that in petitions for naturalization filed under the provisions of this section residence and physical presence within the United States within the meaning of this subchapter shall include residence and physical presence within any of the outlying possessions of the United States. (June 27, 1952, ch. 477, title III, ch. 2, § 325, 66 Stat. 248.)

CROSS REFERENCES

Definition of the term—

National, see section 1101 (a) (21) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1437. Resident Philippine citizens excepted from certain requirements.

Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) entered

the United States prior to May 1, 1934, and (3) has, since such entry, resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of petitioning for naturalization under this subchapter. (June 27, 1952, ch. 477, title III, ch. 2, § 326, 66 Stat. 248.)

CROSS REFERENCES

Definition of the term—

Entry, see section 1101 (a) (13) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1438. Former citizens losing citizenship by entering armed forces of foreign countries during World War II.

(a) Requirements; oath; certified copies of oath.

Any person who, (1) during World War II and while a citizen of the United States, served in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945, and (2) has lost United States citizenship by reason of entering or serving in such forces, or taking an oath or obligation for the purpose of entering such forces, may, upon compliance with all the provisions of subchapter III of this chapter, except section 1427 (a) of this title, and except as otherwise provided in subsection (b) of this section, be naturalized by taking before any naturalization court specified in section 1421 (a) of this title the oath required by section 1448 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice.

(b) Exceptions.

No person shall be naturalized under subsection (a) of this section unless he—

(1) is, and has been for a period of at least five years immediately preceding taking the oath required in subsection (a) of this section, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and

(2) has been lawfully admitted to the United States for permanent residence and intends to reside permanently in the United States.

(c) Status.

Any person naturalized in accordance with the provisions of this section, or any person who was naturalized in accordance with the provisions of section 323 of the Nationality Act of 1940, shall have, from and after such naturalization, the status of a native-born, or naturalized, citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein, or in any other provision of law, shall be construed as conferring United States citizenship retroactively upon any such person during any period in which such person was not a citizen.

(d) Span of World War II.

For the purposes of this section, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

(e) Inapplicability to certain persons.

This section shall not apply to any person who during World War II served in the armed forces of a country while such country was at war with the United States (June 27, 1952, ch. 477, title III, ch. 2, § 327, 66 Stat. 248.)

REFERENCES IN TEXT

Section 323 of the Nationality Act of 1940, referred to in subsec. (c), was formerly classified to section 723 of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by subsec. (a) of this section.

CROSS REFERENCES

Definition of the term—

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

Former citizens regaining citizenship, see section 1435 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§ 1439. Naturalization through service in the armed forces.

(a) Requirements.

A person who has served honorably at any time in the armed forces of the United States for a period or periods aggregating three years, and, who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years, and in the State in which the petition for naturalization is filed for at least six months, and without having been physically present in the United States for any specified period, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

(b) Exceptions.

A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter, except that—

(1) no residence within the jurisdiction of the court shall be required;

(2) notwithstanding section 1429 of this title insofar as it relates to deportability and section 1447 (c) of this title, such petitioner may be naturalized immediately if the petitioner be then actually in the Armed Forces of the United States, and if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service;

(3) the petitioner shall furnish to the Attorney General, prior to the final hearing upon his petition, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service,

including periods of service not relied upon by him for the benefits of this section, were other than honorable. The certificate or certificates herein provided for shall be conclusive evidence of such service and discharge.

(c) When service not continuous.

In the case such petitioner's service was not continuous, the petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such petition between the periods of petitioner's service in the Armed Forces, shall be alleged in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon. Such allegation and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

(d) Residence requirements.

The petitioner shall comply with the requirements of section 1427 (a) of this title, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service within five years immediately preceding the date of filing such petition shall be considered as residence and physical presence within the United States.

(e) Moral character.

Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 1427 (a) of this title. (June 27, 1952, ch. 477, title III, ch. 2, § 328, 66 Stat. 249; Oct. 24, 1968, Pub. L. 90–633, § 5, 82 Stat. 1344.)

AMENDMENTS

1968—Subsec. (b) (2). Pub. L. 90–633 inserted reference to section 1429 of this title as it relates to deportability.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1429 of this title.

§ 1440. Naturalization through active-duty service in the armed forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities.

(a) Requirements.

Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as of the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Excutive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: *Provided, however,* That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of a petition for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) Exceptions.

A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter, except that—

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 1429 of this title as they relate to deportability and the provisions of section 1442 of this title;

(2) no period of residence or specified period of physical presence within the United States or any State shall be required;

(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner;

(4) service in the military, air or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or

thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions; and

(5) notwithstanding section 1447 (c) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service.

(c) Revocation.

Citizenship granted pursuant to this section may be revoked in accordance with section 1451 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

(d) Applicability of petitions filed prior to January 1, 1947.

The eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under section 701 of the Nationality Act of 1940, as amended (56 Stat. 182, 58 Stat. 886, 59 Stat. 658), and which is still pending on the effective date of this chapter, shall be determined in accordance with the provisions of this section. (June 27, 1952, ch. 477, title III, ch. 2, § 329, 66 Stat. 250; Sept. 26, 1961, Pub. L. 87–301, § 8, 75 Stat. 654; Oct. 24, 1968, Pub. L. 90–633, §§ 1, 2, 6, 82 Stat. 1343, 1344.)

REFERENCES IN TEXT

Section 701 of the Nationality Act of 1940, as amended, referred to in subsec. (d), was formerly classified to section 1101 of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by this section.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–633, § 1, added the Vietnam hostilities and any subsequent period of military operations involving armed conflict with a hostile foreign force as periods during which a person may be naturalized through service in active duty status.

Subsec. (b)(1). Pub. L. 90–633, § 6, inserted reference to the provisions of section 1429 of this title as they relate to deportability.

Subsec. (b)(4). Pub. L. 90–633, § 2, added reference to the period of the Vietnam hostilities and to any other subsequent period which the President by Executive order designates as a period in which the Armed Forces of the United States were engaged in military operations involving armed conflict with a hostile foreign force.

1961—Subsec. (a). Pub. L. 87–301, § 8(a), inserted "or during a period beginning June 25, 1950, and ending July 1, 1955".

Subsec. (b)(4). Pub. L. 87–301, § 8(b), inserted "or during a period beginning June 25, 1950, and ending July 1, 1955".

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

NATURALIZATION OF ALIENS ENLISTED IN REGULAR ARMY

Act June 30, 1950, ch. 443, § 4, 64 Stat. 316, as amended June 27, 1952, ch. 477, title IV, § 402 (e), 66 Stat. 276, provided that: "Notwithstanding the dates or periods of service specified and designated in section 329 of the Immigration and Nationality Act [this section], the provisions of that section are applicable to aliens enlisted or reenlisted pursuant to the provisions of this Act and who have completed five or more years of military service, if honorably discharged therefrom. Any alien enlisted or reenlisted pursuant to the provisions of this Act who subsequently enters the United States, American Samoa, Swains Island, or the Canal Zone, pursuant to military orders shall, if otherwise qualified for citizenship, and after completion of five or more years of military service, if honorably discharged therefrom, be deemed to have been lawfully admitted to the United States for permanent residence within the meaning of such section 329 (a) [subsection (a) of this section]."

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Residence, see section 1101 (a) (33) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1429, 1440e, 1451 of this title.

§§ 1440a to 1440d. Omitted.

CODIFICATION

Sections, act June 30, 1953, ch. 162, §§ 1—4, 67 Stat. 108, which authorized naturalization of persons who served in the Armed Forces after June 29, 1950 and not later than July 1, 1955, were omitted as obsolete, since the provisions of section 1 of act June 30, 1953, required the petition for naturalization to be filed not later than December 31, 1955. Provisions are now covered by sections 1440 and 1440e of this title.

§ 1440e. Exemption from naturalization fees for aliens naturalized through service during Vietnam hostilities or other subsequent period of military hostilities; report by clerks of courts to Attorney General.

Notwithstanding any other provision of law, no clerk of a United States court shall charge or collect a naturalization fee from an alien who has served in the military, air, or naval forces of the United States during a period beginning February 28, 1961, and ending on the date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who is applying for naturalization during such periods under section 1440 of this title, for filing a petition for naturalization or issuing a certificate of naturalization upon his admission to citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this section

shall be made to the Attorney General as in the case of other reports required of clerks of courts by this subchapter. (Pub. L. 90-633, § 3, Oct. 24, 1968, 82 Stat. 1344.)

CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

§ 1441. Constructive residence through service on certain United States vessels.

(a) (1) Any periods of time during all of which a person who was previously lawfully admitted for permanent residence has served honorably or with good conduct, in any capacity other than as a member of the Armed Forces of the United States, (A) on board a vessel operated by the United States, or an agency thereof, the full legal and equitable title to which is in the United States; or (B) on board a vessel whose home port is in the United States, and (i) which is registered under the laws of the United States, or (ii) the full legal and equitable title to which is in a citizen of the United States, or a corporation organized under the laws of any of the several States of the United States, shall be deemed residence and physical presence within the United States within the meaning of section 1427 (a) of this title, if such service occurred within five years immediately preceding the date such person shall file a petition for naturalization. Service on vessels described in clause (A) of this subsection shall be proved by duly authenticated copies of the records of the executive departments or agency having custody of the records of such service. Service on vessels described in clause (B) of this subsection may be proved by certificates from the masters of such vessels.

(2) For the purposes of this subsection, any periods of time prior to September 23, 1950, during all of which any person had served honorably or with good conduct for an aggregate period of five years on any vessel described in section 325 (a) of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, shall be deemed residence and physical presence within the United States within the meaning of section 1427 (a) of this title, if such petition is filed within one year from the effective date of this chapter. Notwithstanding the provisions of section 1429 of this title, a person entitled to claim the exemptions contained in this paragraph shall not be required to establish a lawful admission for permanent residence.

(3) For the purposes of this subsection, any periods of time prior to September 23, 1950, during all of which any person not within the provisions of paragraph (2) of this subsection had, prior to September 23, 1950, served honorably or with good conduct on any vessel described in section 325 (a) of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and was so serving on September 23, 1950, shall be deemed residence and physical presence within the United States within the meaning of section 1427 (a) of this title, if such person at any time prior to filing his petition for naturalization shall have been lawfully admitted to the United States for permanent residence, and if such petition is filed on or before September 23, 1955.

(b) Any person who was excepted from certain requirements of the naturalization laws under section 325 of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and had filed a petition for naturalization under section 325 of the Nationality Act of 1940, may, if such petition was pending on September 23, 1950, and is still pending on the effective date of this chapter, be naturalized upon compliance with the applicable provisions of the naturalization laws in effect upon the date such petition was filed: *Provided,* That any such person shall be subject to the provisions of section 1424 of this title and to those provisions of section 1429 of this title which relate to the prohibition against the naturalization of a person against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act, or which relate to the prohibition against the final hearing on a petition for naturalization if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act. (June 27, 1952, ch. 477, title III, ch. 2, § 330, 66 Stat. 251.)

REFERENCES IN TEXT

Section 325 of the Nationality Act of 1940, referred to in the text, was formerly classified to section 725 (a) of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by subsec. (a) (1) of this section.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1442. Alien enemies.

(a) Naturalization under specified conditions.

An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien's petition for naturalization shall be pending at the beginning of the state of war and the petitioner is otherwise entitled to admission to citizenship.

(b) Procedure.

An alien embraced within this section shall not have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General's objection to such final hearing shall cause the petition to be continued from time to time for so long as the Attorney General may require.

(c) Exceptions from classification.

The Attorney General may, in his discretion, upon investigation fully establishing the loyalty of any alien enemy who did not have a petition for naturalization pending at the beginning of the state of war,

except such alien enemy from the classification of alien enemy for the purposes of this subchapter, and thereupon such alien shall have the privilege of filing a petition for naturalization.

(d) Effect of cessation of hostilities.

An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. Notwithstanding the provisions of section 405 (b) of this Act, this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this chapter and which is still pending on that date.

(e) Apprehension and removal.

Nothing contained herein shall be taken or construed to interfere with or prevent the apprehension and removal, consistent with law, of any alien enemy at any time prior to the actual naturalization of such alien. (June 27, 1952, ch. 477, title III, ch. 2, § 331, 66 Stat. 252.)

REFERENCES IN TEXT

Section 405 (b) of this Act, referred to in subsec. (d), is classified as a note under section 1101 of this title.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Naturalization, see section 1101 (a) (23) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1440 of this title.

§ 1443. Administration.

(a) Rules and regulations governing examination of petitioners; limitation on examination.

The Attorney General shall make such rules and regulations as may be necessary to carry into effect the provisions of this Part and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination, in the discretion of the Attorney General, and under such rules and regulations as may be prescribed by him, may be conducted before or after the applicant has filed his petition for naturalization. Such examination shall be limited to inquiry concerning the applicant's residence, physical presence in the United States, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, ability to read, write, and speak English, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

(b) Instruction in citizenship.

The Attorney General is authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization including the sending of names of candidates for naturalization to the public schools, preparing and distributing citizenship textbooks to such candidates as are receiving instruction in preparation for citizenship within or under the supervision of the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and cooperating with official State and national organizations, including those concerned with vocational education.

(c) Prescription of forms.

The Attorney General shall prescribe and furnish such forms as may be required to give effect to the provisions of this Part, and only such forms as may be so provided shall be legal. All certificates of naturalization and of citizenship shall be printed on safety paper and shall be consecutively numbered in separate series.

(d) Administration of oaths and depositions.

Employees of the Service may be designated by the Attorney General to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Attorney General may, in his discretion, authorize such depositions to be taken before a postmaster without charge, or before a notary public or other person authorized to administer oaths for general purposes.

(e) Issuance of certificate of naturalization or citizenship.

A certificate of naturalization or of citizenship issued by the Attorney General under the authority of this subchapter shall have the same effect in all courts, tribunals, and public offices of the United States, at home and abroad, of the District of Columbia, and of each State, Territory, and outlying possession of the United States, as a certificate of naturalization or of citizenship issued by a court having naturalization jurisdiction.

(f) Copies of records.

Certifications and certified copies of all papers, documents, certificates, and records required or authorized to be issued, used, filed, recorded, or kept under any and all provisions of this chapter shall be admitted in evidence equally with the originals in any and all cases and proceedings under this chapter and in all cases and proceedings in which the originals thereof might be admissible as evidence.

(g) Furnished quarters for photographic studios.

The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters, without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of persons seeking to comply with requirements under the immigration and nationality laws. Such studio shall be under the

supervision of the Attorney General. (June 27, 1952, ch. 477, title III, ch. 2, § 332, 66 Stat. 252.)

CROSS REFERENCES

Citizenship textbooks, publication and distribution; use of naturalization fees, see section 1457 of this title.

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

Service, see section 1101 (a) (34) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1446, 1457 of this title.

§ 1444. Photographs; number.

(a) Three identical photographs of the applicant shall be signed by and furnished by each petitioner for naturalization or citizenship. One of such photographs shall be affixed by the clerk of the court to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Three identical photographs of the applicant shall be furnished by each applicant for—

(1) a record of lawful admission for permanent residence to be made under section 1259 (a) of this title;

(2) a certificate of derivative citizenship;

(3) a certificate of naturalization or of citizenship;

(4) a special certificate of naturalization;

(5) a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed;

(6) a new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had his name changed by order of a court of competent jurisdiction or by marriage; and

(7) a declaration of intention.

One such photograph shall be affixed to each such certificate issued by the Attorney General and one shall be affixed to the copy of such certificate retained by the Service. (June 27, 1952, ch. 477, title III, ch. 2, § 333, 66 Stat. 253.)

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Service, see section 1101 (a) (34) of this title.

Photographic studio for benefit of aliens, see section 1443 (g) of this title.

§ 1445. Petition for naturalization.

(a) Evidence and form; verification.

An applicant for naturalization shall make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting if physically able to write, and duly verified by two witnesses, which petition shall be on a form prescribed by the Attorney General and shall include averments of all facts which in the opinion of the Attorney General may be material to the applicant's naturalization, and required to be proved upon the hearing of such petition.

(b) Who may file.

No person shall file a valid petition for naturalization unless (1) he shall have attained the age of eighteen years and (2) he shall have first filed an application therefor at an office of the Service in the form and manner prescribed by the Attorney General. An application for petition for naturalization by an alien shall contain an averment of lawful admission for permanent residence.

(c) When filed.

Petitions for naturalization may be made and filed during the term time or vacation of the naturalization court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court.

(d) Substitute filing place.

If the applicant for naturalization is prevented by sickness or other disability from presenting himself in the office of the clerk to make the petition required by subsection (a) of this section, such applicant may make such petition at such other place as may be designated by the clerk of court or by such clerk's authorized deputy.

(e) Same; investigation into reasons.

Before a petition for naturalization may be made outside of the office of the clerk of the court, pursuant to subsection (d) of this section, or before a final hearing on a petition may be held or the oath of allegiance administered outside of open court, pursuant to sections 1447 (a) and 1448 (c) of this title, the court must satisfy itself that the illness or other disability is sufficiently serious to prevent appearance in the office of the clerk of court and is of a permanent nature, or of a nature which so incapacitates the person as to prevent him from personally appearing in the office of the clerk of court or in court as otherwise required by law.

(f) Declaration of intention.

Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe. Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing a petition for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding,

action, or matter arising under this chapter or any other Act. (June 27, 1952, ch. 477, title III, ch. 2, § 334, 66 Stat. 254.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Lawfully admitted for permanent residence, see section 1101 (a) (20) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Residence, see section 1101 (a) (33) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

Record of admission for permanent residence in the case of certain aliens who entered the United States prior to June 28, 1940, see section 1259 of this title.

Records of admission, see section 1230 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1880.

§ 1446. Investigation of petitioners.

(a) Waiver.

At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 1447 (a) of this title, an employee of the Service, or of the United States designated by the Attorney General, shall conduct a personal investigation of the person petitioning for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of his petition for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

(b) Conduct of examinations; authority of designees; record.

The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. For such purposes any such employee so designated is authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to administer oaths, including the oath of the petitioner for naturalization and the oaths of petitioner's witnesses to the petition for naturalization, and to require by subpena the attendance and testimony of witnesses, including petitioner, before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of any court exercising naturalization jurisdiction as specified in section 1421 of this title; and any such court may, in the event of neglect or refusal to respond to a subpena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 1421 of this title.

(c) Transmittal of record of preliminary examination.

The record of the preliminary examination upon any petition for naturalization may, in the discretion of the Attorney General be transmitted to the Attorney General and the recommendation with respect thereto of the employee designated to conduct such preliminary examination shall when made also be transmitted to the Attorney General.

(d) Submission of recommendations to court.

The recommendation of the employee designated to conduct any such preliminary examination shall be submitted to the court at the hearing upon the petition and shall include a recommendation that the petition be granted, or denied, or continued, with reasons therefor. In any case in which the recommendation of the Attorney General does not agree with that of the employee designated to conduct such preliminary examination, the recommendations of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer of the Service in attendance at such hearing shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court. The recommendations of such employee and of the Attorney General shall be accompanied by duplicate lists containing the names of the petitioners, classified according to the character of the recommendations, and signed by such employee or the Attorney General, as the case may be. The judge to whom such recommendations are submitted shall, if he approve such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of each such lists shall thereafter be filed permanently of record in such court and the duplicate of each such list shall be sent by the clerk of such court to the Attorney General.

(e) Withdrawal of petition.

After the petition for naturalization has been filed in the office of the clerk of court, the petitioner shall not be permitted to withdraw his petition, except with the consent of the Attorney General. In cases where the Attorney General does not consent to withdrawal of the petition, the court shall determine the petition on its merits and enter a final order accordingly. In cases where the petitioner fails to prosecute his petition, the petition shall be decided upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.

(f) Affidavits.

As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of

filing the petition, there shall be included in the petition for naturalization the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(g) Hearing; proof of residence.

At the hearing on the petition, residence in the State in which the petitioner resides at the time of filing the petition, for at least six months immediately preceding the date of filing the petition, and the other qualifications required by section 1427 (a) of this title during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by subsection (f) of this section to be included in the petition. At the hearing, residence and physical presence within the United States during the five-year period required by section 1427 (a) of this title, but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by section 1427 (a) of this title during such period at such places, shall be proved either by depositions taken in accordance with subsection (d) of section 1443 of this title, or oral testimony, of at least two such witnesses for each place of residence.

(h) Same; satisfactory evidence as to good moral character, etc.

Notwithstanding the provisions of subsections (f) and (g) of this section, the requirements of subsection (a) of section 1427 of this title as to the petitioner's residence, good moral character, attachment to the principles of the Constitution of the United States, and disposition toward the good order and happiness of the United States may be established by any evidence satisfactory to the naturalization court in those cases under subsection (b) of section 1427 of this title in which the alien has been absent from the United States because of his employment by or contract with the Government of the United States or an American institution of research, recognized as such by the Attorney General, or employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof, or employment by a public international organization in which the United States participates.

(i) Transfer of petition; transmittal of certified copy of petition and record.

(1) A petitioner for naturalization who removes from the jurisdiction of the court in which his petition for naturalization is pending may, at any time thereafter, make application to the court for transfer of the petition to a naturalization court exercising jurisdiction over the petitioner's place of residence, or to any other naturalization court if the petition was not required to be filed in a naturalization court exercising jurisdiction over the petitioner's place of residence: *Provided*, That such transfer shall not be made without the consent of the Attorney General, and of the court to which the petition is transferred.

(2) Where transfer of the petition is authorized the clerk of court in which the petition was filed shall forward a certified copy of the petition and the original record in the case to the clerk of court to which the petition is transferred, and proceedings on the petition shall thereafter continue as though the petition had originally been filed in the court to which transferred, except that the court to which the petition is transferred may in its discretion, require the production of two credible United States citizen witnesses to testify as to the petitioner's qualifications for naturalization since the date of such transfer. (June 27, 1952, ch. 477, title III, ch. 2, § 335, 66 Stat. 255.)

CROSS REFERENCES

Contempts, see chapter 21 of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Person of good moral character, see section 1101 (f) of this title.

Residence, see section 1101 (a) (33) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1447 of this title.

§ 1447. Final hearing.

(a) Open court; examination under oath.

Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the petitioner and the witnesses, except as provided in subsection (b) of this section, shall be examined under oath before the court and in the presence of the court. If the petitioner is prevented by sickness or other disability from being in open court for the final hearing upon a petition for naturalization, such final hearing may be had before a judge or judges of the court at such place as may be designated by the court.

(b) Exceptions.

The requirement of subsection (a) of this section for the examination of the petitioner and the witnesses under oath before the court and in the presence of the court shall not apply in any case where an employee designated under section 1446 (b) of this title has conducted the preliminary examination authorized by section 1446 (b) of this title; except that the court may, in its discretion, and shall, upon demand of the petitioner, require the examination of the petitioner and the witnesses under oath before the court and in the presence of the court.

(c) Waiting period after filing of petition; waiver.

Except as otherwise specifically provided in this subchapter, no final hearing shall be held on any

petition for naturalization nor shall any person be naturalized nor shall any certificate of naturalization be issued by any court within a period of thirty days after the filing of the petition for naturalization. The Attorney General may waive such period in an individual case if he finds that the waiver will be in the public interest.

(d) Appearance of Attorney General.

The Attorney General shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, including the petitioner, produce evidence, and be heard in opposition to, or in favor of. the granting of any petition in naturalization proceedings.

(e) Subpena of witnesses.

The clerk of court shall, if the petitioner requests it at the time of filing the petition for naturalization, issue a subpena for the witnesses named by such petitioner to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. If it should appear after the petition has been filed that any of the verifying witnesses thereto are not competent, and it further appears that the petitioner has acted in good faith in producing such witnesses found to be incompetent, other witnesses may be substituted in accordance with such regulations.

(f) Change of name of petitioner.

It shall be lawful at the time and as a part of the naturalization of any person, for the court, in its discretion, upon the bona fide prayer of the petitioner included in the petition for naturalization of such person, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith. (June 27, 1952, ch. 477, title III, ch. 2, § 336, 66 Stat. 257; Dec. 5, 1969, Pub. L. 91–136, 83 Stat. 283.)

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–136 struck out the requirement that the Attorney General, as a prerequisite to waiver of the waiting period, make an affirmative finding that such waiver will promote the security of the United States, and further struck out the provision prohibiting the acquisition of citizenship by final oath within 60 days preceding a general election and prior to the tenth day following such election.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1435, 1438, 1439, 1445, 1446 of this title.

§ 1448. Oath of renunciation and allegiance.

(a) A person who has petitioned for naturalization shall, in order to be and before being admitted to citizenship, take in open court an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law. Any such person shall be required to take an oath containing the substance of clauses (1) to (5) of the preceding sentence, except that a person who shows by clear and convincing evidence to the satisfaction of the naturalization court that he is opposed to the bearing of arms in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) to (4) and clauses (5)(B) and (5) (C) of this subsection, and a person who shows by clear and convincing evidence to the satisfaction of the naturalization court that he is opposed to any type of service in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of said clauses (1) to (4) and clause (5)(C). The term "religious training and belief" as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 1433 or 1434 of this title the naturalization court may waive the taking of the oath if in the opinion of the court the child is unable to understand its meaning.

(b) In case the person petitioning for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the petitioner shall in addition to complying with the requirements of subsection (a) of this section, make under oath in open court in the court in which the petition for naturalization is made, an express renunciation of such title or order of nobility, and such renunciation shall be recorded in the court as a part of such proceedings.

(c) If the petitioner is prevented by sickness or other disability from being in open court, the oath required to be taken by subsection (a) of this section may be taken before a judge of the court at such place as may be designated by the court. (June 27, 1952, ch. 477, title III, ch. 2, § 337, 66 Stat. 258.)

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b) (1) of this title.

Child, as used in this subchapter, see section 1101 (c) (1) of this title.

Foreign state, see section 1101 (a) (14) of this title.
Naturalization, see section 1101 (a) (23) of this title.
Naturalization court, see section 1101 (a) (24) of this title.

§ 1449. Certificate of naturalization; contents.

A person admitted to citizenship by a naturalization court in conformity with the provisions of this subchapter shall be entitled upon such admission to receive from the clerk of such court a certificate of naturalization, which shall contain substantially the following information: Number of petition for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; title, venue, and location of the naturalization court; statement that the court, having found that the petitioner intends to reside permanently in the United States, except in cases falling within the provisions of section 1435 (a) of this title, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted a citizen of the United States of America, thereupon ordered that the petitioner be admitted as a citizen of the United States of America; attestation of the clerk of the naturalization court; and seal of the court. (June 27, 1952, ch. 477, title III, ch. 2, § 338, 66 Stat. 259.)

CROSS REFERENCES

Definition of the term—
Clerk of court, see section 1101 (a) (7) of this title.
National, see section 1101 (a) (21) of this title.
Naturalization, see section 1101 (a) (23) of this title.
Naturalization court, see section 1101 (a) (24) of this title.
Permanent, see section 1101 (a) (31) of this title.
Residence, see section 1101 (a) (33) of this title.
Unmarried, see section 1101 (a) (39) of this title.

§ 1450. Functions and duties of clerks of naturalization courts.

(a) It shall be the duty of the clerk of each and every naturalization court to forward to the Attorney General a duplicate of each petition for naturalization within thirty days after the close of the month in which such petition was filed, and to forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

(b) It shall be the duty of the clerk of each and every naturalization court to issue to any person admitted by such court to citizenship a certificate of naturalization and to forward to the Attorney General within thirty days after the close of the month in which such certificate was issued, a duplicate thereof, and to make and keep on file in the clerk's office a stub for each certificate so issued, whereon shall be entered a memorandum of all the essential facts set forth in such certificate, and to forward a duplicate of each such stub to the Attorney General within thirty days after the close of the month in which such certificate was issued.

(c) It shall be the duty of the clerk of each and every naturalization court to report to the Attorney General, within thirty days after the close of the month in which the final hearing and decision of the court was had, the name and number of the petition of each and every person who shall be denied naturalization together with the cause of such denial.

(d) Clerks of courts shall be responsible for all blank certificates of naturalization received by them from time to time from the Attorney General, and shall account to the Attorney General for them whenever required to do so. No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificates shall be returned to the Attorney General.

(e) It shall be the duty of the clerk of each and every naturalization court to cause to be filed in chronological order in separate volumes, indexed, consecutively numbered, and made a part of the records of such court, all declarations of intention and petitions for naturalization. (June 27, 1952, ch. 477, title III, ch. 2, § 339, 66 Stat. 259.)

CROSS REFERENCES

Definition of the term—
Attorney General, see section 1101 (a) (5) of this title.
Clerk of court, see section 1101 (a) (7) of this title.
Naturalization, see section 1101 (a) (23) of this title.
Naturalization court, see section 1101 (a) (24) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1459 of this title.

§ 1451. Revocation of naturalization.

(a) Concealment of material evidence; refusal to testify.

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 1421 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: *Provided,* That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States

at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

(b) Notice to party.

The party to whom was granted the naturalization alleged to have been illegally procured or procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answers to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the States or the place where such suit is brought.

(c) Membership in certain organizations; prima facie evidence.

If a person who shall have been naturalized after the effective date of this chapter shall within five years next following such naturalization become a member of or affiliated with any organization, membership in or affiliation with which at the time of naturalization would have precluded such person from naturalization under the provisions of section 1424 of this title, it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

(d) Foreign residence.

If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to reside permanently in the United States at the time of filing his petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with statements of the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

(e) Wife or minor child not affected.

The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 of the Nationality Act of 1940 shall not, where such action takes place after the effective date of this chapter, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or been available to a wife or minor child of the naturalized person had such naturalization not been revoked: *Provided,* That this subsection shall not apply in any case in which the revocation and setting aside of the order was the result of actual fraud.

(f) Applicability to citizenship through naturalization of parent or spouse.

Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship under the provisions of subsection (a) of this section on the ground that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which he may have, now has, or may hereafter acquire under and by virtue of such naturalization of such parent or spouse, regardless of whether such person is residing within or without the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship. Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization under the provisions of subsections (c) or (d) of this section, or under the provisions of section 1440 (c) of this title on any ground other than that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which would have been enjoyed by such person had there not been a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization, unless such person is residing in the United States at the time of the revocation and

setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization.

(g) Citizenship unlawfully procured.

When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(h) Cancellation of certificate of naturalization.

Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. In case such certificate was not originally issued by the court making such order, it shall direct the clerk of court in which the order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Attorney General of the entry of such order and of such cancellation. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancellation was made, or by the Attorney General, surrender the same to the Attorney General.

(i) Applicability to certificates of naturalization and citizenship.

The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this subchapter, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other act.

(j) Power of court to correct, reopen, alter, modify or vacate judgment or decree.

Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of any naturalization court, by or in which a person has been naturalized, to correct, reopen, alter, modify, or vacate its judgment or decree naturalizing such person, during the term of such court or within the time prescribed by the rules of procedure or statutes governing the jurisdiction of the court to take such action. (June 27, 1952, ch. 477, title III, ch. 2, § 340, 66 Stat. 260; Sept. 3, 1954, ch. 1263, § 18, 68 Stat. 1232; Sept. 26, 1961, Pub. L. 87-301, § 18, 75 Stat. 656.)

REFERENCES IN TEXT

Subsection (a) of section 338 of the Nationality Act of 1940, referred to in subsec. (e), was formerly classified to section 738 (a) of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by subsec. (a) of this section.

Section 702 of the Nationality Act of 1940, as amended, referred to in subsec. (i), was formerly classified to section 1002 of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by section 1440 of this title.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87-301, § 18(a), inserted "were illegally procured or" following "that such order and certificate of naturalization."

Subsec. (b). Pub. L. 87-301, § 18(b), inserted "illegally procured or" preceding "procured by concealment."

1954—Subsec. (a). Act Sept. 3, 1954, substituted "United States attorneys" for "United States district attorneys".

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Contempts, see chapter 21 of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Commissioner, see section 1101 (a) (8) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Organization, see section 1101 (a) (28) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Permanent, see section 1101 (a) (31) of this title.

Residence, see section 1101 (a) (33) of this title.

Spouse, wife or husband, see section 1101 (a) (35) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1440 of this title.

§ 1452. Certificates of citizenship; procedure.

A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsections (c), (d), (e), (g), or (i) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (3), (4), (5), or (7) of section 1401 (a) of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 558), or under the provisions of section 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139), or under the provi-

sions of section 1403 of this title, may apply to the Attorney General for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this chapter of a petitioner for naturalization, such individual shall be furnished by the Attorney General with a certificate of citizenship, but only if such individual is at the time within the United States. (June 27, 1952, ch. 477, title III, ch. 2, § 341, 66 Stat. 263.)

REFERENCES IN TEXT

Section 1993 of the Revised Statutes, referred to in the text, was formerly classified to section 6 of this title and was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172.

Sections 201, 203 and 205, of the Nationality Act, as amended, referred to in the text, were classified to former sections 601, 603 and 605, respectively of this title, and repealed by section 403 (a) (42) of act June 27, 1952.

Act Aug. 4, 1937, referred to in the text, was classified to former section 5 (d) and (e) of this title and was repealed by said act Oct. 14, 1940.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Husband, see section 1101 (a) (35) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1101 of this title.

§ 1453. Cancellation of certificates issued by Attorney General, the Commissioner or a Deputy Commissioner; action not to affect citizenship status.

The Attorney General is authorized to cancel any certificate of citizenship, certificate of naturalization, copy of a declaration of intention, or other certificate, document or record heretofore issued or made by the Commissioner or a Deputy Commissioner or hereafter made by the Attorney General if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefor and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued. (June 27, 1952, ch. 477, title III, ch. 2, § 342, 66 Stat. 263.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Commissioner and Deputy Commissioner, see section 1101 (a) (8) of this title.

§ 1454. Documents and copies issued by Attorney General.

(a) A person who claims to have been naturalized in the United States under section 323 of the Nationality Act of 1940 may make application to the Attorney General for a certificate of naturalization. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen and that he has been naturalized as claimed in the application, such individual shall be furnished a certificate of naturalization by the Attorney General, but only if the applicant is at the time within the United States.

(b) If any certificate of naturalization or citizenship issued to any citizen or any declaration of intention furnished to any declarant is lost, mutilated, or destroyed, the citizen or declarant may make application to the Attorney General for a new certificate or declaration. If the Attorney General finds that the certificate or declaration is lost, mutilated, or destroyed, he shall issue to the applicant a new certificate or declaration. If the certificate or declaration has been mutilated, it shall be surrendered to the Attorney General before the applicant may receive such new certificate or declaration. If the certificate or declaration has been lost, the applicant or any other person who shall have, or may come into possession of it is required to surrender it to the Attorney General.

(c) The Attorney General shall issue for any naturalized citizen, on such citizen's application therefor, a special certificate of naturalization for use by such citizen only for the purpose of obtaining recognition as a citizen of the United States by a foreign state. Such certificate when issued shall be furnished to the Secretary of State for transmission to the proper authority in such foreign state.

(d) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

(e) The Attorney General is authorized to make and issue certifications of any part of the naturalization records of any court, or of any certificate of naturalization or citizenship, for use in complying with any statute, State or Federal, or in any judicial proceeding. No such certification shall be made by any clerk of court except upon order of the court. (June 27, 1952, ch. 477, title III, ch. 2, § 343, 66 Stat. 263.)

REFERENCES IN TEXT

Section 323 of the Nationality Act of 1940, referred to in subsec. (a), was classified to former section 723 of

this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by section 1438 (a) of this title.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Foreign state, see section 1101 (a) (14) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Unmarried, see section 1101 (a) (39) of this title.

§ 1455. Fiscal provisions.

(a) The clerk of court shall charge, collect, and account for fees prescribed by the Attorney General pursuant to section 483a of Title 31 for the following:

(1) Making, filing, and docketing a petition for naturalization, including the final hearing on such petition, if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by the naturalization court.

(2) Receiving and filing a declaration of intention, and issuing a duplicate thereof.

(b) Notwithstanding the provisions of this chapter or any other law, no fee shall be charged or collected for an application for declaration of intention or a certificate of naturalization in lieu of a declaration or a certificate alleged to have been lost, mutilated, or destroyed, submitted by a person who was a member of the military or naval forces of the United States at any time after April 20, 1898, and before July 5, 1902; or at any time after April 5, 1917, and before November 12, 1918; or who served on the Mexican border as a member of the Regular Army or National Guard between June 1916 and April 1917; or who has served or hereafter serves in the military, air, or naval forces of the United States after September 16, 1940, and who was not at any time during such period or thereafter separated from such forces under other than honorable conditions, who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform, or who was not at any time during such period or thereafter discharged from such military, air, or naval forces on account of alienage.

(c) The clerk of any naturalization court specified in subsection (a) of section 1421 of this title (except the courts specified in subsection (d) of this section) shall account for and pay over to the Attorney General one-half of all fees up to the sum of $6,000, and all fees in excess of $6,000, collected by any such clerk in naturalization proceedings in any fiscal year.

(d) The clerk of any United States district court (except in the District Court of the Virgin Islands of the United States and in the District Court of Guam) shall account for and pay over to the Attorney General all fees collected by any such clerk in naturalization proceedings: *Provided, however,* That the clerk of the District Court of the Virgin Islands of the United States and of the District Court of Guam shall report but shall not be required to pay over to the Attorney General the fees collected by any such clerk in naturalization proceedings.

(e) The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Attorney General by such respective clerks in their quarterly accounts which they are required to render to the Attorney General within thirty days from the close of each quarter of each and every fiscal year, in accordance with regulations prescribed by the Attorney General.

(f) The clerks of the various naturalization courts shall pay all additional clerical force that may be required in performing the duties imposed by this subchapter upon clerks of courts from fees retained under the provisions of this section by such clerks in naturalization proceedings.

(g) All fees collected by the Attorney General, and all fees paid over to the Attorney General by clerks of courts under the provisions of this subchapter, shall be deposited by the Attorney General in the Treasury of the United States: *Provided, however,* That all fees received by the Attorney General or by the clerks of the courts from applicants residing in the Virgin Islands of the United States, and in Guam, under this subchapter, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

(h) During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing a petition for naturalization or issuing a certificate of naturalization upon admission to citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected. A report of all transactions under this subsection shall be made to the Attorney General as in the case of other reports required of clerks of courts by this subchapter.

(i) In addition to the other fees required by this subchapter, the petitioner for naturalization shall, upon the filing of a petition for naturalization, deposit with and pay to the clerk of court a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such petitioner may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner. (June 27, 1952, ch. 477, title III, ch. 2, § 344, 66 Stat. 264; July 7, 1958, Pub. L. 85–508, § 26, 72 Stat. 351; Oct. 21, 1968, Pub. L. 90–609, § 3, 82 Stat. 1200.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–609 inserted reference to section 483a of Title 31 and substituted provisions making reference to the setting of fees by the Attorney General for provisions establishing fees of $10 and $5 respectively for the covered services.

Subsec. (b). Pub. L. 90–609 struck out provisions setting fixed dollar amounts for specified services to be charged, collected, and accounted for by the Attorney General.

Subsec. (g). Pub. L. 90–609 substituted fees received under this subchapter for fees received under subsec. (b) of this section as the description of the fees received from

applicants residing in the Virgin Islands of the United States and in Guam which are turned over to the treasury of the Virgin Islands and Guam respectively.

1958—Subsec. (d). Pub. L. 85–508 eliminated "in Alaska and" preceding "in the District Court of the Virgin Islands".

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment of this section by Pub. L. 85–508 was dependent upon the admission of Alaska into the Union under section 8(b) of Pub. L. 85–508. Admission was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Audit of vouchers and accounts of the courts and their clerical and administrative personnel by Director of Administrative Office of the United States Courts, see section 604 of Title 28, Judiciary and Judicial Procedure.

Clerk of each district court to pay into the Treasury all fees, costs and other moneys collected by him except certain naturalization fees, see section 751 of Title 28, Judiciary and Judicial Procedure.

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Clerk of court, see section 1101 (a) (7) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Naturalization court, see section 1101 (a) (24) of this title.

Service, see section 1101 (a) (34) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1456. Repealed. Pub. L. 86–682, § 12(c), Sept. 2, 1960, 74 Stat. 708, eff. Sept. 1, 1960.

Section, act June 27, 1952, ch. 477, title III, ch. 2, § 345, 66 Stat. 266, related to free transmittal of official mail in naturalization matters. See section 3202 of Title 39, Postal Service.

§ 1457. Publication and distribution of citizenship textbooks; use of naturalization fees.

Authorization is granted for the publication and distribution of the citizenship textbook described in subsection (b) of section 1443 of this title and for the reimbursement of the appropriation of the Department of Justice upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Service for the cost of such publication and distribution, such reimbursement to be made upon statements by the Attorney General of books so published and distributed. (June 27, 1952, ch. 477, title III, ch. 2, § 346, 66 Stat. 266.)

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Service, see section 1101 (a) (34) of this title.

§ 1458. Compilation of naturalization statistics and payment for equipment.

The Attorney General is authorized and directed to prepare from the records in the custody of the Service a report upon those heretofore seeking citizenship to show by nationalities their relation to the numbers of aliens annually arriving and to the prevailing census populations of the foreign-born, their economic, vocational, and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually hereafter. Payment for the equipment used in preparing such compilation shall be made from the appropriation for the enforcement of this chapter by the Service. (June 27, 1952, ch. 477, title III, ch. 2, § 347, 66 Stat. 266.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Attorney General, see section 1101 (a) (5) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Service, see section 1101 (a) (34) of this title.

§ 1459. Admissibility in evidence of statements voluntarily made to officers or employees in the course of their official duties; failure of clerk of court to do duty; penalties.

(a) It shall be lawful and admissible as evidence in any proceedings founded under this subchapter, or any of the penal or criminal provisions of any law relating to immigration, naturalization, or citizenship, for any officer or employee of the United States to render testimony as to any statement voluntarily made to such officer or employee in the course of the performance of the official duties of such officer or employee by any defendant at the time or subsequent to the alleged commission of any crime or offense which may tend to show that such defendant did not have or could not have had knowledge of any matter concerning which such defendant is shown to have made affidavit, or oath, or to have been a witness pursuant to such law or laws.

(b) In case any clerk of court shall refuse or neglect to comply with any of the provisions of section 1450 (a), (b), or (c) of this title, such clerk of court shall forfeit and pay to the United States the sum of $25 in each and every case in which such violation or omission occurs and the amount of such forfeiture may be recovered by the United States in a civil action against such clerk.

(c) If any clerk of court shall fail to return to the Service or properly account for any certificate of naturalization furnished by the Service as provided in subsection (d) of section 1450 of this title, such clerk of court shall be liable to the United States in the sum of $50, to be recovered in a civil action, for each and every such certificate not properly accounted for or returned. (June 27, 1952, ch. 477, title III, ch. 2, § 348, 66 Stat. 267.)

CROSS REFERENCES

Definition of the term—

Clerk of court, see section 1101 (a) (7) of this title.

Service, see section 1101 (a) (34) of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Civil action, one form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

PART III.—LOSS OF NATIONALITY

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions.

(a) From and after the effective date of this chapter a person who is a national of the United

States whether by birth or naturalization, shall lose his nationality by—

(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided,* That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further,* That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this chapter, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 1101 (a) (27) (E) of this title; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or

(3) entering, or serving in, the armed forces of a foreign state unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: *Provided,* That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; or

(4) (A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(6) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(7) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(8) deserting the military, air, or naval forces of the United States in time of war, if and when he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military, air, or naval forces: *Provided,* That, notwithstanding loss of nationality or citizenship under the terms of this chapter or previous laws by reason of desertion committed in time of war, restoration to active duty with such military, air, or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military, air, or naval authority shall be deemed to have the immediate effect of restoring such nationality or citizenship heretofore or hereafter so lost; or

(9) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of Title 18, or willfully performing any act in violation of section 2385 of Title 18, or violating section 2384 of Title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction; or

(10) departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

(b) Any person who commits or performs any act specified in subsection (a) of this section shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act.

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b) of this section, any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done volun-

tarily. (June 27, 1952, ch. 477, title III, ch. 3, § 349, 66 Stat. 267; Sept. 3, 1954, ch. 1256, § 2, 68 Stat. 1146; Sept. 26, 1961, Pub. L. 87-301, § 19, 75 Stat. 656.)

REFERENCES IN TEXT

The proviso "that a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this chapter, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 1101(a) (27) (E) of this title" has expired, and ever since the amendment in 1965, section 1101(a) (27) defines "special immigrant" rather than "nonquota immigrant".

AMENDMENTS

1961—Subsec. (c). Pub. L. 87-301 added subsec. (c).

1954—Subsec. (a) (9). Act Sept. 3, 1954, provided for forfeiture of citizenship of persons advocating the overthrow of the Government by force or violence.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

SHORT TITLE

Section 1 of act Sept. 3, 1954, provided that the amendment of subsec. (a) (9) by section 2 of act Sept. 3, 1954, should be popularly known as the "Expatriation Act of 1954".

RIGHT OF EXPATRIATION

R. S. § 1999 provided that: "Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Foreign state, see section 1101 (a) (14) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b) (2) of this title.

Parent, as used in this subchapter, see section 1101(c) (2) of this title.

United States, see section 1101 (a) (38) of this title.

Treason, sedition and subversive activities, see chapter 115 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1483 of this title.

§ 1482. Dual nationals; divestiture of nationality.

A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by hereafter having a continuous residence for three years in the foreign state of which he is a national by birth at any time after attaining the age of twenty-two years unless he shall—

(1) prior to the expiration of such three-year period, take an oath of allegiance to the United States before a United States displomatic [1] or consular officer in a manner prescribed by the Secretary of State; and

(2) have his residence outside of the United States solely for one of the reasons set forth in paragraph (1), (2), (4), (5), (6), (7), or (8) of section 1485 of this title, or paragraph (1) or (2) of section 1486 of this title: *Provided, however,* That nothing contained in this section shall deprive any person of his United States nationality if his foreign residence shall begin after he shall have attained the age of sixty years and shall have had his residence in the United States for twenty-five years after having attained the age of eighteen years.

(June 27, 1952, ch. 477, title III, ch. 3, § 350, 66 Stat. 269.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

EXPATRIATION; NATURAL AND INHERENT RIGHT; FOREIGN ALLEGIANCE: DISAVOWAL

Provisions preserving the right of expatriation and disavowal of foreign allegiance, see note set out under section 1481 of this title.

CROSS REFERENCES

Definition of the term—

Consular officer, see section 1101 (a) (9) of this title.

Foreign state, see section 1101 (a) (14) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1487 of this title; title 26 sections 877, 2107, 2501.

§ 1483. Restrictions on expatriation.

(a) Except as provided in paragraphs (7), (8), and (9) of section 1481 of this title, no national of the United States can expatriate himself, or be expatriated, under this chapter while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this Part if and when the national thereafter takes up a residence outside the United States and its outlying possessions.

(b) A national who within six months after attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (2) and (4), (5), and (6) of section 1481 (a) of this title. (June 27, 1952, ch. 477, title III, ch. 3, § 351, 66 Stat. 269.)

[1] So in original. Probably should read "diplomatic".

RIGHT OF EXPATRIATION

Provisions preserving the right and disavowal of foreign allegiance, see note under section 1481 of this title.

CROSS REFERENCES

Definition of the term—

National of the United States, see section 1101 (a) (22) of this title.

Outlying possessions of the United States, see section 1101 (a) (29) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1484. Loss of nationality by naturalized national.

(a) A person who has become a national by naturalization shall lose his nationality by—

(1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 1485 of this title, whether such residence commenced before or after the effective date of this chapter;

(2) having a continuous residence for five years in any other foreign state or states, except as provided in sections 1485 and 1486 of this title, whether such residence commenced before or after the effective date of this chapter.

(b) (1) For the purpose of paragraph (1) of subsection (a) of this section, the time during which the person had his residence abroad solely or principally for a reason or purpose within the scope of any provision of section 1485 of this title shall not be counted in computing quantum of residence.

(2) For the purpose of paragraph (2) of subsection (a) of this section, the time during which the person had his residence abroad solely or principally for a reason or purpose within the scope of any provision of sections 1485 and 1486 of this title shall not be counted in computing quantum of residence. (June 27, 1952, ch. 477, title III, ch. 3, § 352, 66 Stat. 269.)

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Foreign state, see section 1101 (a) (14) of this title.

National, see section 1101 (a) (21) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Residence, see section 1101 (a) (33) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1485, 1486, 1487 of this title.

§ 1485. Inapplicability of section 1484 to certain persons.

Section 1484 (a) of this title shall have no application to a national who—

(1) has his residence abroad in the employment of the Government of the United States; or

(2) is receiving compensation from the Government of the United States and has his residence abroad on account of disability incurred in its service; or

(3) shall have had his residence in the United States for not less than twenty-five years subsequent to his naturalization and shall have attained the age of sixty years when the foreign residence is established; or

(4) had his residence abroad on October 14, 1940, and temporarily has his residence abroad, or who, thereafter has gone or goes abroad and temporarily has his residence abroad, solely or principally to represent a bona fide American educational, scientific, philanthropic, commercial, financial, or business organization, having its principal office or place of business in the United States, or a bona fide religious organization having an office and representative in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation; or

(5) has his residence abroad and is prevented from returning to the United States exclusively (A) by his own ill health; or (B) by the ill health of his parent, spouse, or child who cannot be brought to the United States, whose condition requires his personal care and attendance: *Provided,* That in such case the person having his residence abroad shall, at least every six months, register at the appropriate Foreign Service office and submit evidence satisfactory to the Secretary of State that his case continues to meet the requirements of this subparagraph; or (C) by reason of the death of his parent, spouse, or child: *Provided,* That in the case of the death of such parent, spouse, or child the person having his residence abroad shall return to the United States within six months after the death of such relative; or

(6) has his residence abroad for the purpose of pursuing a full course of study of a specialized character or attending full-time an institution of learning of a grade above that of a preparatory school: *Provided,* That such residence does not exceed five years; or

(7) is the spouse or child of, or has a son or daughter who is, an American citizen, and who has his residence abroad for the purpose of being with his American citizen spouse, parent, or son or daughter who has his residence abroad for one of the objects or considerations specified in paragraph (1), (2), (3), (4), (5), or (6) of this section, or paragraph (2) of section 1486 of this title; or

(8) is the spouse or child of an American national by birth who while under the age of twenty-one years had his residence in the United States for a period or periods totaling ten years, and has his residence abroad for the purpose of being with said spouse or parent; or

(9) was born in the United States or one of its outlying possessions, who originally had American nationality and who, after having lost such nationality through marriage to an alien, reacquired it; or

(10) has, by Act of Congress or by treaty, United States nationality solely by reason of former nationality and birth or residence in an area outside the continental United States: *Provided,* That subsections (b) and (c) of section 404

of the Nationality Act of 1940, as amended, shall not be held to be or to have been applicable to persons defined in this paragraph.

(June 27, 1952, ch. 477, title III, ch. 3, § 353, 66 Stat. 270; Aug. 4, 1959, Pub. L. 86–129, § 1, 73 Stat. 274.)

REFERENCES IN TEXT

Section 404 of the Nationality Act of 1940, referred to in par. (10), was classified to former section 804 of this title, was repealed by section 403 (a) (42) of act June 27, 1952, and is now covered by section 1484 (a) of this title.

AMENDMENTS

1959—Par. (7). Pub. L. 86–129 included a national who has a son or daughter who is an American citizen.

CROSS REFERENCES

Definition of the term—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

National, see section 1101 (a) (21) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Organization, see section 1101 (a) (28) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

Spouse, see section 1101 (a) (35) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1482, 1484, 1486 of this title.

§ 1486. Inapplicability of section 1484 (a) (2) to certain persons.

Section 1484 (a) (2) of this title shall have no application to a national—

(1) who is a veteran of the Spanish-American War, World War I, or World War II, or of the Korean hostilities (having served honorably in an active-duty status in the military, air, or naval forces of the United States during a period beginning June 25, 1950, and ending July 1, 1955), and the spouse, children, and dependent parents of such veteran whether such residence in the territory of a foreign state or states commenced before or after the effective date of this chapter: *Provided,* That any such veteran who upon June 27, 1952, has had his residence continuously in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated for three years or more, and who has retained his United States nationality solely by reason of the provisions of section 406(h) of the Nationality Act of 1940, shall not be subject to the provisions or requirements of section 1484(a)(1) of this title: *Provided further,* That the provisions of section 404(c) of the Nationality Act of 1940, as amended, shall not be held to be or to have been applicable to veterans of World War II;

(2) who has established to the satisfaction of the Secretary of State, as evidenced by possession of a valid unexpired United States passport or other valid document issued by the Secretary of State, that his residence is temporarily outside of the United States for the purpose of (A) carrying on a commercial enterprise which in the opinion of the Secretary of State will directly and substantially benefit American trade or commerce; or (B) carrying on scientific research on behalf of an institution accredited by the Secretary of State and engaged in research which in the opinion of the Secretary of State is directly and substantially beneficial to the interests of the United States; or (C) engaging in such work or activities, under such unique or unusual circumstances, as may be determined by the Secretary of State to be directly and substantially beneficial to the interests of the United States;

(3) who is the widow or widower of a citizen of the United States and who has attained the age of sixty years, and who has had a residence outside of the United States and its outlying possessions for a period of not less than ten years during all of which period a marriage relationship has existed with a spouse who has had a residence outside of the United States and its outlying possessions in an occupation or capacity of the type designated in paragraphs (1), (2), (3), (4), or (5) (A) of section 1485 of this title, or paragraphs (1), (2) or (4) of this section;

(4) who has attained the age of sixty years, and has had a residence outside the United States and its outlying possessions for not less than ten years, during all of which period he has been engaged in an occupation of the type designated in paragraphs (1), (2), or (4) of section 1485 of this title, or paragraph (2) of this section, and who is in bona fide retirement from such occupation; or who is the spouse or child of the national described in this paragraph and who has his residence abroad for the purpose of being with such American citizen spouse or parent; or

(5) who shall have had his residence in the United States for not less than fifteen years subsequent to his naturalization and prior to the establishment of his foreign residence; or who prior to attaining the age of twenty-one years, shall have had his residence in the United States for not less than fifteen years subsequent to his lawful admission for permanent residence.

(June 27, 1952, ch. 477, title III, ch. 3, § 354, 66 Stat. 271; Aug. 4, 1959, Pub. L. 86–129, §§ 2, 3, 73 Stat. 274; Sept. 26, 1961, Pub. L. 87–301, § 20, 75 Stat. 656.)

REFERENCES IN TEXT

The provisions of sections 406(h) and 404(c) of the Nationality Act of 1040, referred to in par. (1), were formerly classified to sections 806(h) and 804(c), respectively, of this title, were repealed by section 403(a) (42) of act June 27, 1952, and are now covered by par. (1) of this section and section 1484(a) of this title, respectively.

AMENDMENTS

1961—Par. (4). Pub. L. 87–301 included the spouse or child of the national described in this paragraph who has his residence abroad for the purpose of being with such American citizen spouse or parent.

1959—Par. (1). Pub. L. 86–129, § 2, included veterans of Korean hostilities.

Par. (5). Pub. L. 86–129, § 3, substituted "fifteen" for "twenty-five" in the first clause and added the second clause.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the terms—

Child, as used in subchapters I and II of this chapter, see section 1101(b)(1) of this title.

Child, as used in this subchapter, see section 1101 (c)(1) of this title.

Foreign state, see section 1101 (a) (14) of this title.

National, see section 1101 (a) (21) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Naturalization, see section 1101 (a) (23) of this title.

Outlying possessions of the United States, see section 1101 (a) (29) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Passport, see section 1101 (a) (30) of this title.

Residence, see section 1101 (a) (33) of this title.

Spanish-American War, World War I and World War II, see section 1101 (d) (2) of this title.

Spouse, see section 1101 (a) (35) of this title.

Veteran, see section 1101 (d) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1482, 1484, 1485 of this title.

§ 1487. Loss of American nationality through parents' expatriation; not effective until persons attain age of twenty-five years.

A person having United States nationality, who is under the age of twenty-one and whose residence is in a foreign state with or under the legal custody of a parent who hereafter loses United States nationality under section 1482 or 1484 of this title, shall also lose his United States nationality if such person has or acquires the nationality of such foreign state: *Provided,* That, in such case, United States nationality shall not be lost as the result of loss of United States nationality by the parent unless and until the person attains the age of twenty-five years without having established his residence in the United States. (June 27, 1952, ch. 477, title III, ch. 3, § 355, 66 Stat. 272.)

EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Foreign state, see section 1101 (a) (14) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Parent, as used in subchapters I and II of this chapter, see section 1101(b)(2) of this title.

Parent, as used in this subchapter, see section 1101(c)(2) of this title.

Residence, see section 1101 (a) (33) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 877, 2107, 2501.

§ 1488. Nationality lost solely from performance of acts or fulfillment of conditions.

The loss of nationality under this Part shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Part. (June 27, 1952, ch. 477, title III, ch. 3, § 356, 66 Stat. 272.)

CROSS REFERENCES

Definition of the term national, see section 1101 (a) (21) of this title.

§ 1489. Application of treaties; exceptions.

Nothing in this subchapter shall be applied in contravention of the provisions of any treaty or convention to which the United States is a party and which has been ratified by the Senate upon the effective date of this subchapter: *Provided, however,* That no woman who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention. (June 27, 1952, ch. 477, title III, ch. 3, § 357, 66 Stat. 272.)

EFFECTIVE DATE

Subchapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Ineligible to citizenship, see section 1101 (a) (19) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

PART IV.—MISCELLANEOUS

§ 1501. Certificate of diplomatic or consular officer of United States as to loss of American nationality.

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of Part 3 of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. (June 27, 1952, ch. 477, title III, ch. 3, § 358, 66 Stat. 272.)

REFERENCES IN TEXT

Chapter IV of the Nationality Act of 1940, as amended, referred to in the text, was classified to former sections 800—810 of this title and was repealed by section 403 (a) (42) of act June 27, 1952.

CROSS REFERENCES

Definition of the term—

Attorney General, see section 1101 (a) (5) of this title.

Consular officer, see section 1101 (a) (9) of this title.

Foreign state, see section 1101 (a) (14) of this title.

National of the United States, see section 1101 (a) (22) of this title.

§ 1502. Certificate of nationality issued by Secretary of State for person not a naturalized citizen of United States for use in proceedings of a foreign state.

The Secretary of State is authorized to issue, in his discretion and in accordance with rules and regu-

lations prescribed by him, a certificate of nationality for any person not a naturalized citizen of the United States who presents satisfactory evidence that he is an American national and that such certificate is needed for use in judicial or administrative proceedings in a foreign state. Such certificate shall be solely for use in the case for which it was issued and shall be transmitted by the Secretary of State through appropriate official channels to the judicial or administrative officers of the foreign state in which it is to be used. (June 27, 1952, ch. 477, title III, ch. 3, § 359, 66 Stat. 273.)

CROSS REFERENCES

Definition of the term—

Foreign state, see section 1101 (a) (14) of this title.

National of the United States, see section 1101 (a) (22) of this title.

United States, see section 1101 (a) (38) of this title.

§ 1503. Denial of rights and privileges as national.

(a) Proceedings for declaration of United States nationality.

If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of Title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any exclusion proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

(b) Application for certificate of identity; appeal.

If any person who is not within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may make application to a diplomatic or consular officer of the United States in the foreign country in which he is residing for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission. Upon proof to the satisfaction of such diplomatic or consular officer that such application is made in good faith and has a substantial basis, he shall issue to such person a certificate of identity. From any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing his reasons for his decision. The Secretary of State shall prescribe rules and regulations for the issuance of certificates of identity as above provided. The provisions of this subsection shall be applicable only to a person who at some time prior to his application for the certificate of identity has been physically present in the United States, or to a person under sixteen years of age who was born abroad of a United States citizen parent.

(c) Application for admission to United States under certificate of identity; revision of determination.

A person who has been issued a certificate of identity under the provisions of subsection (b) of this section, and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this chapter relating to the conduct of proceedings involving aliens seeking admission to the United States. A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise. Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this chapter relating to aliens seeking admission to the United States. (June 27, 1952, ch. 477, title III, ch. 3, § 360, 66 Stat. 273.)

CROSS REFERENCES

Definition of the term—

Alien, see section 1101 (a) (3) of this title.

Application for admission, see section 1101 (a) (4) of this title.

Attorney General, see section 1101 (a) (9) of this title.

Consular officer, see section 1101 (a) (9) of this title.

National of the United States, see section 1101 (a) (22) of this title.

Residence, see section 1101 (a) (33) of this title.

United States, see section 1101 (a) (38) of this title.

Judicial review of orders of deportation and exclusion, see section 1105a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1223 of this title.

Chapter 13.—IMMIGRATION AND NATURALIZATION SERVICE

Sec.
1551. Immigration and Naturalization Service.
1552. Commissioner of Immigration and Naturalization; office.
1553. Assistant Commissioners and one District Director; compensation and salary grade.
1554. Special immigrant inspectors at Washington.
1555. Same; Immigration Service expenses.
1556. Disposition of money received as extra compensation.
1557. Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information.

§ 1551. Immigration and Naturalization Service.

There is created and established in the Department of Justice an Immigration and Naturalization Service. (Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826; June 29, 1906, ch. 3592, § 1, 34 Stat. 596; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238.)

HISTORY OF IMMIGRATION AND NATURALIZATION AGENCIES

By acts Aug. 3, 1882, ch. 376, §§ 2, 3, 22 Stat. 214; Feb. 23, 1887, ch. 220, 24 Stat. 415, the administration of the immigration laws then in force was reposed in the Secretary of the Treasury. Subsequently, by act Mar. 3, 1891, ch. 551, § 7, 26 Stat. 1087, the office of the Superintendent of Immigration was created as a permanent immigration agency and he in turn was designated Commissioner General of Immigration under the heading "Bureau of Immigration" by act Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780. Upon the establishment of the Department of Commerce and Labor, the Commissioner General of Immigration and the Bureau of Immigration were transferred to that Department by act Feb. 14, 1903, ch. 552, § 4, 32 Stat. 825 and thereafter were redesignated the Bureau of Immigration and Naturalization by act June 29, 1906, ch. 3592, § 1, 34 Stat. 596. The Bureau of Immigration and Naturalization was transferred to the Department of Labor upon its establishment by act Mar. 4, 1913, ch. 141, 37 Stat. 736, and divided into two bureaus to be known as the Bureau of Immigration and the Bureau of Naturalization, respectively. Ex. Ord. No. 6166, § 14, June 10, 1933, set out as note under section 901 of Title 5, Government Organization and Employees, again consolidated these bureaus to form the Immigration and Naturalization Service, under a "Commissioner of Immigration and Naturalization", which was then transferred from the Department of Labor to the Department of Justice by 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, set out in the Appendix to Title 5.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1552. Commissioner of Immigration and Naturalization; office.

The office of the Commissioner of Immigration and Naturalization is created and established, and the President, by and with the advice and consent of the Senate, is authorized and directed to appoint such officer. The Attorney General shall provide him with a suitable, furnished office in the city of Washington, and with such books of record and facilities for the discharge of the duties of his office as may be necessary. (Mar. 3, 1891, ch. 551, § 7, 26 Stat. 1085; Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; Apr. 28, 1904, No. 34, 33 Stat. 591; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Feb. 5, 1917, ch. 29, § 23, 39 Stat. 892; Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1118; Mar. 28, 1922, ch. 117, title II, 42 Stat. 486; Jan. 5, 1923, ch. 24, title II, 42 Stat. 1127; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238; June 27, 1952, ch. 477, title IV, § 403(a)(4), 66 Stat. 279.)

AMENDMENTS

1952—Act June 27, 1952, omitted the second and fourth sentences relating to the duties of the commissioner and the appointment of an assistant commissioner.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and employees.

§ 1553. Assistant Commissioners and one District Director; compensation and salary grade.

The compensation of the five assistant commissioners and one district director shall be at the rate of grade GS–16. (June 20, 1956, ch. 414, title II, § 201, 70 Stat. 307.)

SIMILAR PROVISIONS

Similar provisions were contained in act July 7, 1955, ch. 279, title II, § 201, 69 Stat. 272.

§ 1554. Special immigrant inspectors at Washington.

Special immigrant inspectors, not to exceed three, may be detailed for duty in the service at Washington. (Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; Ex. Ord. No. 6166, § 14, June 10, 1933.)

CODIFICATION

Ex. Ord. No. 6166, is authority for the substitution of "service" for "bureau." See note set out under section 1551 of this title.

§ 1555. Same; Immigration Service expenses.

Appropriations now or hereafter provided for the Immigration and Naturalization Service shall be available for payment of (a) hire of privately owned horses for use on official business, under contract with officers or employees of the Service; (b) pay of interpreters and translators who are not citizens of the United States; (c) distribution of citizenship textbooks to aliens without cost to such aliens; (d) payment of allowances (at such rate as may be specified from time to time in the appropriation Act involved) to aliens, while held in custody under the immigration laws, for work performed; and (e) when so specified in the appropriation concerned, expenses of unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, who shall make a certificate of the amount of any such expenditure as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (July 28, 1950, ch. 503, § 6, 64 Stat. 380.)

§ 1556. Disposition of money received as extra compensation.

CODIFICATION

Section transferred to section 1353d of this title.

§ 1557. Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information.

For the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted July 25, 1902, for submission to their respective governments by the delegates of various powers represented at the Paris Conference and confirmed by a formal agreement signed at Paris on May 18, 1904, and adhered to by the United States on June 6, 1908, as shown by the proclamation of the President of the United States dated June 15, 1908, the Commissioner of Immigration and Naturalization is designated as the authority of the United

States to receive and centralize information concerning the procuration of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner of Immigration and Naturalization to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this Act to the persons, respectively, making and filing them. (June 25, 1910, ch. 395, § 6, 36 Stat. 826; Ex. Ord. No. 6166, § 14, June 10, 1933.)

REFERENCES IN TEXT

This Act, referred to in the text, means the White Slave Traffic Act, June 25, 1910. See sections 2421—2424 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

TITLE 9.—ARBITRATION

This title was enacted by act July 30, 1947, ch. 392, § 1, 61 Stat. 669

Chapter	Sec.
1. General provisions	1
2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards	201

AMENDMENTS

1970—Pub. L. 91-368, § 2, July 31, 1970, 84 Stat. 693, added analysis of chapters.

TABLE

Showing where former sections of Title 9 and the laws from which such former sections were derived, have been incorporated in revised Title 9.

Title 9 former sections	*Revised Statutes Statutes at Large*	*Title 9 new sections*
1	Feb. 12, 1925, ch. 213, § 1, 43 Stat. 883	1
2	Feb. 12, 1925, ch. 213, § 2, 43 Stat. 883	2
3	Feb. 12, 1925, ch. 213, § 3, 43 Stat. 883	3
4	Feb. 12, 1925, ch. 213, § 4, 43 Stat. 883	4
5	Feb. 12, 1925, ch. 213, § 5, 43 Stat. 884	5
6	Feb. 12, 1925, ch. 213, § 6, 43 Stat. 884	6
7	Feb. 12, 1925, ch. 213, § 7, 43 Stat. 884	7
8	Feb. 12, 1925, ch. 213, § 8, 43 Stat. 884	8
9	Feb. 12, 1925, ch. 213, § 9, 43 Stat. 885	9
10	Feb. 12, 1925, ch. 213, § 10, 43 Stat. 885	10
11	Feb. 12, 1925, ch. 213, § 11, 43 Stat. 885	11
12	Feb. 12, 1925, ch. 213, § 12, 43 Stat. 885	12
13	Feb. 12, 1925, ch. 213, § 13, 43 Stat. 886	13
14	Feb. 12, 1925, ch. 213, § 14, 43 Stat. 886	Rep.
15	Feb. 12, 1925, ch. 213, § 15, 43 Stat. 886	14

POSITIVE LAW; CITATION

This title has been made positive law by section 1 of act July 30, 1947, ch. 392, 61 Stat. 669, which provided in part that: "title 9 of the United States Code, entitled 'Arbitration', is codified and enacted into positive law and may be cited as '9 U. S. C., § —' ".

REPEALS

Section 2 of act July 30, 1947, ch. 392, 61 Stat. 669, provided that the sections or parts thereof of the Statutes at Large covering provisions codified in this Act, insofar as such provisions appeared in former title 9 were repealed and provided that any rights or liabilities now existing under such repealed sections or parts thereof shall not be affected by such repeal.

CROSS REFERENCES

Arbitration of disputes between carriers and employees, see sections 157—159 of Title 45, Railroads.

Convention on the Settlement of Investment Disputes, nonapplication of title to enforcement of arbitration awards under the Convention, see section 1650a of Title 22, Foreign Relations and Intercourse.

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 22 section 1650a.

CHAPTER 1.—GENERAL PROVISIONS

Sec.

1. "Maritime transactions" and "commerce" defined; exceptions to operation of title.
2. Validity, irrevocability, and enforcement of agreements to arbitrate.
3. Stay of proceedings where issue therein referable to arbitration.
4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination.
5. Appointment of arbitrators or umpire.
6. Application heard as motion.
7. Witnesses before arbitrators; fees; compelling attendance.
8. Proceedings begun by libel in admiralty and seizure of vessel or property.
9. Award of arbitrators; confirmation; jurisdiction; procedure.
10. Same; vacation; grounds; rehearing.
11. Same; modification or correction; grounds; order.
12. Notice of motions to vacate or modify; service; stay of proceedings.
13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement.
14. Contracts not affected.

AMENDMENTS

1970—Pub. L. 91-368, § 3, July 31, 1970, 84 Stat. 693, designated existing sections 1 through 14 as "Chapter 1", and added heading for Chapter 1.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 205, 208 of this title.

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title.

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. (July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 1, 43 Stat. 883.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate.

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of

such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 2, 43 Stat. 883.

§ 3. Stay of proceedings where issue therein referable to arbitration.

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. (July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 3, 43 Stat. 883.

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination.

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. (July 30, 1947, ch. 392, 61 Stat. 671; Sept. 3, 1954, ch. 1263, § 19, 68 Stat. 1233.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 4, 43 Stat. 883.

REFERENCES IN TEXT

Federal Rules of Civil Procedure, referred to in the text, are set out in Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1954—Act Sept. 3, 1954, brought section into conformity with present terms and practice.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

Service and filing of pleadings and other papers, see rule 5.

Trials—

Jury trial of right, see rule 38.

Trial by jury or by the court, see rule 39.

§ 5. Appointment of arbitrators or umpire.

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator. (July 30, 1947, ch. 392, 61 Stat. 671.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 5, 43 Stat. 884.

§ 6. Application heard as motion.

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided. (July 30, 1947, ch. 392, 61 Stat. 671.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 6, 43 Stat. 884.

§ 7. Witnesses before arbitrators; fees; compelling attendance.

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be

directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States. (July 30, 1947, ch. 392, 61 Stat. 672; Oct. 31, 1951, ch. 655, § 14, 65 Stat. 715.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 7, 43 Stat. 884.

AMENDMENTS

1951—Act Oct. 31, 1951, substituted "United States district court for" for "United States court in and for", and "by law for" for "on February 12, 1925, for".

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property.

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award. (July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 8, 43 Stat. 884.

CROSS REFERENCES

Unification of civil and admiralty procedure in United States District Courts, see section 2072 of Title 28, Judiciary and Judicial Procedure, and Rule 1 of the Federal Rules of Civil Procedure, Title 28, Appendix.

Supplemental Rules for Certain Admiralty and Maritime Claims, see Rules A–E, Federal Rules of Civil Procedure, Title 28, Appendix.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure.

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. (July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 9, 43 Stat. 885.

§ 10. Same; vacation; grounds; rehearing.

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators. (July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 10, 43 Stat. 885.

§ 11. Same; modification or correction; grounds; order.

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties. (July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 11, 43 Stat. 885.

§ 12. Notice of motions to vacate or modify; service; stay of proceedings.

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his

attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. (July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 12, 43 Stat. 885.

FEDERAL RULES OF CIVIL PROCEDURE

Service and filing of pleadings and other papers, see rule 5, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement.

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. (July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 13, 43 Stat. 886.

FEDERAL RULES OF CIVIL PROCEDURE

Books and records kept by district court clerks and entries therein, see rule 79, Title 28, Appendix, Judiciary and Judicial Procedure.

Entry of judgment, see rule 58.

§ 14. Contracts not affected.

This title shall not apply to contracts made prior to January 1, 1926. (July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 15, 43 Stat. 886.

PRIOR LAW

Act Feb. 12, 1925, ch. 213, § 14, 43 Stat. 886, former provisions of section 14 of this title relating to "short title" is not now covered.

CHAPTER 2.—CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Sec.
201. Enforcement of Convention.
202. Agreement or award falling under the Convention.
203. Jurisdiction; amount in controversy.
204. Venue.
205. Removal of cases from State courts.
206. Order to compel arbitration; appointment of arbitrators.
207. Award of arbitrators; confirmation; jurisdiction; proceeding.
208. Chapter 1; residual application.

AMENDMENTS

1970—Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692, added the heading for chapter 2 and the analysis of sections for such chapter.

EFFECTIVE DATE

Section 4 of Pub. L. 91–368 provided that: "This Act [enacting this chapter] shall be effective upon the entry into force of the Convention on Recognition and Enforcement of Foreign Arbitral Awards with respect to the United States."

§ 201. Enforcement of Convention.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 202. Agreement or award falling under the Convention.

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 203. Jurisdiction; amount in controversy.

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 204 of this title.

§ 204. Venue.

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of

this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 205. Removal of cases from State courts.

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 206. Order to compel arbitration; appointment of arbitrators.

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 693.)

§ 207. Award of arbitrators; confirmation; jurisdiction; proceeding.

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 693.)

§ 208. Chapter 1; residual application.

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States. (Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 693.)

TITLE 10.—ARMED FORCES

This title was enacted by act Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 1

Subtitle	Sec.
A. General Military Law	**101**
B. Army	**3001**
C. Navy and Marine Corps	**5001**
D. Air Force	**8001**

TABLE I

(Showing disposition of all sections of former Title 10)

Title 10 former sections	*Title 10 new sections*
1	Omitted.
1a	101, 3001.
1b	3062.
1c	3075.
1d, 1e	3074.
1f	Omitted.
1g (a)	3063.
1g (b)	3064.
1g (c—f)	3065.
2—8	Repealed.
9, 10	Omitted.
11	3536.
12	Omitted.
13	Repealed.
14	Omitted.
15	See Title 18, § 1385.
15a	4711, 9711.
16	3061, 8061.
16a	3492, 8492.
17, 17a	Repealed.
18	See Title 37, § 31a.
19	1031.
19a	4833.
20	3062, 8062.
20a	4503, 4531, 9503, 9531.
20b, 20c	3681 note.
20j	3062.
20j (a)	3201.
20j (b)	3205, 3213.
20j (c)	3225.
20j (d)	3222, 3223.
20r	8062.
20s a)	8201.
20s (b)	8205, 8213.
20s (c)	8225.
20s (d)	8222, 8223.
20t	8062.
21	Repealed.
21a	3031.
21b	3034.
21c	3035.
21d	3034.
21e	3032.
21f	3036.
21g	3039.
21h	3037, 3040.
22—36	Repealed.
37	Omitted.
38	3033, 3034, 8033, 8034.
41, 42	Repealed.
51	Do.
52	4024.
53	Omitted.
61	Repealed.
61-1	3072, 3209, 3210.
61a	3037.
62	3037, 8072.
62a	3037.
63	Omitted.
64	Repealed.
65	3292.
66—70c	Omitted.
71, 72	Repealed.
72a	4533, 4561.
73	4749.
74	Omitted.
75	4564, 9564.
76	Do.
77	Omitted.
81, 81a	Repealed.
81-1	3067—3070.
81-2	3311, 3685, 3818, 8067, 8685, 8818.
82	3579, 8579.
83	Repealed.
91	Do.
91a	3294, 8294.
91b	Omitted.
92, 92a	Repealed.
93	3289, 8289.
94	Omitted.
95	3579, 8579.
96	3546, 8546.
97—100	Repealed.
101	3302, 8302.
102	Do.
103	Do.
104	Repealed.
105, 106	3539,
107	4022, 9022.
108	Do.
121	Repealed.
121a	3294, 8294.
121b	Omitted.
122, 123	Repealed.
124	Omitted.
125	3302, 8302.
126—130	Repealed.
131	Omitted.
141	Repealed.
142	Omitted.
143	Repealed.
143a	3302, 8302.
144, 145	Repealed.
145a, 145a-1	Omitted.
146	Repealed.
151	Do.
152	Omitted.
153—156	Repealed.
156a	3068, 3209.
156b	3068.
156c	3504, 3962, 3991.
156d	3068.
156e	3287, 3290.
156f—156i	Omitted.
161—165	Do.
166(a)	3069, 3206, 8206.
166(b)	3069.
166(c)	3291, 8291.
166(d)	3291 note.
166a(a)	3070, 3207, 8207.
166a(b)	3070.
166a(c)	3291, 8291.
166a(d)	3291 note.
166b to 166b-2	Omitted.
166b-3	5581 note.
166c to 166d-1	Omitted.
166e (a)	3574, 3579, 8574, 8579.
166e (b)	3574 note.
166e (c)	8574 note.
166f	3206, 3207, 3212, 3304, 8206, 8207, 8212, 8304.
166g (a), (b)	3504, 3881, 3882, 3887, 3912, 3928, 3962, 3991, 8881, 8882, 8887, 8912, 8928, 8891.
166g (c)	Repealed.
166h	Omitted.
166i	3683, 8683.
166j	3818, 8818.
166k	3205.
166l	Omitted.
171—175	Repealed.
176, 177	Omitted.
181	3036, 3040, 3074, 3209, 3216.
181a	3040, 3209, 3493; Title 33, § 583a.
181b	3038.
181c	3535.
181d	3535 note.
182	Repealed.
183	Omitted.
184	Repealed.
185—188	Omitted.
189	3534; D. C. Code 1-201, 203, 206-210, 213, 220, 802, 803.
190	3534.
190a	Title 33, §§ 575, 701b-9.
190b	Title 33, §§ 576, 701b-10.
191—195	Repealed.
196—197a	Omitted.
198	Do.
199	Title 33, §§ 575, 701b-9.
211, 212	Repealed.
213	Omitted.
214	Repealed.
215	Omitted.
221, 222	Repealed.
223	Omitted.
231	Repealed.
231a	3073.
232	3293, 8293.
233	Omitted.
234	Repealed.
235	3581, 8581.
236, 237	Repealed.
238	3547, 8547.
239	Do.

Title 10 former sections	Title 10 new sections
240	Omitted.
251—253	Repealed.
261, 262	Do.
271—273	Do.
274, 275	Omitted.
276	Repealed.
277	Omitted.
281, 282	Repealed.
283	Omitted.
291—291b	Do.
291c	3691, 8691.
291c-1	Do.
291d	3692, 8692.
291e	3691, 8691.
291f	Repealed.
291f-1	Omitted.
291f-2	8257.
291g	Omitted.
292	Repealed.
292-1, 292a	Omitted.
292a-1	Repealed.
292a-2, 292a-3	Omitted.
292b, 292b-1	Repealed.
292b-2, 292b-3	Omitted.
292c	8537.
292c-1	9305.
292d, 293	Omitted.
294	8577.
295	Omitted.
296, 296a	9303.
297	Omitted.
297a	8257.
298, 298a	Omitted.
298a-1	9304.
298b	4656, 9656.
298c	4628, 9628.
299	8257, 8356, 8817.
299a	Omitted.
299b—299d	Repealed.
299e	8356.
300—300c	Omitted.
301	Repealed.
302	Omitted.
303	Repealed.
304	Title 37, § 251 (a).
304a—305	Omitted.
306	Repealed.
307	Omitted.
308	Repealed.
308a, 309	Omitted.
310	2271—2277, 2279.
311	2382.
312	2278.
313	Repealed.
316	3071.
316-1	3071.
316a	3209, 3215.
316b	3071, 3504, 3962, 3991.
316c (a)	3311.
316c (b)	Omitted.
316c (c)	3211.
316d	3580.
316e	3685.
321	3063 note.
321a—331	Omitted.
332	Repealed.
333—342	Omitted.
343	Repealed.
351—353	Do.
354	3355, 8355.
355—362	Repealed.
362a	Omitted.
363, 364	Repealed.
365	Omitted.
366	Title 37, § 232.
367—368	Omitted.
369, 369a	Repealed.
369b	683 note.
370	Repealed.
371—371b	Title 5, § 30r.
371c	Omitted.
372, 373	Repealed.
374, 375	Omitted.
376	3357.
377, 378	Repealed.
381	4382, 9382.
382	Do.
383	4383, 9383.
384	Do.
385	4384, 9384.
385a	4387, 9387.
385b	4387.
386	3540, 8540.
386a	4387, 9387.
387	Do.
387a	Do.
388	Repealed.
389	4386, 9386.
390	Do.
391	4382 note.
421—424	Repealed.
425	3256, 8256.
426, 427	Repealed.
441	4385, 9385.
442	4411—4414, 9411—9414.
443	4385, 9385.
444	4387, 9387.
445	Omitted.
451—455	Repealed.
455a	3722, 8722.
455b	Do.
455c	3722, 8722.
455d	Repealed.
455e	3723, 8723; Title 32, § 320.
455f	Omitted.
456	3687, 3688, 3721, 8687, 8688, 8721.
456-1	3687 note.
456-2 to 457	Omitted.
481, 481a	3205.
481b, 482	Repealed.
482a	Omitted.
482b—484	Repealed.
484a	3814, 8814.
485, 486	Repealed.
486a	4353, 4353 note, 9353.
487, 487a	Repealed.
488, 489	Omitted.
490	3302, 8302.
491	3302, 8302.
491a—491c	1521.
491c-1	1521 note.
491d	1523.
492—494	Omitted.
495	3544, 8544.
496	Repealed.
497	3545, 8545.
498	3543, 8543.
498a	Repealed.
499	3446, 8446.
499a, 499b	Omitted.
500	3681, 8681.
501	3682, 8682.
502—505e	Omitted.
506 (a)	3281, 3284, 8281, 8284.
506 (b)	3282, 3283.
506 (c)	3283, 3533.
506 (d)	3209, 8209.
506 (e), (f)	Omitted.
506a (a)	3210, 8210.
506a (b)	3573, 8573.
506a (c)	Do.
506b (a)	Omitted.
506b (b)	3066, 3531, 8066, 8531.
506b (c)	711.
506b(d)	3962, 3991, 8962, 8991.
506c (a)	3284, 8284.
506c (b)	3285, 8285.
506c (c)	3287, 8287.
506c (d)	3288, 3295, 8288, 8295.
506c (e)	3286, 8286.
506c (f)	3212, 3287, 3574, 4353, 8212, 8287, 8574, 9353.
506c (g)	Omitted.
506c-1	Do.
506c-2 to 506c-10	3284 note.
506d (a)	3442, 8442.
506d (b)	Do.
506d (c)	3442, 3572, 8442, 8572.
506d (d)	3443, 8443.
506d (e)	3444, 8444.
506d (f)	3447, 8447.
506d (g)	Omitted.
506d (h)	3491, 8491.
506d (i)	3441, 8441.
506d-1 to 506d-3	3202.
506d-4	686.
507	3578, 8578.
507a	3576, 5954, 8576.
511	3571, 8571.
512, 512a	Omitted.
513	3395, 3445, 3447, 8395, 8445, 8447.
514	Omitted.
515	744.
516	Omitted.
517	741.
521—528	Omitted.
531—534	Repealed.
535, 535a	4301.
536	Repealed.
537—539	Omitted.
540	712.
541	Omitted.
551—552b	Repealed.
552c	Omitted.
553—553b	Repealed.
554, 555	Omitted.
555a	3302, 3309, 8302, 8309.
556	3309, 8309.
556a	3302, 3309, 8302, 8309.
557	Repealed.
558	3312, 3394, 3451, 8352, 8394, 8451.
559 (a)	3296, 8296.
559 (b)	3211, 3212, 8211, 8212.
559 (c)	3296, 8296.
559 (d)	3296, 3574, 8296, 8574.
559 (e)	Omitted.
559a (a)	3297, 3308, 8297, 8308.
559a (b)	3313, 8313.
559a (c)	3297, 8297.
559a (d)	Omitted.
559b	3212, 3298, 8212, 8298.
559c (a-d)	3299, 8299.
559c (e)	3300, 8300.
559c (f)	3299, 8299.
559c (g)	3303, 8303.
559c (h)	3303, 3913, 8303, 8913.
559c (i)	3913, 8913.
559c (j)	3299, 8299.
559c (k)	3212, 3299, 8212, 8299.
559c (l)	8301.
559c (m)	Omitted.
559c-1	3299.

Title 10 former sections	Title 10 new sections
559d	3305, 8305.
559e	3306, 8306.
559f	3307, 8307.
559g	3036, 3212.
559h, 559i	Omitted.
559j	3296.
559k	3818.
559l—559o	Omitted.
571—575	Repealed.
576	3544, 8544.
576a	Repealed.
577	3544, 8544.
578	Omitted.
579	Repealed.
580	3784, 8784.
581	3781, 8781.
582	3782, 8782.
583	3782-3784, 3786, 8782-8784, 8786.
584	3785, 8785.
585	3786, 8786.
586, 587	Omitted.
591	3310, 8310.
591-1	3311, 3818.
591a	3448, 8448.
592	Omitted.
593	3548, 3575, 8548, 8575.
593a	Repealed.
594	3964, 3992, 8964, 8992.
595—599	Omitted.
600 (a, b)	101.
600 (c)	564.
600 (d)	564, 1164 note, 1166, 1167, 1255, 1263, 1293, 1305.
600a	555, 597, 745, 3445, 3448, 8445, 8448.
600b	Omitted.
600c	555, 556, 597, 3448, 8448.
600d	515, 1165.
600e	557, 598, 3449, 8449.
600f	558.
600g	559, 561.
600h	560, 562.
600i	562, 563.
600j	557.
600k	564.
600l (a)	1293.
600l (b)	1164 note, 1255, 1263, 1293, 1305.
600l (c)	1164.
600l (d)	1371, 1401.
600l (e)	564, 1164, 1166, 1255, 1263, 1305.
600l (f)	1371, 1401.
600l (g)	Omitted.
600m	515, 1166.
600n	1167.
600o	Omitted.
600p	565, 599, 3450, 8450.
600q	Omitted.
600r	564, 1164, 1255, 1263, 1305.
602	Repealed.
603—605	Omitted.
606, 607	Repealed.
608	3639, 8639.
609	3635, 8635.
610	3690, 8690.
611	Repealed.
612	1522.
621	3256, 8256.
621a	Omitted.
621b	3256, 3818.
621c, 621d	Omitted.
622—625	3253, 8253.
626	Omitted.
626a	Repealed.
627	3256, 8256.
628	3256, 3815, 3816, 8256, 8815, 8816.
628-1	3256, 8256.
628a	3262, 8262.
629	3638, 8638.
629a	3638 note.
630	Omitted.
631	Repealed.
631a	3258, 3684, 8258, 8684.
632	Omitted.
633	Repealed.
634	3254, 3812, 8254, 8812.
635	3255, 8255.
636	3256, 8256.
636a, 637	Omitted.
641—642a	Repealed.
643	Omitted.
644	Repealed.
645	Omitted.
651	Repealed.
652	3813, 8813.
652a	3811, 8811.
653, 653a	Repealed.
654, 654a	Omitted.
654b	3816 note.
655	Do.
656	Repealed.
657	Omitted.
658	Repealed.
661, 662	Omitted.
663	4023, 9023.
664, 665	Omitted.
671	Title 37, §§ 232, 251, 252, 254.
671a	Omitted.
672	Title 37, § 232.
673	Title 37, §§ 232, 238, 251, 252.
681	Title 37, § 232.
682	Title 37, §§ 232, 238, 251, 252.
683	Omitted.
683a	Title 37, § 233.
684	3682, 8682.
685	Title 37, § 232.
686	Omitted.
691	Do.
692	Repealed.
693	Title 37, § 237.
694	Title 37, § 235a.
695	Omitted.
696—699	Repealed.
711	Title 37, §§ 232, 251, 252, 254.
712	Title 37, § 252.
713	Title 37, § 251.
714	Title 37, § 253.
715	Title 37, §§ 232, 251, 252.
716	Title 37, §§ 238, 251, 252.
716a	Omitted.
716b	4561, 9561.
717—720	Omitted.
721	Repealed.
722	Omitted.
723	4593, 9593.
724	4561, 9561.
725	Do.
726	Do.
727	Omitted.
728	4775, 9775.
729	Omitted.
741	Title 37, § 253.
742—744	Repealed.
745, 746	Omitted.
747, 748	Repealed.
748a	Omitted.
749	4743, 9743.
750—754	Repealed.
755—756b	Omitted.
757	Title 37, § 253.
758, 759	Omitted.
760	Repealed.
771, 772	Do.
781	Title 37, §§ 231, 251, 252.
782—786	Omitted.
787	Title 37, § 232
801, 802	Omitted.
803	Repealed.
804—810	Omitted.
811	Repealed.
821	Do.
822	Omitted.
823	Repealed.
824	Title 5, § 73c.
825	4748, 9748.
831	4562, 9562.
832, 833	Omitted.
834	4563, 9563.
835	Omitted.
841, 842	Repealed.
843	4306, 9306.
844, 845	Omitted.
846	Title 37, § 242.
847	Repealed.
847a	3632, 8632.
847b	Repealed.
847c	3632, 8632.
847d	Do.
848	Omitted.
849	3633, 8633.
850—852	Omitted.
861, 861a	Do.
862	Title 37, § 310b.
862a	Title 31, § 493b.
862b—864	Omitted.
865	Title 37, § 310a.
866—867	Omitted.
868	2771.
869	Title 31, § 492d.
870	Repealed.
871	4837, 9837.
872	Do.
873, 874	Omitted.
875—875c	4837, 9837.
876	3636, 8636.
877	2772.
878	4840, 9840.
891—894	3689, 8689.
895	Omitted.
902, 902a	Do.
903	3688, 8688.
903a	Do.
904	4621, 9621.
904a—904d	Repealed.
905	3634, 8634.
906—907	Repealed.
908	Omitted.
908a—908c	1035.
909	Title 37, § 231.
910	Title 37, § 319.
911	Title 37, § 232.
912	Repealed.
913, 914	Omitted.
914a	D. C. Code, § 31-1114.
915	Omitted.
916—917	Repealed.
918	Omitted.
919	Repealed.
920	Omitted.
921	3532.
931—936	Repealed.
937—938a	Do.
939	Repealed.
940, 940a	Omitted.

Title 10 former sections	*Title 10 new sections*
941	Repealed.
941a (a)	3883, 3885, 3886, 3961, 3991, 8883, 8885, 8886, 8961, 8991.
941a (b)	3888, 3927, 8888, 8927.
941a (c)	3919, 8919.
941a (d)	3211, 3913, 3915, 3916, 3921-3923, 8211, 8913, 8916, 8921-8923.
941a (e)	3303, 3888, 3913, 3927, 3961, 3991, 8303, 8888, 8913, 8927, 8961, 8991.
941a (f)	3313, 8313.
942	3924, 8924.
943	3918, 8918.
943a	3911, 8911.
944, 945	Omitted.
946	Repealed.
947	3917, 3925, 8917, 8925.
947a	3917, 3961, 8917, 8961.
948	3914, 3991, 8914, 8991.
948a	3914, 8914.
951	3887, 3926, 3928, 8887, 8926, 8928.
951a	3926, 8926.
951b	3887, 3926, 3928, 8887, 8926, 8928.
952	3682, 8682.
953	Omitted.
953a	3926, 8926.
954	Omitted.
955	Repealed.
956	3914 note.
957	Omitted.
958	3925, 8925.
961—965	Omitted.
966	Repealed.
970	Omitted.
971	3991, 8991.
971a	Omitted.
971b	3911, 3991, 8911, 8991.
971c	3963 note.
972, 973	See Title 37, § 115.
973a	Repealed.
974—979	Omitted.
980	3991, 8991.
981	Omitted.
982, 982a	Repealed.
983—986	Omitted.
990—996	Do.
997	3504.
998	Title 32, § 314.
999	3503, 8503.
1001	3966, 8966.
1002	3963, 3991, 8963, 8991.
1003	Do.
1004	3964, 3992, 8964, 8992.
1005	Omitted.
1006	3965, 8965.
1007	Omitted.
1011	Do.
1012	Repealed.
1013	Omitted.
1014	1375.
1015	Omitted.
1021, 1022	Do.
1023	772, 3681, 8681.
1024	3582, 8582.
1025	3961, 8961.
1026	3961, 3962, 3991.
1026a	Omitted.
1026b	Title 33, § 642a.
1026b-1 to 1028a	Omitted.
1028b	772.
1028c—1035	Omitted.
1036	3966, 8966.
1036a	676, 1331, 1332.
1036b	1333, 1401.
1036c	1001.
1036d	1331, 1336.
1036e	101, 1332, 1333.
1036f	Omitted.
1036g	1334, 1335.
1036h	1337.
1036i	Omitted.
1041	4334.
1042	4334, 9334.
1043	4349, 9349.
1044	Do.
1051—1054a	Repealed.
1055—1060	4355, 9355.
1061	4331, 9331.
1061a	4332, 9332.
1062	4333, 9333.
1063	Do.
1064	4333.
1065	4334.
1066	Omitted.
1067	4340.
1068—1070	Omitted.
1071	4331.
1072	Omitted.
1073	4331.
1074—1076	Omitted.
1077, 1077a	4331.
1078	Omitted.
1078a	4331.
1079	4334, 9334.
1079a (a)	4336, 9336.
1079a (b)	3962, 3991, 8962, 8991.
1079a (c)	3886, 3920, 8886, 8920.
1080—1082	Omitted.
1083	4337, 9337.
1084, 1085	Omitted.
1086	4338.
1087	4331, 4332, 9331, 9332.
1088	4331.
1089	4331, 4335, 9331, 9335.
1091	Repealed.
1091-1	4347, 9347.
1091a—1092	Repealed.
1092a	4342, 9342.
1092b	4342, 4346, 4351, 9342, 9346, 9351.
1092c	4348, 9348.
1092c-1	541.
1092d	4343, 9343.
1093	4345, 9345.
1093a, 1093b	Omitted.
1093c	4344, 9344.
1093d	Title 20, § 221a.
1094	Repealed.
1095	4346, 9346.
1096	4346, 9346.
1097	Omitted.
1098	4342, 9342.
1099	4346.
1100, 1101	Repealed.
1102	4349, 9349.
1103	4351, 9351.
1104	Do.
1105	4349, 9349.
1106	4350, 9350.
1111, 1112	Omitted.
1121, 1121a	Do.
1122	Repealed.
1123, 1124	Omitted.
1125	4354.
1126	4354, 9354.
1127	Omitted.
1131—1136	Do.
1137	4337, 9337.
1138, 1139	4339.
1140	Omitted.
1141—1143	Repealed.
1144	4341, 9341.
1145	Omitted.
1146	Repealed.
1147, 1148	Omitted.
1149	Repealed.
1149a	4350, 9350.
1150	Title 37, § 308a.
1151	Omitted.
1161	Do.
1161a	4333 note.
1162	Omitted.
1163	4352, 9352.
1171	Omitted.
1172	4302, 9302.
1173	Omitted.
1174	Repealed.
1175	Omitted.
1176	4302, 9302.
1177, 1178	Omitted.
1178a	Repealed.
1179	4627, 4629, 9627, 9629.
1180	4651, 9651.
1180a, 1180b	Repealed.
1181	3540, 8540.
1182	4654, 9654.
1182a	Omitted.
1183	4653, 9653.
1184	Omitted.
1185	4652, 9652.
1186—1186b	Repealed.
1191, 1192	Do.
1192a	4506, 9506.
1193—1195	Repealed.
1195a	4533, 4561.
1196	4621, 9621.
1197	4535, 9535.
1198	4534, 9534.
1199—1203	Repealed.
1204	Omitted.
1205	Repealed.
1206	Omitted.
1206a	4539.
1207	2384.
1208	Omitted.
1209	4538, 9538.
1210	Do.
1210a	Repealed.
1211, 1212	Omitted.
1213, 1214	2421.
1221—1224	Omitted.
1225	Repealed.
1231	Omitted.
1232	4622, 9622.
1233—1235	4621, 9621.
1236	4624, 9624.
1237	4621, 9621.
1238	Do.
1239	4623, 9623.
1240	Repealed.
1241	4621, 9621.
1251	Repealed.
1252	Omitted.
1253	4621, 9621.
1254	4624, 9624.
1255, 1256	2542.
1257	Repealed.
1257a	2572.
1257b	2573.
1258	Repealed.
1259	4682, 9682.
1259a—1259c	Repealed.
1259d	4564, 9564.
1259e	Do.

Title 10 former sections	*Title 10 new sections*
1261	Repealed.
1262	4681, 9681.
1262a	Omitted.
1262b	2574.
1263—1267	Repealed.
1268	Omitted.
1269—1269b	2481.
1270	2667.
1270a, 1270b	Omitted.
1270c	Repealed.
1270d	2667.
1271—1274	Repealed.
1281—1286	Do.
1287	4591, 9591.
1288	Omitted.
1289	Repealed.
1301	4832, 9832.
1302	4838, 9838.
1303	4839, 9839.
1304	4835.
1305	9835.
1311	Repealed.
1312, 1313	4834.
1314	Omitted.
1315	3631, 8631.
1316	4836, 9836.
1317	Do.
1318	Omitted.
1319	4592, 9592.
1320	Omitted.
1331	Repealed.
1332	4779, 9779.
1333	Repealed.
1334	4536, 9536.
1335	4779, 9779.
1336	Repealed.
1336a	Omitted.
1337	Repealed.
1337a	4774, 9774.
1337b	4774.
1337c	Omitted.
1337d	Repealed.
1337e, 1338	Omitted.
1339	4774, 9774.
1340	Omitted.
1341	4772, 9772.
1342	4771, 9771.
1343	Omitted.
1343a—1343c	9773.
1343d	9774.
1344	4771, 9771.
1345	4779, 9779.
1346	4778, 9778.
1347	Title 36, § 12.
1348	4777, 9777.
1349	Repealed.
1350	Omitted.
1351	2669.
1352	Omitted.
1353, 1354	Repealed.
1361	4742, 9742.
1362	Omitted.
1363	4741, 9741.
1364	Repealed.
1365	2631.
1366	Omitted.
1367	4745.
1368	4747.
1369, 1370	4744.
1371	4744, 4747.
1371a	4746, 9746.
1372	Repealed.
1373—1376	Omitted.
1377	4749.
1391	3611, 8611.
1392	Omitted.
1393	771—774, 3612, 6297, 8612.
1394	Omitted.
1395	4621, 4629, 9621, 9629.
1401, 1402	Omitted.
1403	3741, 8741.
1404, 1405	Omitted.
1406	3742, 8742.
1407	3743, 8743.
1408, 1408a	Omitted.
1408b	1121, 1122.
1409	3744, 3752, 8744, 8752.
1410	3745, 8745.
1411	3744, 8744.
1412	3746, 8746.
1413—1415	Omitted.
1415a	3751, 3752, 8751, 8752.
1415b	3751, 8751.
1415c	Do.
1416	3747, 8747.
1417—1423c	Omitted.
1424	3748, 8748.
1425	Repealed.
1426	Omitted.
1427	1123.
1428	3750, 8750.
1429	3749, 3752, 8749, 8752.
1430—1430b	Repealed.
1430c—1430h	Omitted.
1431	807.
1432	3637, 8637.
1433—1443	Omitted.
1451	3661.
1452	Repealed.
1453—1455	3661.
1456	3662, 8662.
1457	3663, 8663.
1457a	Do.
1457b	Do.
1458, 1459	3661.
1460	858.
1461	Omitted.
1471—1578	Repealed.
1579	3638, 8638.
1580	3811, 8811.
1581—1583	Repealed.
1584—1584c	4712, 4713, 9712, 9713.
1585	4711, 9711.
1586—1590	Repealed.
1591	3578, 8578.
1592	3576, 5954, 8576.
1593	Repealed.
1593a	Omitted.
1594	Repealed.
1594a	Omitted.
1594b	Repealed.
1595—1605	Do.
1701—1710	Do.
1711	Omitted.
1712—1718	Repealed.
1719	Omitted.
1801	101.
1802—1804	Omitted.
1805	9833.
1806	Omitted.
1811	8031.
1812	8034.
1813	8035.
1814	8034.
1815	8032.
1831	8062.
1832	8075.
1833	8076.
1834	Omitted.
1835	101, 8078; Title 32, § 101.
1836	Omitted.
1837	8067, 8211, 8296, 8574.
1838, 1839	8074.
1840	8072.
1843	8202.
1844—1849	Do.
1850	686.
1850a—1850k	3284 note.
1851	9331.
1852, 1852a	Omitted.
1853	9331 note.
1854	9331.
1855	Omitted.
1856	541.
1857	9331 note.
1861	4802, 4806, 9802, 9806.
1862	4803, 4806, 9803, 9806.
1863	4804, 9804.
1864	4805, 9805.
1865	Do.
1866	4802, 4803, 9802, 9803.

TABLE II

(Showing disposition of all sections of former Title 34)

Title 34 former sections	*Title 10 new sections*
1	5501.
2	5403, 5405.
3	5404.
3a (a, b)	5447, 5448.
3a (c)	5701 note.
3a (d)	6387.
3a (e)	6371 note.
3b (a, b)	5449.
3b (c)	5701 note.
3b (d)	6388.
3b (e)	6371 note.
3c (a)	5442—5444 5446, 5596, 5652—5661, 5663, 5711, 578,6, 6386.
3c (b)	5442—5444, 5666, 5786, 6371—6380, 6382, 6383, 6385.
3c (c)	5596.
3c (d)	5784, 5788.
3c (e)	5596, 5784, 6326.
3c (f)	Omitted.
3c (g)	5596.
3c (h)	5596, 5784, 5786, 5788.
3c (i)	Omitted.
3c (j)	6381, 6383, 6400.
3d	5445, 5546, 5596, 5662, 5711, 5784, 5785, 6386.
3e	5234, 5451, 5662, 5711, 5785, 6386.
3f	5442 note.
4 (a)	5447, 5448.
4 (b—e)	5447.
4 (f)	5447, 5448, 5455.
4 (g)	5454.
5	5449, 5454, 5455.
5a (a—e)	5442.
5a (f)	5444.
5a (g)	5442, 5443.
5a (h)	5444.
5a (i)	5442—5444, 5449.
5a (j)	5454, 5507.
5a (k)	5442—5444.
5a-1	5451.
5a-2	686.
5b	5591—5594.
6	Omitted.
7, 8	Repealed.
9, 10	Omitted.
10a	5501.

Title 34 former sections	*Title 10 new sections*
11	5572
12	5572, 5573.
13	5572, 5582.
14	Do.
15, 16	Omitted.
17—17b	5572 note.
17c	Repealed.
21	5599.
21a	Repealed.
21b	5574.
21c	5572, 5574.
21d	5574.
21e	5446, 5574, 5578, 5579, 5581, 5663, 5702, 5707, 5708, 5710, 5711, 5753, 5762, 5766, 5773, 5776, 6033, 6393.
22, 23	5574.
24, 25	Omitted.
26	5987.
30a	5404, 6027, 6028.
30a-1	5139.
30b, 30c	Repealed.
30d	Omitted.
30e	5579.
30f	5572.
30g	6392.
30h	5579, 5945.
30i	Repealed.
30j	5579.
30k—30m	5579 note.
31	Repealed.
32	6027.
33	Omitted.
34	5412, 6013, 6014.
34a	6014.
35	Repealed.
36, 37	Omitted.
41, 42	Repealed.
43	5572, 6027.
43a	5140.
43b, 43b-1	Omitted.
43c	5580, 6392.
43c-1	5581 note.
43d	5945, 6030.
43d, 43f	Repealed.
43g (a)	6396.
43g (b)	5140.
43g (c)	6151.
43g (d)	6325, 6396.
43g (e)	Omitted.
43g (f)	6151, 6325, 6396.
43g (g)	6151, 6329, 6404.
43g (h)	6324, 6396.
43g (i)	772.
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43i	6393.
43j—43o	Omitted.
51	5578, 6027.
51a	Omitted.
51b	5572, 5578.
51c, 52	5578.
53	1552.
54, 55	5138.
61	5575.
62	Repealed.
63	Omitted.
64-66	6026.
67	6113.
71	5587.
71a, 71b	Repealed.
72	5406.
73	5587.
74, 74a	Repealed.
75, 76	Omitted.
77	5572, 5587.
78	5407, 5587.
79	Omitted.
81	Repealed.
82	Omitted.
83 (a)	Repealed.
83 (b)	Omitted.
84	Do.
85, 86	Repealed.
91	5576.
92, 93	Omitted.
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94	Omitted.
95, 96	6031.
97	5142.
101	Omitted.
102	Repealed.
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105k	5446, 5504, 5590, 5663, 5664, 5711, 5753, 5763, 5774.
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135b	Omitted.
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135e, 135f	Omitted.
135g	Title 14, §§ 435—438.
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152	Repealed.
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175	Omitted.
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220	5949.
221	Repealed.
222	6018.
223	Repealed.
224	Omitted.
225	5133.
226	6405.
227	Repealed.
228	6406.
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230	6116.
231	Repealed.
232	Omitted.
233	5862.
234	Repealed.
235	Omitted.
241, 241a	741.
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249—251	Omitted.
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252	Repealed.
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256	5577.
257	Omitted.
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259	Repealed.
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260	Repealed.
261	Omitted.
262, 263	Repealed.
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301, 302	Omitted.
303	Repealed.
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306t	Omitted.
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312	Omitted.
313	Repealed.
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331	Repealed.
331a	Omitted.
331b—332b	Repealed.
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333	Repealed.
334	Omitted.
335	Repealed.
335a	Omitted.
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350e	5501, 5597, 5787; Title 14, §§ 435—438.
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350g	Repealed.
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390	Omitted.
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395	Repealed.
396	Omitted.
396a	Repealed.
397, 398	Omitted.
398a—399	Repealed.
399a to 399c-1	Omitted.
399d	772.
399e	Omitted.
399f	Repealed.
399g	Omitted.
399h	Repealed.
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453	Omitted.

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498c-4	Repealed.
498c-5 to 498c-8	Omitted.
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498c-11	Omitted.
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498l	7299.
498m	7296.
498n—498q	Omitted.
501	5943.
502-504	Omitted.
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506	Repealed.
507, 508	Omitted.
509	7475.
510	Omitted.
511	Repealed.
512	Omitted.
513	Repealed.
514	Omitted.
520	Do.
520a	Repealed.
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551	Omitted.
551a	Repealed.
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560—563	Repealed.
564	Omitted.
565—567	Repealed.
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569—575	Repealed.
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580	7229.
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592	Repealed
593	Omitted.
593a	5792.
594	Omitted.
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598, 599	Omitted.
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637	5584.
638	Repealed.
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644	Repealed.
645	Omitted.
646	Repealed.
651	741, 5502.
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653, 654	Repealed.
661	Do.
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682—684	Repealed.
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717	Omitted.

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733	Repealed.
734	Omitted.
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774	Repealed.
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850k—850m	Omitted.
851—853c	Repealed.
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871	Repealed.
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886, 887	Repealed.
887a	Omitted.
888, 889	Repealed.
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903	Repealed.
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906, 907	Repealed.
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974	Omitted.
975—977	Repealed.
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1051	Omitted.
1052	Repealed.
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1055	Omitted.
1056	6966.
1057	5504, 5573.
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1057a	6976.
1057a-1	7047.
1057b	Repealed.
1061	Do.
1062	6961.
1062a	6962.
1063—1067	6964.
1068	6965.
1071	6952, 7478.
1072	Repealed.
1073	7082.
1073a	7083.
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1073c-1	7081, 7085.
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1073e	7088.
1073f	7085 note.

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1074	7043, 7081.
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1076a	7042.
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1081	Repealed.
1082	Omitted.
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1104, 1105	Omitted.
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1108	Repealed.
1108a	Omitted.
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1109	Repealed.
1109a	Omitted.
1110	Repealed.
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1115—1115c	6973.
1116, 1117	Omitted.
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1123b	Title 46, § 1338.
1123c	Title 46, § 1339.
1123d	Title 46, § 1340.
1123e	Title 46, § 1341.
1123f	Repealed.
1124	Omitted.
1125	Do.
1126	5986.
1127	Omitted.
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1165	7681.
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1167	7678.
1200, 1201	Repealed.

Positive Law; Citation

This title has been enacted into positive law by section 1 of act Aug. 10, 1956, ch. 1041, 70A Stat. 1, which provided in part that: "Title 10 of the United States Code, entitled 'Armed Forces', is revised, codified, and enacted into law, and may be cited as 'Title 10, United States Code, § —.' "

Repeals

Section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641, repealed the sections or parts of sections of the Revised Statutes or Statutes at large covering provisions codified in this act, "except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this act [August 10, 1956] and except as provided in section 49."

Savings and Severability Provisions

Section 49 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that:

"(a) In sections 1—48 of this Act, it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act [August 10, 1956]. However, laws effective after March 31, 1955, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

"(b) References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of sections 1—48.

"(c) Actions taken and offenses committed under the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1—48.

"(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

"(e) In chapter 47 of title 10, United States Code, enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.

"(f) The enactment of this Act does not increase or decrease the pay or allowances, including retired pay and retainer pay, of any person.

"(g) The enactment of this Act does not affect the status of persons who, on the effective date of this Act [August 10, 1956], have the status of warrant officers of the Army Mine Planter Service."

Effective Date of Uniform Code of Military Justice

Section 51 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that chapter 47 of this title takes effect January 1, 1957.

Restatement of Suspended or Temporarily Superseded Provisions

Section 50 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that: "If on the effective date of this Act [August 10, 1956] a provision of law that is restated in this Act and repealed by section 53 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status."

Cross References

Coast Guard, generally, see Title 14, Coast Guard.

National Guard, generally, see Title 32, National Guard.

President of the United States—

Commander in Chief, see Const. Art. 2, § 2, cl. 1.

Delegation of functions, see section 301 et seq., of Title 3, The President.

Subtitle A.—General Military Law

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AMENDMENTS

1968—Pub. L. 90-377, § 2, July 5, 1968, 82 Stat. 288, added chapter 48.

1967—Pub. L. 90-83, § 3(2), Sept. 11, 1967, 81 Stat. 220, struck out chapter 80, covering Exemplary Rehabilitation Certificates.

1966—Pub. L. 89-690, § 2, Oct. 15, 1966, 80 Stat. 1017, added chapter 80.

1964—Pub. L. 88-647, title I, § 101(2), title II, § 201 (2), Oct. 13, 1964, 78 Stat. 1064, 1069, added chapters 102 and 103.

1962—Pub. L. 87-651, title II, § 203, Sept. 7, 1962, 76 Stat. 519, added chapter 4.

Pub. L. 87-649, § 3(2), Sept. 7, 1962, 76 Stat. 493, added chapter 40.

1961—Pub. L. 87-381, § 1(2), Oct. 4, 1961, 75 Stat. 810, substituted "Retired Serviceman's Family Protection Plan" for "Annuities Based on Retired or Retainer Pay" in the heading of chapter 73.

1958—Pub. L. 85-861, §§ 1 (21), (26), (33), 33 (a) (4) (B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted "General Service Requirements" for "Service Requirements for Reserves" in the heading of chapter 37, "971" for "[No present sections]" in the heading of chapter 49, "Medical and Dental Care" for "Voting by Members of Armed Forces" in the heading of chapter 55, and eliminated "Care of the Dead" and substituted "1475" for "1481" in the heading of chapter 75.

PART I.—ORGANIZATION AND GENERAL MILITARY POWERS

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AMENDMENTS

1962—Pub. L. 87-651, title II, § 203, Sept. 7, 1962, 76 Stat. 519, added chapter 4.

Chapter 1.—DEFINITIONS

Sec.
101. Definitions.

§ 101. Definitions.

In addition to the definitions in sections 1—5 of title 1, the following definitions apply in this title:

(1) "United States", in a geographic sense, means the States and the District of Columbia.

(2) "Territory" means any Territory organized after this title is enacted, so long as it remains a Territory.

(3) "Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, and the guano islands, so long as they remain possessions, but does not include any Territory or Commonwealth.

(4) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) "Department", when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, it means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.

(6) "Executive part of the department" means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

(7) "Military departments" means the Department of the Army, the Department of the Navy, and the Department of the Air Force.

(8) "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy.

(9) "National Guard" means the Army National Guard and the Air National Guard.

(10) "Army National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia, active and inactive, that—

(A) is a land force;

(B) is trained, and has it officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(11) "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

(12) "Air National Guard" means that part of the organized militia of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(13) "Air National Guard of the United States" means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(14) "Officer" means commissioned or warrant officer.

(15) "Commissioned officer" includes a commissioned warrant officer.

(16) "Warrant officer" means a person who holds a commission or warrant in a warrant officer grade.

(17) "Enlisted member" means a person in an enlisted grade.

(18) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(19) "Rank" means the order of precedence among members of the armed forces.

(20) "Rating" means the name (such as "boatswain's mate") prescribed for members of an armed force in an occupational field. "Rate" means the name (such as "chief boatswain's mate") prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(21) "Authorized strength" means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(22) "Active duty" means full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(23) "Active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.

(24) "Active service" means service on active duty.

(25) "Active status" means the status of a reserve commissioned officer, other than a commissioned warrant officer, who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(26) "Supplies" includes material, equipment, and stores of all kinds.

(27) "Pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(28) "Shall" is used in an imperative sense.

(29) "May" is used in a permissive sense. The words "no person may * * *" mean that no person is required, authorized, or permitted to do the act prescribed.

(30) "Includes" means "includes but is not limited to".

(31) "Inactive-duty training means—

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

It includes those duties when performed by Reserves in their status as members of the National Guard.

(32) "Spouse" means husband or wife, as the case may be.

(33) "Regular", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(34) "Reserve", with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of an armed force.

(35) "Original", with respect to the appointment of a member of the armed forces in a regular or reserve component, refers to his most recent appointment in that component that is neither a promotion nor a demotion.

(36) "Dependent", with respect to a female member of an armed force, does not include her husband, unless he is in fact dependent on her for his chief support, or her child, unless his father is dead or he is in fact dependent on her for his chief support.

(Aug. 10, 1956, ch. 1041, 70A Stat. 3; Sept. 2, 1958, Pub. L. 85–861, §§ 1 (1), 33 (a) (1), 72 Stat. 1437, 1564; June 25, 1959, Pub. L. 86–70, § 6(a), 73 Stat. 142; July 12, 1960, Pub. L. 86–624, § 4(a), 74 Stat. 411; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(1), 76 Stat. 494; Jan. 2, 1968, Pub. L. 90–235, § 7(a)(1), 81 Stat. 762; Oct. 22, 1968, Pub. L. 90–623, § 2(1), 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
101 (1)	50: 351 (clause (b)).	Sept. 10, 1942, ch. 561, § 401 (clause (b)); added Apr. 1, 1944, ch. 150, § 401 (clause (b)); restated Apr. 19, 1946, ch. 142, § 401 (clause (b)), 60 Stat. 102.
101 (2)	32: 4c (1st 33 words).	
101 (3)	[No source].	
101 (4)	50: 901 (e).	
101 (5)	5: 181–1 (c) (for definition purposes); 5: 411a (a) (for definition purposes); 5: 626 (c) (for definition purposes).	July 9, 1952, ch. 608, § 101 (d) (less 2d sentence), (e), (g), § 702 (for definition purposes), 66 Stat. 481, 482, 501.
101 (6)	No source.	
101 (7)	5: 171 (b) (last 23 words of clause (1), for definition purposes).	July 26, 1947, ch. 343, §§ 205 (c) (for definition purposes), 206 (a) (for definition purposes), 207 (c) (for definition purposes), 61 Stat. 501, 502.
101 (8)	10: 600 (a); 34: 135 (a).	
101 (9)	No source.	
101 (10)	32: 2 (for definition purposes); 32: 4b (for definition purposes).	July 26, 1947, ch. 343, § 201 (b) (last 31 words of clause (1), for definition purposes); restated Aug. 10, 1949, ch. 412, § 4 (last 31 words of clause (1) of 201 (b), for definition purposes), 63 Stat. 579.
101 (11)	50: 1112 (a) (for definition purposes).	
101 (12)	10: 1835 (less last 16 words, for definition purposes); 32: 2 (for definition purposes); 32: 4b (for definition purposes).	June 3, 1916, ch. 134, § 62 (1st 36 words of last proviso), 39 Stat. 198.
101 (13)	50: 1112 (b) (for definition purposes).	
101 (14)	5: 181–3 (b) (less last sentence); 10: 1a (b) (less last sentence) 10: 1801 (b) (less last sentence); 37: 231 (c) (1st sentence, for definition purposes); 50: 901 (g).	June 3, 1916, ch. 134, § 117 (for definition purposes), 39 Stat. 212.
101 (15)	No source.	June 3, 1916, ch. 134, § 71 (for definition purposes); added June 15, 1933, ch. 87, § 9 (for definition purposes), 48 Stat. 157; Oct. 12, 1949, ch. 681, § 530 (for definition purposes), 63 Stat. 837; July 9, 1952, ch. 608, § 803 (9th par., for definition purposes), 66 Stat. 505.
101 (16)	10: 600 (b); 34: 135 (b).	
101 (17)	5: 181–3 (b) (last sentence); 10: 1a (b) (last sentence); 10: 1801 (b) (last sentence); 50: 551 (9).	
101 (18)	No source.	
101 (19)	No source.	Sept. 19, 1951, ch. 407, §§ 2 (b), 305 (less last 16 words, for definition purposes), 65 Stat. 326, 330.
101 (20)	No source.	
101 (21)	No source.	
101 (22)	10: 1036e (d) (for definition purposes); 34: 440m (d) (for definition purposes).	June 28, 1950, ch. 383, § 2 (b), 64 Stat. 263; July 9, 1952, ch. 608, § 807 (a), 66 Stat. 508.
101 (23)	No source.	
101 (24)	No source.	Oct. 12, 1949, ch. 681, § 102 (c) (1st sentence, for definition purposes), 63 Stat. 804.
101 (26)	No source.	
101 (27)	No source.	
101 (28)	No source.	May 5, 1950, ch. 169, § 1 (Art, 1 (clause (9)), 64 Stat. 108.
101 (29)	No source.	
101 (30)	No source.	May 29, 1954, ch. 249, § 2 (a). (b), 68 Stat. 157.
101 (31)	50: 901 (d) (less 2d sentence).	
101 (32)	No source.	June 29, 1948, ch. 708, § 306 (d) (for definition purposes), 62 Stat. 1089.
101 (33)	No source.	
101 (34)	No source.	

The definitions in clauses (3), (15), (18)—(21), (23)—(30), and (31)—(33) reflect the adoption of terminology which, though undefined in the source statutes restated in this title, represents the closest practicable approximation of the ways in which the terms defined have been most commonly used. A choice has been made where established uses conflict.

In clause (2), the definition of "Territory" in 32:4c is executed throughout this revised title by specific reference, where applicable, to the Territories, Puerto Rico and the Canal Zone.

In clause (4), the definition of "armed forces" is based on the source statute instead of 50:551 (2), which does not include an express reference to the Marine Corps. The words "including all components thereof" are omitted as surplusage.

In clause (5), the term "Department" is defined to give it the broad sense of "Establishment", to conform to the source statute and the usage preferred by the Department of Defense, instead of the more limited sense defined by 5:421g (a) and 423a (a), and 10:1a (d) and 1801 (d).

In clause (6), the term "executive part of the department" is created for convenience in referring to what is described in the source statutes for this title as "department" in the limited sense of the executive part at the seat of government. This is required by the adoption of the word "department" in clause (5) to cover the broader concept of "establishment".

In clause (8), the term "Secretary concerned" is created and defined for legislative convenience.

In clause (9), a definition of "National Guard" is inserted for clarity.

In clause (10) (A), the words "a land force" are substituted for 32:2 (as applicable to Army National Guard). The National Defense Act of 1916, § 117 (last 66 words), 39 Stat. 212, is not contained in 32:2. It is also omitted from the revised section as repealed by the Act of February 28, 1925, ch. 374, § 3, 43 Stat. 1081.

In clauses (10) and (11), the word "Army" is inserted to distinguish the organizations defined from their Air Force counterparts.

In clauses (10) and (12), the words "unless the context or subject matter otherwise requires" and "as provided in this title", in 32:4b, are omitted as surplusage.

In clauses (10) (B) and (12) (B), the words "has its officers appointed" are substituted for the word "officered", in 32:4b.

In clauses (11) and (13), only that much of the description of the composition of the Army National Guard of the United States and the Air National Guard of the United States is used as is necessary to distinguish these reserve components, respectively, from the other reserve components.

In clause (12) (A), the words "an air force" are substituted for the words "for which Federal responsibility has been vested in the Secretary of the Air Force or the Department of the Air Force pursuant to law", in 10:1835, and for 32:2 (as applicable to Air National Guard), to make the definition of "Air National Guard" parallel with the definition of "Army National Guard", and to make explicit the intent of Congress, in creating the Air National Guard, that the organized militia henceforth should consist of three mutually exhaustive classes comprising the Army, Air, and Naval militia.

In clause (14), the definition of "officer" is based on the source statutes instead of 50:551 (5), which excludes warrant officers. The reference to appointment in 10:1a (b) (2d sentence) and 10:1801 (b) (2d sentence), and the words "commissioned warrant officer", "flight officer", and "either permanent or temporary", in 37:231 (c) (1st sentence), are omitted as surplusage. 5:181–3 (b) (1st sentence), 10:1a (b) (1st sentence), and 10:1801 (b) (1st sentence) are omitted as covered by the definitions in clauses (14) and (16) of the revised section and by section 3062 (c) and section 8062 (d) of this title.

In clause (16), the words "unless otherwise qualified", "permanent or temporary", and "in the Army, Navy, Air Force, Marine Corps, or Coast Guard, including any component thereof" are omitted as surplusage. The word "person" is substituted for the word "officer".

In clause (22), the definition of "active duty" is based on the definition of "active Federal service" in the source statute, since it is believed to be closer to general usage than the definition in 50: 901 (b), which excludes active duty for training from the general concept of active duty.

AMENDMENTS

1968—Pub. L. 90–623 substituted "Secretary of Transportation" for "Secretary of the Treasury" in cl. (8)(D). Pub. L. 90–235 added cl. (36).

1962—Cl. (31)(A). Pub. L. 87–649 substituted "section 206 of title 37" for "section 301 of title 37".

1960—Cl. (2). Pub. L. 86–624 eliminated Hawaii.

1959—Cl. (2). Pub. L. 86–70 eliminated Alaska.

1958—Cl. (25). Pub. L. 85–861, § 1 (1), added cl. (25). Cl. (35). Pub. L. 85–861, § 33 (a) (1), added cl. (35).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 33 (g) of Pub. L. 85-861 provided that section 33 (a)-(f) of Pub. L. 85-861, which added cl. (35) of this section and section 5787 (c) of this title, former section 114a of Title 5, and section 440 of Title 14, Coast Guard, and amended sections 280, 560 (b), 672 (a), (c), 673 (a), 1217, 1331 (a) (3), 1332 (a) (2) (A) (ii), 1333 (1)—(4), 1431 (b), 2304 (a) (6), 2451 (c) (2), (3), 2663 (a), 2664 (a), (e), (f), 2732 (d) (2), 3033 (d), 3037 (a), 3066 (a), 3261 (b), 3299 (h), 3355 (4), 3574 (c), 3752 (b), 3914, 4335 (b), 4336, 4342 (c), 4837 (b), (f), 5149 (b), 5785, 6115, 6150 (a), 6332, 7203 (b), 7434, 8033 (d), 8066 (a), 8257 (e), 8299 (h), 8355 (4), 8448 (a), 8571 (c) (2), 8574 (c), 8752 (b), 8885, 9335 (b), 9336, 9353 (a), 9382 (c) (3) and 9837 (b), (f), of this title, sections 318, 323 (b) (1), (2), and 710 (c) of Title 32, National Guard, and sections 31a (c), 38, and 255(b) of Title 37, Pay and Allowances, shall be effective as of August 10, 1956, for all purposes.

SAVING AND SEVERABILITY CLAUSES

Section 34 of Pub. L. 85-861 provided that:

"(a) In sections 1—32 of this Act [see Tables for distribution], it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act [September 2, 1958]. However, laws effective after December 31, 1957, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

"(b) References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of sections 1—32.

"(c) Actions taken under the replaced law shall be considered to have been taken under the corresponding provisions of sections 1—32.

"(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

"(e) The enactment of this Act does not increase or decrease the pay or allowances, including retired and retainer pay, of any person."

RESTATEMENT OF SUSPENDED OR TEMPORARILY SUPERSEDED PROVISIONS

Section 35 of Pub. L. 85-861 provided that: "If on the effective date of this Act [September 2, 1958] a provision of law that is restated in this Act and repealed by section 36 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status."

PUBLIC HEALTH SERVICE

Authority vested by this title in the "military departments", "the Secretary concerned", or "the Secretary of Defense" with respect to certain rights, privileges, immunities, and benefits to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a (b) of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Armed forces, see section 8311 et seq. of Title 5, Government Organization and Employees.

Deferred officer of Army or Air Force, see sections 3303, 8303 of this title.

Enlistment, Army or Air Force, see sections 3251, 8251 of this title.

Partial mobilization, see section 276 (b) of this title.

Promotion-list officer, see sections 3296, 8296 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438; title 18 section 232; title 39 section 3401.

Chapter 3.—GENERAL POWERS

Sec.
121. Regulations.
122. Official registers.
123. Suspension of certain provisions of law relating to reserve commissioned officers.
124. Combatant commands: establishment; composition; functions; administration and support.
125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition.
126. Transfer of funds and employees.

AMENDMENTS

1962—Pub. L. 87-651, title II, §201(b), Sept. 7, 1962, 76 Stat. 517, added items 124-126.

1958—Pub. L. 85-861, § 1 (2) (B), Sept. 2, 1958, 72 Stat. 1437, added items 122 and 123.

§ 121. Regulations.

The President may prescribe regulations to carry out his functions, powers, and duties under this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 6.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
121	No source.	No source.

The revised section is inserted to make express the President's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

§ 122. Official registers.

The Secretary of a military department may have published, annually or at such other times as he may designate, official registers containing the names of, and other pertinent information about, such regular and reserve officers of the armed forces under his jurisdiction as he considers appropriate. The register may also contain any other list that the Secretary considers appropriate. (Added Pub. L. 85-861, § 1 (2) (A), Sept. 2, 1958, 72 Stat. 1437.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
122	10 App.: 20b. 34 App.: 609.	July 24, 1956, ch. 677, § 1, 70 Stat. 623.

§ 123. Suspension of certain provisions of law relating to reserve commissioned officers.

(a) In time of war, or of national emergency declared by Congress, the President may suspend the operation of any provision of the following sections of this title with respect to any armed force: 281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 33552(a) (last sentence), 3353, 3354, 3359, 3360, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3375, 3378, 3380, 3382, 3383, 3384, 3385, 3386, 3388, 3389, 3390, 3392, 3393, 3494, 3571, 3819, 3820(c), 3843, 3844, 3845, 3846, 3847, 3848, 3850, 3851, 3852, 3853, 3854, 3855, 5414, 5457, 5458, 5506, 5600, 5665, 5867, 5891, 5892, 5893, 5894, 5895, 5896, 5897, 5898, 5899, 5900, 5901, 5902, 5903, 5904, 5905, 5906, 5908, 5909, 5910, 5911, 6391, 6397, 6398, 6403, 6410, 8217,

8218, 8219, 8353, 8354, 8358, 8359, 8360, 8361, 8362, 8363, 8365, 8366, 8367, 8368, 8370, 8371, 8372, 8373, 8374, 8375, 8376, 8377, 8378, 8379, 8380, 8381, 8392, 8393, 8494, 8571, 8819, 8843, 8844, 8845, 8846, 8847, 8848, 8850, 8851, 8852, 8853, and 8855.

(b) If a provision is so suspended, the Secretary of Defense shall, before the end of that suspension, recommend to Congress legislation necessary to adjust the grades of reserve commissioned officers other than commissioned warrant officers. So far as practicable, this legislation shall be the same as that recommended for adjusting the grades of officers of the regular component of the armed force concerned. (Added Pub. L. 85–861, § 1 (2) (A), Sept. 2, 1958, 72 Stat. 1437, and amended Pub. L. 86–559, § 1 (1), June 30, 1960, 74 Stat. 264; Pub. L. 89–718, § 1, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(1), Nov. 8, 1967, 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
123	50: 1199 (less applicability to National Guard).	Sept. 3, 1954, ch. 1257, § 209 (less applicability to National Guard), 68 Stat. 1152.

In subsection (b), the words "the same as" are substituted for the word "comparable", since any necessary differences in the recommended legislation between Reserves and Regulars are fully taken account of in the words "So far as practicable".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 eliminated reference to section 3391.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to section 5907 of this title.

1960—Subsec. (a). Pub. L. 86–559 added sections 281, 3855, and 8855 and eliminated sections 3841, 3842, 3849, 8841, 8842, and 8849.

SAVINGS PROVISIONS; SUPERSESSION OF INCONSISTENT LAWS; REFERENCES TO AND ACTIONS UNDER PROVISIONS RESTATED BY PUB. L. 89–718

Section 74 of Pub. L. 89–718 provided that:

"(a) Laws becoming effective after June 1, 1965, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

"(b) References made by other laws, regulations, and orders to the laws restated by this Act shall be considered to be made to the corresponding provisions of this Act.

"(c) Actions taken under the laws restated by this Act shall be considered to have been taken under the corresponding provisions of this Act."

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 124. Combatant commands: establishment; composition; functions; administration and support.

(a) With the advice and assistance of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands or specified combatant commands to perform military missions; and

(2) shall prescribe the force structure of those commands.

(b) The military departments shall assign forces to combatant commands established under this section to perform the missions of those commands. A force so assigned is under the full operational command of the commander of the command to which it is assigned. It may be transferred from the command to which it is assigned only by authority of the Secretary and under procedures prescribed by the Secretary with the approval of the President. A force not so assigned, remains, for all purposes, in the military department concerned.

(c) Combatant commands established under this section are responsible to the President and to the Secretary for such military missions as may be assigned to them by the Secretary with the approval of the President.

(d) Subject to the authority, direction, and control of the Secretary, each military department is responsible for the administration of forces assigned by that department to combatant commands established under this section. The Secretary shall assign the responsibility for the support of forces assigned to those commands to one or more of the military departments. (Added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 614.)

CROSS REFERENCES

Air Force Chief of Staff, supervision over members and organizations of Air Force, see section 8034 of this title.

Army Chief of Staff, supervision over members and organizations of Army, see section 3034 of this title.

Chief of Naval Operations, supervision over members and organizations, of Navy and Marine Corps, see section 5081 of this title.

Commandant of Marine Corps, supervision over members and organizations of Marine Corps and Navy, see section 5201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3034, 5081, 5201, 8034 of this title.

§ 125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition.

(a) Subject to section 401 of title 50, the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any function, power, or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), a function, power, or duty vested in the Department of Defense, or an officer, official, or agency thereof, by law may not be substantially transferred, reassigned, consolidated, or abolished unless the Secretary reports the details of the proposed transfer, reassignment, consolidation, or abolition to the Committees on Armed Services of the Senate and House of Representatives. The transfer, reassignment, consolidation, or abolition concerned takes effect on the first day after the expiration of the first 30 days that Congress is in continuous session after the Secretary so reports, unless either of those Committees, within that period, reports a resolution recommending that the proposed transfer, reassignment, consolidation, or abolition be rejected by the Senate or the House of Representatives, as the case may be, because it—

(1) proposes to transfer, reassign, consolidate, or abolish a major combatant function, power, or duty assigned to the Army, Navy, Air Force, or Marine Corps by section 3062(b), 5012, 5013, or 8062(c) of this title; and

(2) would, in its judgment, tend to impair the defense of the United States.

If either of those Committees, within that period, reports such a resolution and it is not adopted by the Senate or the House of Representatives, as the case may be, within the first 40 days that Congress is in continuous session after that resolution is so reported, the transfer, reassignment, consolidation, or abolition concerned takes effect on the first day after the expiration of that forty-day period. For the purposes of this subsection, a session may be considered as not continuous only if broken by an adjournment of Congress sine die. However, in computing the period that Congress is in continuous session, days that the Senate or the House of Representatives is not in session because of an adjournment of more than three days to a day certain are not counted.

(b) Notwithstanding subsection (a), if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty, including one assigned to the Army, Navy, Air Force, or Marine Corps by section 3062(b), 5012, 5013, or 8062(c) of this title, may be transferred, reassigned, or consolidated. The transfer, reassignment, or consolidation remains in effect until the President determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the military departments or one or more of the armed forces. However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.

(d) In subsection (a)(1), "major combatant function, power, or duty" does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate. (Added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 515 and amended Pub. L. 89–501, title IV, § 401, July 13, 1966, 80 Stat. 278.)

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–501 required the Secretary of Defense to report to the Congress all the pertinent details regarding any substantial reduction or elimination of a major weapons system before action could be initiated or effected by the Department of Defense.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Section 303 of Pub. L. 87–651 provided that:

"(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code [this section], shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [now covered by section 901 et seq. of title 5, Government Organization and Employees], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [now covered by sections 912 and 913 of title 5].

"(b) The provisions of this section are enacted by the Congress—

"(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 133 of this title.

§ 126. Transfer of funds and employees.

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(1) be credited to any applicable appropriation account of the receiving department or agency; or

(2) be credited to a new account that may be established on the books of the Department of the Treasury;

and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the Director of the Bureau of the Budget, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which em-

ployees are transferred under this section is increased by the number of employees so transferred. (Added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 516.)

DELEGATION OF FUNCTIONS

Functions of the President under subsection (a) of this section delegated to the Director of the Bureau of the Budget, see section 1(13) of Ex. Ord. No. 11230, June 28, 1965, 30 F.R. 8447, set out as a note under section 301 of Title 3, The President.

OFFICE OF MANAGEMENT AND BUDGET

The Bureau of the Budget was designated as the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

Chapter 4.—DEPARTMENT OF DEFENSE

Sec.
131. Executive department.
132. Seal.
133. Secretary of Defense: appointment; powers and duties; delegation by.
134. Deputy Secretary of Defense: appointment; powers and duties; precedence.
135. Director of Defense Research and Engineering: appointment; powers and duties; precedence.
136. Assistant Secretaries of Defense: appointment; powers and duties; precedence.
137. General Counsel: appointment; powers and duties.

§ 131. Executive department.

The Department of Defense is an executive department of the United States. (Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 517.)

SAVINGS AND SEVERABILITY PROVISIONS

Section 306 of Pub. L. 87–651 provided that:

"(a) Laws becoming effective after January 9, 1962, that are inconsistent with this Act [enacting sections 124—126, 131—137, 687, 718, 1168, 1580, 2203—2211, 2358, 2634, 2679, 2680, 2681, 2734a, 2734b, 3010 and 8010 of this title, amending sections 141, 280, 674, 802, 1006, 1163, 1201—1203, 1211, 1218, 1219, 1334, 1405, 1553, 1554, 2276, 2633, 2672, 2674, 3012, 3034, 3853, 4337, 4621, 5011, 5031, 5081, 5082, 5201, 6033, 6148, 6954, 7230, 8012, 8034, 8352, 8991, 9337 and 9621 of this title, and section 454 of Title 50, repealing sections 1220, 4023, 4748, 6157, 9023 and 9748 of this title, former sections 171, 171a, 171a–1, 171c, 171c–2, 171d, 171m–1, 171n (partial), 171z–1, 172, 172b—172h and 174d of Title 5, section 471a of Title 14, sections 224i–2 to 224i–5 of Title 31, and section 1016 of Title 50, and enacting provisions set out as notes under this section and sections 125, 687, 1334 and 5034 of this title] shall be considered as superseding it to the extent of the inconsistency.

"(b) References made by other laws, regulations and orders to the laws shall be considered to be made to the corresponding provisions of this Act.

"(c) Actions taken under the replaced law shall be considered to have been taken under the corresponding provisions of this Act.

"(d) The enactment of this Act, except section 108 [amending section 1334 of this title], does not increase or decrease the pay or allowances, including retired and retainer pay, of any person."

REORGANIZATION PLAN NO. 6 OF 1953

Effective June 30, 1953; 18 F.R. 3743, 67 Stat. 638

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 30, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see section 901 et seq. of Title 5].

DEPARTMENT OF DEFENSE

§ 1. TRANSFERS OF FUNCTIONS

(a) All functions of the Munitions Board, the Research and Development Board, the Defense Supply Management Agency, and the Director of Installations are hereby transferred to the Secretary of Defense.

(b) The selection of the Director of the Joint Staff by the Joint Chiefs of Staff, and his tenure, shall be subject to the approval of the Secretary of Defense.

(c) The selection of the members of the Joint Staff by the Joint Chiefs of Staff, and their tenure, shall be subject to the approval of the Chairman of the Joint Chiefs of Staff.

(d) The functions of the Joint Chiefs of Staff with respect to managing the Joint Staff and the Director thereof are hereby transferred to the Chairman of the Joint Chiefs of Staff.

§ 2. ABOLITION OF AGENCIES AND FUNCTIONS

(a) There are hereby abolished the Munitions Board, the Research and Development Board, and the Defense Supply Management Agency.

(b) The offices of Chairman of the Munitions Board, Chairman of the Research and Development Board, Director of the Defense Supply Management Agency, Deputy Director of the Defense Supply Management Agency, and Director of Installations are hereby abolished.

(c) The Secretary of Defense shall provide for winding up any outstanding affairs of the said abolished agency, boards, and offices, not otherwise provided for in this reorganization plan.

(d) The function of guidance to the Munitions Board in connection with strategic and logistic plans as required by section 213 (c) of the National Security Act of 1947, as amended [former section 171h(c) of Title 5], is hereby abolished.

§ 3. ASSISTANT SECRETARIES OF DEFENSE

[Repealed. Pub. L. 85–599, § 10 (b), Aug. 6, 1958, 72 Stat. 521. Section authorized appointment of six additional Assistant Secretaries and prescribed their duties and compensation. For effective date of repeal, see note under section 3013 of this title.]

§ 4. GENERAL COUNSEL

[Repealed. Pub. L. 87–651, title III, § 307C, Sept. 7, 1962, 76 Stat. 526. Section authorized appointment of a General Counsel for the Department of Defense, and is now covered by section 137 of this title.]

§ 5. PERFORMANCE OF FUNCTIONS

[Repealed. Pub. L. 87–651, title III, § 307C, Sept. 7, 1962, 76 Stat. 526. Section authorized the Secretary of Defense from time to time to make such provisions as he deemed appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of any function of the Secretary, and is now covered by section 133 of this title.]

§ 6. MISCELLANEOUS PROVISIONS

(a) The Secretary of Defense may from time to time effect such transfers within the Department of Defense of any of the records, property, and personnel affected by this reorganization plan, and such transfers of unexpended balances (available or to be made available for use in connection with any affected function or agency) of appropriations, allocations, and other funds of such Department, as he deems necessary to carry out the provisions of this reorganization plan.

(b) Nothing herein shall affect the compensation of the Chairman of the Military Liaison Committee (63 Stat. 762).

§ 132. Seal.

The Secretary of Defense shall have a seal for the Department of Defense. The design of the

seal is subject to approval by the President. Judicial notice shall be taken of the seal. (Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 517.)

§ 133. Secretary of Defense: appointment; powers and duties; delegation by.

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 401 of title 50, he has authority, direction, and control over the Department of Defense.

(c) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with—

(1) a report from each military department on the expenditures, work, and accomplishments of that department;

(2) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under section 125 of this title;

(3) a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a review of the effectiveness of chapters 51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers; and

(4) such recommendations as he considers appropriate.

(d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate. (Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 517.)

PROCUREMENT OF AIRCRAFT, MISSILES, NAVAL VESSELS, TRACKED COMBAT VEHICLES, AND OTHER WEAPONS; AUTHORIZATION OF APPROPRIATIONS FOR PROCUREMENT, RESEARCH, DEVELOPMENT, TEST, AND EVALUATION ACTIVITIES; SELECTED RESERVE OF RESERVE COMPONENTS: ANNUAL AUTHORIZATION OF PERSONNEL STRENGTH

Section 412 of Pub. L. 86–149, title IV, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, § 2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, § 610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, § 304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, § 6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, § 405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§ 505, 509, Oct. 7, 1970, 84 Stat. 912, 913, provided that:

"(a) The Secretary of Defense shall, on or before January 31, 1960, submit to the President of the Senate and the Speaker of the House of Representatives complete and detailed information with respect to the various types and kinds of aircraft, missiles, and naval vessels being procured by the armed forces of the United States, including the number of each type and kind procured and the cost thereof and the number of each type and kind proposed to be procured and the estimated cost thereof.

"(b) No funds may be appropriated after December 31, 1960, to or for the use of any armed force of the United States for the procurement of aircraft, missiles, or naval vessels, or after December 31, 1962, to or for the use of any armed force of the United States for the research, development, test, or evaluation of aircraft, missiles, or naval vessels, or after December 31, 1963, to or for the use of any armed force of the United States for any research, development, test, or evaluation, or after December 31, 1965, to or for the use of any armed force of the United States for the procurement of tracked combat vehicles, or after December 31, 1969, to or for the use of any armed force of the United States for the procurement of other weapons, or after December 31, 1970, to or for the use of the Navy for the procurement of torpedoes and related support equipment unless the appropriation of such funds has been authorized by legislation enacted after such dates.

"(c) Beginning with the fiscal year which begins July 1, 1968, and for each fiscal year thereafter, the Congress shall authorize the personnel strength of the Selected Reserve of each Reserve component of the Armed Forces; and no funds may be appropriated for any fiscal year beginning on or after such date for the pay and allowances of members of any Reserve component of the Armed Forces unless the personnel strength of the Selected Reserve of such Reserve component for such fiscal year has been authorized by law.

"(d)(1) Beginning with the fiscal year which begins July 1, 1971, and for each fiscal year thereafter, the Congress shall authorize the average annual active duty personnel strength for each component of the Armed Forces; and no funds may be appropriated for any fiscal year beginning on or after such date to or for the use of the active duty personnel of any component of the Armed Forces unless the average active duty personnel strength of such component for such fiscal year has been authorized by law."

"(2) Beginning with the fiscal year ending June 30, 1971, the President shall submit to the Congress a written report not later than January 31 of each fiscal year recommending the average annual active duty strength level for each component of the Armed Forces for the next fiscal year and shall include in such report justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for such fiscal year and the national security policies of the United States in effect at the time."

DELEGATION OF FUNCTIONS

Functions of the President under various sections delegated to the Secretary of Defense, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, as amended by Ex. Ord. No. 11294, Aug. 4, 1966, 31 F.R. 10601; see Ex. Ord. No. 10661, Feb. 27, 1956, 21 F.R. 1315; see Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841; all set out as notes under section 301 of Title 3, The President.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Defense, see Parts 1, 4, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

CROSS REFERENCES

National Security Agency employment, delegation of authority for terminating, notwithstanding subsec. (d) of this section, see section 833 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 833.

§ 134. Deputy Secretary of Defense: appointment; powers and duties; precedence.

(a) There is a Deputy Secretary of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Deputy Secretary of Defense within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary is absent or disabled.

(c) The Deputy Secretary takes precedence in the Department of Defense immediately after the Secretary. (Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518.)

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 135. Director of Defense Research and Engineering: appointment; powers and duties; precedence.

(a) There is a Director of Defense Research and Engineering, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Director performs such duties relating to research and engineering as the Secretary of Defense may prescribe, including—

(1) being the principal adviser to the Secretary on scientific and technical matters;

(2) supervising all research and engineering activities in the Department of Defense; and

(3) directing, controlling, assigning, and reassigning research and engineering activities that the Secretary considers need centralized management.

(c) The Director takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments. (Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518.)

COMPENSATION OF DIRECTOR

The last sentence of section 203(b)(1) of Act July 26, 1947, c. 343, Title II, as added Aug. 6, 1958, Pub. L. 85–599, § 9(a), 72 Stat. 520, which prescribed the compensation of the Director of Defense Research and Engineering, was repealed by Pub. L. 88–426, Title III, § 305(23), Aug. 14, 1964, 78 Stat. 425, and is now covered by section 5312 et seq. of Title 5, Government Organization and Employees.

EMERGENCY FUND FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Pub. L. 89–37, title III, § 305, June 11, 1965, 79 Stat. 128, provided that: "No funds may be appropriated after June 30, 1966, to or for the use of any armed force of the United States for use as an emergency fund for research, development, test, and evaluation, or procurement or production related thereto unless the appropriation of such funds has been authorized by legislation enacted after that date."

§ 136. Assistant Secretaries of Defense: appointment; powers and duties; precedence.

(a) There are eight Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Health Affairs. He shall have as his principal duty the overall supervision of health affairs of the Department of Defense. One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of Defense. In addition, one of the Assistant Secretaries shall be the Comptroller of the Department of Defense and shall, subject to the authority, direction, and control of the Secretary—

(1) advise and assist the Secretary in performing such budgetary and fiscal functions and duties, and in exercising such budgetary and fiscal powers, as are needed to carry out the powers of the Secretary;

(2) supervise and direct the preparation of budget estimates of the Department of Defense;

(3) establish and supervise the execution of principles, policies, and procedures to be followed in connection with organizational and administrative matters relating to—

(A) the preparation and execution of budgets;

(B) fiscal, cost, operating, and capital property accounting;

(C) progress and statistical reporting; and

(D) internal audit;

(4) establish and supervise the execution of policies and procedures relating to the expenditure and collection of funds administered by the Department of Defense; and

(5) establish uniform terminologies, classifications, and procedures concerning matters covered by clauses (1)—(4).

(c) Except as otherwise specifically provided by law, an Assistant Secretary may not issue an order to a military department unless—

(1) the Secretary of Defense has specifically delegated that authority to him in writing; and

(2) the order is issued through the Secretary of the military department concerned, or his designee.

(d) In carrying out subsection (c) and sections 3010, 3012(b) (last two sentences), 5011 (first two sentences), 5031(a) (the last two sentences), 8010, and 8012(b) (last two sentences) of this title, the Secretary of each military department, his civilian assistants, and members of the armed forces under the jurisdiction of his department shall cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(e) The Assistant Secretaries take precedence in the Department of Defense after the Secretary, the Deputy Secretary of Defense, the Secretaries of the military departments and the Director of Defense Research and Engineering.

(f) Within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs there shall be a Deputy Assistant Secretary of Defense for Reserve Affairs who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. Subject to the supervision and control of the Assistant Secretary of Defense for Manpower and Reserve Affairs, the Deputy Assistant Secretary shall be responsible for all matters relating to reserve affairs within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs. (Added Pub. L. 87–651, title II, § 202, Sept. 7,

1962, 76 Stat. 518, and amended Pub. L. 90–168, § 2 (1), (2), Dec. 1, 1967, 81 Stat. 521; Pub. L. 91–121, title IV, § 404(a), Nov. 19, 1969, 83 Stat. 207.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–121, § 404(a)(1), increased the number of Assistant Secretaries of Defense from seven to eight.

Subsec. (b). Pub. L. 91–121, § 404(a)(2), provided for an Assistant Secretary of Defense for Health Affairs having as his principal duty the overall supervision of health affairs of the Department of Defense.

1967—Subsec. (b). Pub. L. 90–168, § 2(1), added provisions for an Assistant Secretary of Defense for Manpower and Reserve Affairs with the principal duty of overall supervision of manpower and reserve component affairs of the Department of Defense.

Subsec. (f). Pub. L. 90–148, § 2(2), added subsec. (f).

EFFECTIVE DATE OF 1967 AMENDMENT

Section 7 of Pub. L. 90–168 provided that: "The provisions of this Act [amending this section and sections 175, 262, 264, 268, 269, 270, 511, 3013, 5034, 8013, and 8850 of this title, section 502 of Title 32, and section 404 of Title 37, enacting sections 3019, 3033, 8019, and 8033 of this title, enacting provisions set out as notes under this section and section 8202 of this title, and amending note set out under section 133 of this title] shall become effective on the first day of the first calendar month following the date of enactment [Dec. 1, 1967]."

SHORT TITLE

Section 1 of Pub. L. 90–168 provided: "That this Act [amending this section and sections 175, 262, 264, 268, 269, 270, 511, 3013, 5034, 8013, and 8850 of this title, section 502 of Title 32, and section 404 of Title 37, enacting sections 3019, 3033, 8019, and 8033 of this title, enacting provisions set out as notes under this section and section 8202 of this title, and amending note set out under section 133 of this title] may be cited as the 'Reserve Forces Bill of Rights and Vitalization Act'."

§ 137. General Counsel: appointment; powers and duties.

(a) There is a General Counsel of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel is the chief legal officer of the Department of Defense. He shall perform such functions as the Secretary of Defense may prescribe. (Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 519, and amended Pub. L. 88–426, title III, § 305(9), Aug. 14, 1964, 78 Stat. 423.)

AMENDMENTS

1964—Subsec. (c). Pub. L. 88–426 repealed subsec. (c), which related to the compensation of the General Counsel. See section 5301 et seq. of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

CROSS REFERENCES

Compensation of General Counsel, see section 5312 of Title 5, Government Organization and Employees.

Chapter 5.—JOINT CHIEFS OF STAFF

Sec.
141. Composition; functions.
142. Chairman.
143. Joint Staff.

§ 141. Composition; functions.

(a) There are in the Department of Defense the Joint Chiefs of Staff consisting of—

(1) a Chairman;

(2) the Chief of Staff of the Army;

(3) the Chief of Naval Operations; and

(4) the Chief of Staff of the Air Force.

(b) The Joint Chiefs of Staff are the principal military advisers to the President, the National Security Council, and the Secretary of Defense.

(c) The Commandant of the Marine Corps shall indicate to the Chairman any matter scheduled for consideration by the Joint Chiefs that directly concerns the Marine Corps. Unless, upon request of the Chairman for a determination, the Secretary of Defense determines that such a matter does not concern the Marine Corps, the Commandant shall meet with the Joint Chiefs of Staff when that matter is under consideration. While the matter is under consideration and with respect to it, the Commandant has co-equal status with the members of the Joint Chiefs of Staff.

(d) Subject to the authority and direction of the President and the Secretary of Defense, the Joint Chiefs of Staff shall—

(1) prepare strategic plans and provide for the strategic direction of the armed forces;

(2) prepare joint logistic plans and assign logistic responsibilities to the armed forces in accordance with those plans;

(3) establish unified commands in strategic areas;

(4) review the major material and personnel requirements of the armed forces in accordance with strategic and logistic plans;

(5) formulate policies for the joint training of the armed forces;

(6) formulate policies for coordinating the military education of members of the armed forces;

(7) provide for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations; and

(8) perform such other duties as the President or the Secretary of Defense may prescribe.

(e) After first informing the Secretary of Defense, a member of the Joint Chiefs of Staff may make such recommendations to Congress relating to the Department of Defense as he may consider appropriate. (Aug. 10, 1956, ch. 1041, 70A Stat. 6; Aug. 6, 1958, Pub. L. 85–599, § 7, 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–651, title II, § 204, 76 Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
141 (a)	5: 171f (a) (1st par., less 20th through 26th words of 1st sentence, and less last sentence).	July 26, 1947, ch. 343, § 211 (a) (less 20th through 26th words of 1st sentence of 1st par.), (b); restated Aug. 10, 1949, ch. 412, § 7 (b) (1st par., less 20th through 26th words of 1st sentence; and 2d par.), 63 Stat. 582; June 28, 1952, ch. 479, § 2, 66 Stat. 282.
141 (b)	5: 171f (a) (last sentence of 1st par.).	
141 (c)	5: 171f (a) (less 1st par.).	
141 (d)	5: 171f (b).	

In subsection (a), the word "are" is substituted for the words "is established", to make explicit the continuing authority of the organization established by the source statute.

In subsection (c), the words "While the matter is under consideration" are substituted for the words "on such occasion".

In subsection (d), the words "armed forces" are substituted for the words "military forces" and "military services".

AMENDMENTS

1962—Subsec. (e). Pub. L. 87-651 added subsec. (e).

1958—Subsec. (a) (1). Pub. L. 85-599 deleted ", who has no vote" following "Chairman".

CROSS REFERENCES

Chief of Naval Operations, generally, see sections 5081—5084 of this title.

Chief of Staff of the Army or Air Force, appointment and duties, see sections 3034, 8034 of this title.

Commandant of the Marine Corps, appointment, term and emoluments, see section 5201 of this title.

Detail of officers to assist Secretary of Defense, see section 718 of this title.

National Security Council, establishment and functions, see section 402 of Title 50, War and National Defense.

Selection of Director of the Joint Staff, see section 143 (b) of this title.

United Nations Organization—

Personal money allowance of officers serving as members of Military Staff Committee, see section 414 (a) (3) of Title 37, Pay and Allowances of the Uniformed Services.

Representation, see section 287 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3034, 8034 of this title.

§ 142. Chairman.

(a) The Chairman of the Joint Chiefs of Staff shall be appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. He serves at the pleasure of the President for a term of two years, and may be reappointed in the same manner for one additional term. However, in time of war declared by Congress there is no limit on the number of reappointments.

(b) In addition to his other duties as a member of the Joint Chiefs of Staff, the Chairman shall, subject to the authority and direction of the President and the Secretary of Defense—

(1) preside over the Joint Chiefs of Staff;

(2) provide agenda for the meetings of the Joint Chiefs of Staff and assist them in carrying on their business as promptly as practicable; and

(3) inform the Secretary of Defense, and, when the President or the Secretary of Defense considers it appropriate, the President, of those issues upon which the Joint Chiefs of Staff have not agreed.

(c) While holding office, the Chairman outranks all other officers of the armed forces. However, he may not exercise military command over the Joint Chiefs of Staff or any of the armed forces. (Aug. 10, 1956, ch. 1041, 70A Stat. 7; Sept. 7, 1962, Pub. L. 87-649, § 14c(1), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
142 (a)	5: 171f (c) (less last sentence).	July 26, 1947, ch. 343, § 211 (a) (20th through 26th words of 1st sentence of 1st par.), (c), (d) (less applicability to admiral in 1st sentence), (e); restated Aug. 10, 1949, ch. 412, § 7 (b) (20th through 26th words of 1st sentence of 1st par., and 3d, 4th, and 5th pars.), 63 Stat. 581.
142 (b)	5: 171f (e); 5: 171f (a) (20th through 26th words of 1st sentence of 1st par.).	
142 (c)	5: 171f (d) (less applicability to admiral in 1st sentence).	
142 (d)	5: 171f (c) (last sentence).	

In subsection (a), the words "armed forces" are substituted for the words "armed services". The words "(hereinafter referred to as the 'Chairman')", "hereafter", and "except" are omitted as surplusage. The words "in the same manner" are substituted for the words "by and with the advice and consent of the Senate" (following the word "reappointed").

In subsection (b), the words "his other duties as a member of the Joint Chiefs of Staff" are substituted for the words "participating as a member of the Joint Chiefs of Staff in the performance of the duties assigned in subsection (b) of this section".

In subsection (c), the words "armed forces" are substituted for the words "armed services" and "military services". The word "outranks" is substituted for the words "shall take precedence over", 5: 171f (d) (1st sentence, less applicability to admiral) is omitted, since the limitation on numbers in grade under 10: 506b (b) (3d proviso) is executed (see opinion of the Judge Advocate General of the Army (JAGA 1951/6180, 17 Oct. 1951)).

In subsection (d), the words "basic and personal money" and "and such special pays and hazardous duty pays to which he may be entitled under other provisions of law" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (d). Pub. L. 87-649 repealed subsec. (d), which provided that the Chairman is entitled to the pay and allowances provided for the Chief of Staff of the Army and is now covered by section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Armed Forces Policy Council, member of, see section 171 (a) (7) of this title.

Management of the Joint Staff and its director, see section 143 (c) of this title.

Pay and allowances—

Chairman, see section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Grade of general, see section 3034 of this title; sections 203, 402 and 403 of Title 37, Pay and Allowances of the Uniformed Services.

Personal money allowance of the Chief of Staff of the Army see section 414 (a) (5) of Title 37, Pay and Allowances of the Uniformed Services.

§ 143. Joint Staff.

(a) There is under the Joint Chiefs of Staff a Joint Staff consisting of not more than 400 officers selected by the Joint Chiefs of Staff with the approval of the Chairman. The Joint Staff shall be selected in approximately equal numbers from—

(1) the Army;

(2) the Navy and the Marine Corps; and

(3) the Air Force.

The tenure of the members of the Joint Staff is subject to the approval of the Chairman of the Joint Chiefs of Staff, and except in time of war, no such tenure of duty may be more than three years. Except in time of war, officers completing a tour of duty with the Joint Staff may not be reassigned to the Joint Staff for a period of not less than three years following their previous tour of duty on the Joint Staff except that selected officers may be recalled to Joint Staff duty in less than three years with the approval of the Secretary of Defense in each case. The number of such officers recalled to Joint Staff duty in less than three years shall not exceed 30 serving on the Joint Staff at any one time.

(b) The Chairman of the Joint Chiefs of Staff in consultation with the Joint Chiefs of Staff, and with

the approval of the Secretary of Defense, shall select the Director of the Joint Staff. Except in time of war, the tour of duty of the Director may not exceed three years. Upon the completion of a tour of duty as Director of the Joint Staff, the Director, except in time of war, may not be reassigned to the Joint Staff. The Director must be an officer junior in grade to each member of the Joint Chiefs of Staff.

(c) The Joint Staff shall perform such duties as the Joint Chiefs of Staff or the Chairman prescribes. The Chairman of the Joint Chiefs of Staff manages the Joint Staff and its Director, on behalf of the Joint Chiefs of Staff.

(d) The Joint Staff shall not operate or be organized as an overall Armed Forces General Staff and shall have no executive authority. The Joint Staff may be organized and may operate along conventional staff lines to support the Joint Chiefs of Staff in discharging their assigned responsibilities. (Aug. 10, 1956, ch. 1041, 70A Stat. 7; Aug. 6, 1958, Pub. L. 85-599, § 5 (a), 72 Stat. 517.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
143 (a)	5: 171g (1st sentence).	July 26, 1947, ch. 343, § 212; restated Aug. 10, 1949, ch. 412, § 7 (c), 63 Stat. 583; 1953 Reorg. Plan No. 6, § 1 (b)—(d), eff. June 30, 1953, 67 Stat. 638.
143 (b)	5: 171g (9th through 15th words of 2d sentence and last sentence).	
143 (c)	5: 171g (2d sentence, less 9th through 15th words).	

In subsection (a), the enumeration of the services is substituted for the words "each of the three armed services".

In subsections (a) and (b), the words "selected" and "select" are substituted for the words "appointed" and "appoint", respectively, since the filling of the position involved is not an appointment in the constitutional sense.

In subsection (c), the words "are hereby transferred", in section 1 (d) of 1953 Reorganization Plan No. 6, are omitted as executed.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-599 increased the number of officers on the Joint Staff from 210 to 400, limited the tenure of duty, except in time of war, to three years, and inserted provisions covering reassignment of officers.

Subsec. (b). Pub. L. 85-599 permitted the Chairman to select the Director, after consulting with the Joint Chiefs of Staff and upon approval of the Secretary, and, except in time of war, limited the tenure of the Director to three years and prohibited reassignment to the Joint Staff.

Subsec. (c). Pub. L. 85-599 substituted "The Joint Staff shall perform such duties as the Joint Chiefs of Staff or the Chairman prescribes" for "The Joint Staff, operating under the the Director, shall perform such duties as the Joint Chiefs of Staff direct", and inserted "on behalf of the Joint Chiefs of Staff" following "Director,".

Subsec. (d). Pub. L. 85-599 added subsec. (d).

Chapter 7.—BOARDS, COUNCILS, AND COMMITTEES

Sec.
171. Armed Forces Policy Council.
172. Ammunition storage board.
173. Advisory personnel.
174. Advisory personnel: research and development.
175. Reserve Forces Policy Board.

§ 171. Armed Forces Policy Council.

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

(1) the Secretary of Defense, as Chairman, with the power of decision;

(2) the Deputy Secretary of Defense;

(3) the Secretary of the Army;

(4) the Secretary of the Navy;

(5) the Secretary of the Air Force;

(6) the Director of Defense Research and Engineering;

(7) the Chairman of the Joint Chiefs of Staff;

(8) the Chief of Staff of the Army;

(9) the Chief of Naval Operations; and

(10) the Chief of Staff of the Air Force.

(b) The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 8; Aug. 6, 1958, Pub. L. 85-599, § 9 (c), 72 Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
171 (a)	5: 171e (less last sentence).	July 26, 1947, ch. 343, § 210; restated Aug. 10, 1949, ch. 412, § 7 (a), 63 Stat. 581.
171 (b)	5: 171e (last sentence).	

AMENDMENTS

1958—Subsec. (a) (6). Pub. L. 85-599 added subsec. (a) (6) and redesignated former subsec. (a) (6) as (a) (7).

Subsecs. (a) (7)—(a) (10). Pub. L. 85-599 redesignated former subsecs. (a) (6)—(a) (9) as (a) (7)—(a) (10), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3034, 8034 of this title.

§ 172. Ammunition storage board.

(a) The Secretaries of the military departments, acting through a joint board of officers selected by them, shall keep informed on stored supplies of ammunition and components thereof for use of the Army, Navy, Air Force, and Marine Corps, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations.

(b) The board shall confer with and advise the Secretaries of the military departments in carrying out the recommendations in House Document No. 199 of the Seventieth Congress. (Aug. 10, 1956, ch. 1041, 70A Stat. 8.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
172 (a)	50: 83 (less last sentence).	May 29, 1928, ch. 853 (last par. under "Ordnance Establishment"), 45 Stat. 928.
172 (b)	50: 83 (last sentence).	

In subsection (a), the words "informed on stored" are substituted for the words "advised of storage". The words "particular regard" are substituted for the words "special reference". The words "inside or outside of" are substituted for the words "within or without". The word "selected" is substituted for the word "appointed", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the words "in carrying out" are substituted for the words "in the execution of".

CROSS REFERENCES

Explosives; manufacture, distribution, storage, use, and possession regulated, see section 121 et seq. of Title 50, War and National Defense.

§ 173. Advisory personnel.

(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.

(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary determines. (Aug. 10, 1956, ch. 1041, 70A Stat. 8; Nov. 2, 1966, Pub. L. 89–718, § 2, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
173 (a)	5: 171j (a) (1st sentence, as applicable to Secretary of Defense).	July 26, 1947, ch. 343, § 303 (as applicable to Secretary of Defense); Aug. 10, 1949, ch. 412, § 10 (c) (as applicable to Secretary of Defense); Sept. 3, 1954, ch. 1263, § 8 (as applicable to Secretary of Defense), 68 Stat. 1228.
173 (b)	5: 171j (a) (less 1st sentence, as applicable to Secretary of Defense).	
173 (c)	5: 171j (b) (as applicable to Secretary of Defense).	

In subsection (a), the words "consistent with other provisions of sections 171—171n, 172—172j, 181–1, 181–2, 411a, 411b, and 626—626d of this title and sections 401—405 of Title 50" are omitted as surplusage. The word "establish" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word "Secretary" is substituted for the words "appointing authority".

In subsection (c), the words "as a part-time adviser" are substituted for the words "in any other part-time capacity for a department or agency" to conform to subsections (a) and (b).

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–718 repealed subsec. (c) which provided that sections 281, 283, and 284 of title 18 did not apply to a person because of his service on a committee or as a part-time advisor under subsec. (a) of this section unless the unlawful act related to a matter directly involving a department or agency which he was advising or to a matter in which that department or agency was directly interested.

§ 174. Advisory personnel: research and development.

(a) The Secretary of each military department may establish such advisory committees and panels as are necessary for the research and development activities of his department and may employ such part-time advisers as he considers necessary to carry out those activities.

(b) A person who serves as a member of such a committee or panel may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary concerned determines.

(c) The Secretary concerned may delegate any authority under this section to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
174 (a)	5: 235b (1st sentence); 5: 475g (1st sentence); 5: 628b (1st sentence).	July 16, 1952, ch. 882, §§ 1, 7 (as applicable to § 1), 66 Stat. 725, 726.
174 (b)	5: 235b (less 1st sentence); 5: 475g (less 1st sentence); 5: 628b (less 1st sentence).	
174 (c)	5:235h (as applicable to 5: 235b); 5:475m (as applicable to 5: 475g); 5: 628h (as applicable to 5: 628b).	

In subsection (a), the words "the conduct of" are omitted as surplusage.

In subsection (b), the words "or panel" are inserted for clarity. The words "Secretary concerned" are substituted for the words "appointing authority".

§ 175. Reserve Forces Policy Board.

(a) There is in the Office of the Secretary of Defense a Reserve Forces Policy Board consisting of—

(1) a civilian chairman appointed by the Secretary of Defense;

(2) the Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs;

(3) an officer of the Regular Army designated by the Secretary of the Army;

(4) an officer of the Regular Navy or Regular Marine Corps designated by the Secretary of the Navy;

(5) an officer of the Regular Air Force designated by the Secretary of the Air Force;

(6) four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve;

(7) four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Naval Reserve, and two of whom must be members of the Marine Corps Reserve;

(8) four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve; and

(9) a reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board.

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation may designate an officer of the Regular

Coast Guard or the Coast Guard Reserve to serve as a voting member of the Board.

(c) The Board, acting through the Assistant Secretary of Defense for Manpower and Reserve Affairs is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

(d) This section does not affect the committees on reserve policies prescribed by section 3033, 5251, 5252, or 8033 of this title.

(e) A member of a committee or board prescribed under a section listed in subsection (d) may, if otherwise eligible, be a member of the Reserve Forces Policy Board.

(f) The Board shall act on those matters referred to it by the Chairman and, in addition, on any matter raised by a member of the Board (Aug. 10, 1956, ch. 1041, 70A Stat. 9; Dec. 1, 1967, Pub. L. 90-168, § 2 (3), (4), 81 Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
175 (a)	50: 1008 (a).	July 9, 1952, ch. 608, § 257 (less (e)), 66 Stat. 497.
175 (b)	50: 1008 (b).	
175 (c)	50: 1008 (c).	
175 (d)	50: 1008 (d) (less proviso).	
175 (e)	50: 1008 (d) (proviso).	

In subsection (a), the word "are" is substituted for the words "is established", to make clear the continuing authority of the organization established by the source statute. Clauses (3), (4), and (5) are substituted for 50: 1008 (a) (iii) for clarity. In clauses (6), (7), (8), and (9), the word "designated" is substituted for the word "appointed", in 50: 1008 (iv), (v), (vi), and (vii), to make it clear that the positions described are not constitutional offices.

In subsection (b), the words "Regular Coast Guard or Coast Guard Reserve" are substituted for the words "Regular or Reserve * * * Coast Guard".

AMENDMENTS

1967—Subsec. (a)(2). Pub. L. 90-168, § 2(3), substituted "the Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs" for "the Secretary, the Under Secretary, or an Assistant Secretary designated under section 264(b) of this title, of each of the military departments."

Subsec. (b). Pub. L. 90-168, § 2(4), substituted "Secretary of Transportation" for "Secretary of the Treasury" as the Secretary empowered to designate officers to serve on the Board and substituted "serve as a voting member" for "serve without vote as a member" in the description of the officer's service on the Board.

Subsec. (c). Pub. L. 90-168, § 2(4), substituted "Assistant Secretary of Defense for Manpower and Reserve Affairs" for "Assistant Secretary of Defense designated under section 264(a) of this title'."

Subsec. (d). Pub. L. 90-168, § 2(4), added references to sections 5251 and 5252 of this title.

Subsec. (e). Pub. L. 90-168, § 2(4), substituted "member of a committee or board prescribed under a section listed in subsection (d)" for "member of a committee under section 3033 or 8033 of this title".

Subsec. (f). Pub. L. 90-168, § 2(4), added subsec. (f).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90-168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90-168, set out as a note under section 136 of this title.

CROSS REFERENCES

Air Force Reserve policy committee, see section 8033 of this title.

Air National Guard of the United States policy committee, see section 8033 of this title.

Army National Guard of the United States policy committee, see section 3033 of this title.

Army Reserve policy committee, see section 3033 of this title.

Marine Corps Reserve Policy Board, see section 5252 of this title.

Naval Reserve Policy Board, see section 5251 of this title.

Chapter 9.—REGULAR COMPONENTS

[No present sections]

Chapter 11.—RESERVE COMPONENTS

Sec.
261. Reserve components named.
262. Purpose.
263. Basic policy for order into Federal service.
264. Reserve affairs: designation of general or flag officer of each military department; personnel and logistic support for reserves; reports to Congress.
265. Policies and regulations: participation of reserve officers in preparation and administration.
266. Boards for appointment, promotion, and certain other purposes: composition.
267. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members.
268. Ready Reserve.
269. Ready Reserve: placement in; transfer from.
270. Ready Reserve: training requirements.
271. Ready Reserve: continuous screening.
272. Ready Reserve: transfer back from Standby Reserve.
273. Standby Reserve: composition; inactive status list.
274. Retired Reserve.
275. Personnel records.
276. Mobilization forces: maintenance.
277. Regular and reserve components: discrimination prohibited.
278. Dissemination of information.
279. Training reports.
280. Regulations.
281. Adjutants general and assistant adjutants general: reference to other officers of National Guard.

AMENDMENTS

1967—Pub. L. 90-168, § 2(7), Dec. 1, 1967, 81 Stat. 522, substituted "designation of general or flag officers of each military department; personnel and logistic support for reserves; reports to Congress" for "responsibility for" in item 264.

1960—Pub. L. 86-559, § 1(2)(D), June 30, 1960, 74 Stat. 264, added item 281.

1958—Pub. L. 85-861, § 1 (6), Sept. 2, 1958, 72 Stat. 1439, added items 270, 271, 272 and 279.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 280 of this title.

§ 261. Reserve components named.

(a) The reserve components of the armed forces are:

(1) The Army National Guard of the United States.

(2) The Army Reserve.

(3) The Naval Reserve.

(4) The Marine Corps Reserve.

(5) The Air National Guard of the United States.

(6) The Air Force Reserve.

(7) The Coast Guard Reserve.

(b) Except as otherwise provided in this title, no person may be a member of more than one reserve

component at the same time. (Aug. 10, 1956, ch. 1041, 70A Stat. 10.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
261 (a)-----	50: 922.	July 9, 1952, ch. 608, §§ 202, 229, 66 Stat. 483, 488.
261 (b)----	50: 953.	

In subsection (a), the words "of the armed forces" are inserted for clarity.

AVERAGE STRENGTH OF SELECTED RESERVE OF EACH RESERVE COMPONENT FOR FISCAL YEAR ENDING JUNE 30, 1971

Pub. L. 91–441. title III, §§ 301, 302, Oct. 7, 1970, 84 Stat. 908, provided that:

"Sec. 301. For the fiscal year beginning July 1, 1970, and ending June 30, 1971, the Selected Reserve of each Reserve component of the Armed Forces will be programed to attain an average strength of not less than the following:

"(1) The Army National Guard of the United States, 400,000.

"(2) The Army Reserve, 260,000.

"(3) The Naval Reserve, 129,000.

"(4) The Marine Corps Reserve, 47,715.

"(5) The Air National Guard of the United States, 87,878.

"(6) The Air Force Reserve, 47,921.

"(7) The Coast Guard Reserve, 15,000.

"Sec. 302. The average strength prescribed by section 301 of this title for the Selected Reserve of any Reserve component shall be proportionately reduced by (1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at any time during the fiscal year, and (2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at any time during fiscal year. Whenever any such units or such individual members are released from active duty during any fiscal year the average strength for such fiscal year for the Selected Reserve of such Reserve component shall be proportionately increased by the total authorized strength of such units and by the total number of such individual members."

Similar provisions for prior fiscal years ending June 30 of year indicated below were contained in the following prior Appropriation Acts:

1970—Pub. L. 91–121, title III, §§ 301, 302, Nov. 19, 1969, 83 Stat. 206.

1969—Pub. L. 90–500, Title I, §§ 301, 302, Sept. 20, 1968, 82 Stat. 850.

SELECTED RESERVE OF RESERVE COMPONENTS: ANNUAL AUTHORIZATION OF PERSONNEL STRENGTH

Authorization of personnel strength of Selected Reserve of each Reserve component of the Armed Forces commencing with fiscal year beginning July 1, 1968, prerequisite to appropriation of funds for pay and allowances of members of any Reserve component, see section 412(c) of Pub. L. 86–149, Title IV, Aug. 10, 1959, 73 Stat. 322, as amended, set out as a note under section 133 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 263 of this title.

§ 262. Purpose.

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the needs of the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components. (Aug. 10, 1956, ch. 1041, 70A Stat. 10; Dec. 1, 1967, Pub. L. 90–168, § 2(5), 81 Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
262--------	50: 921 (a).	July 9, 1952, ch. 608, § 201 (a), 66 Stat. 482.

The words "Congress declares that", "Armed Forces of the United States" before the words "are maintained", and "trained" are omitted as surplusage. The words "the purpose of * * * is" are substituted for the words "are maintained for the purpose". The words "whenever * * * more units and persons * * * are required than are in" are substituted for the words "in excess of those". The words "fill the needs" are substituted for the words "meet the requirements".

AMENDMENTS

1967—Pub. L. 90–168 substituted "each reserve component" for "the reserve components".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

§ 263. Basic policy for order into Federal service.

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed. (Aug. 10, 1956, ch. 1041, 70A Stat. 11.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
263--------	50: 921 (b) (less 1st sentence).	July 9, 1952, ch. 608, § 201 (b) (less 1st sentence), 66 Stat. 482.

The words "It is the intent of Congress that" are omitted as surplusage. The words "more * * * than are in" are substituted for the words "in excess of those". The words "active duty" are substituted for the words "active military service of the United States". The words "as long as so needed" are substituted for the words "so long as such necessity exists".

PRESIDENTIAL AUTHORIZATION TO ORDER READY RESERVE TO ACTIVE DUTY

Pub. L. 89–687, title I, § 101, Oct. 15, 1966, 80 Stat. 981, as amended by Pub. L. 90–500, title III, § 303, Sept. 20, 1968, 82 Stat. 850, provided that:

"(a) Notwithstanding any other provision of law, until June 30, 1968, the President may order to active duty any member of the Ready Reserve of an armed force who—

"(1) is not assigned to, or participating satisfactorily in, a unit in the Selected Reserve, and

"(2) has not fulfilled his statutory reserve obligation, and

"(3) has not served on active duty or active duty for training for a total of twenty-four months.

"(b) Notwithstanding the provisions of any other law, until June 30, 1968, the President may order to active duty any member of the Ready Reserve of an armed force

who had become a member of a reserve component prior to July 1, 1966; and who

"(1) has not served on active duty or active duty for training for a period of one hundred and twenty days or more, and

"(2) has not fulfilled his statutory reserve military obligation.

"(c) A member ordered to active duty under this section may be required to serve on active duty until his total service on active duty or active duty for training equals twenty-four months. If the enlistment or period of military service of a member of the Ready Reserve ordered to active duty under subsection (a) or (b) of this section would expire before he has served the required period of active duty prescribed herein, his enlistment or period of military service may be extended until that service on active duty has been completed.

"(d) In order to achieve fair treatment as between members in the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

"(1) family responsibilities; and

"(2) employment necessary to maintain the national health, safety, or interest.

"(e) Notwithstanding any other provision of law, until June 30, 1969, the President may, when he deems it necessary, order to active duty any unit of the Ready Reserve of an armed force for a period of not to exceed twenty-four months."

Pub. L. 87–736, Oct. 3, 1962, 76 Stat. 710, authorized the President, until February 28, 1963, to order any unit, and any member of the Ready Reserve of an armed force to active duty for not more than twelve consecutive months.

Pub. L. 87–117, Aug. 1, 1961, 75 Stat. 242, authorized the President, until July 1, 1962, to order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve of an armed force to active duty for not more than twelve consecutive months.

EX. ORD. NO. 10957. AUTHORIZATION TO ORDER READY RESERVE TO ACTIVE DUTY; EXTENSION OF MILITARY SERVICE

Ex. Ord. No. 10957, Aug. 10, 1961, 26 F.R. 7541, authorized the Secretary of Defense, and, when designated by him for this purpose, any of the Secretaries of the military departments of the Department of Defense, to exercise the authority vested in the President until July 1, 1962, by section 1 of the Act of August 1, 1961 (Public Law 87–117) to order, without the consent of the persons concerned, any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve of an armed force to active duty for not more than 12 consecutive months.

EX. ORD. NO. 11058. AUTHORIZATION TO ORDER READY RESERVE TO ACTIVE DUTY; EXTENSION OF MILITARY SERVICE

Ex. Ord. No. 11058, Oct. 23, 1962, 27 F.R. 10403, provided:

By virtue of the authority vested in me by the Joint Resolution of October 3, 1962 (Public Law 87–736) and by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense, and, when designated by him for this purpose, any of the Secretaries of the military departments of the Department of Defense, and the Secretary of the Treasury with respect to the Coast Guard are hereby authorized and empowered to exercise the authority vested in the President until February 28, 1963, by section 1 of the Act of October 3, 1962 (Public Law 87-736) to order, without the consent of the persons concerned, any unit, or any member, of the Ready Reserve of an armed force to active duty for not more than twelve consecutive months, provided there are not more than 150,000 members of the Ready Reserve thereby on active duty (other than for training) without their consent at any one time.

SEC. 2. In pursuance of the provisions of section 2 of the said Joint Resolution of October 3, 1962, the Secretary of Defense and the Secretary of the Treasury with respect to the Coast Guard are hereby authorized to extend enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service or other military status in any component of an armed force or in the National Guard that expire before February 28, 1963, for not more than twelve months. However, if the enlistment of a member of the Ready Reserve who is ordered to active duty under section 1 of this Executive Order would expire after February 28, 1963, but before he has served the entire period for which he was so ordered to active duty, his enlistment may be extended until the last day of that period.

SEC. 3. In pursuance of the provisions of section 3 of the said Joint Resolution of October 3, 1962, no member of the armed forces who was involuntarily ordered to active duty or whose period of active duty was extended under the Act of August 1, 1961, Public Law 87–117 (75 Stat. 242), may be involuntarily ordered to active duty under this Executive Order.

JOHN F. KENNEDY

ORDERING READY RESERVE TO ACTIVE DUTY DURING NATIONAL EMERGENCIES

For additional provisions authorizing ordering of Ready Reserve to active duty during national emergencies, see section 673a of this title and notes thereunder.

CROSS REFERENCES

Similar provision, see section 102 of Title 32, National Guard.

§ 264. Reserve affairs: designation of general or flag officer of each military department; personnel and logistic support for reserves; reports to Congress.

(a) The Secretary concerned may designate a general or flag officer of the armed force under his jurisdiction to be directly responsible for reserve affairs to the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps, or the Commandant of the Coast Guard, as the case may be. This subsection does not affect the functions of the Chief of the National Guard Bureau, the Chief, Office of Army Reserve, or the Chief, Office of Air Force Reserve.

(b) The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the Reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary of Transporation when the Coast Guard is not operated as a service of the Navy.

(c) The Secretary concerned shall submit a written report to the Committees on Armed Services of the Senate and the House of Representatives each year regarding the extent to which units and Reserves in the Ready Reserve of the Reserve components under his jurisdiction have satisfied the training and mobilization readiness requirements pursuant to subsection (b) of this section for the year with respect to which such report was submitted. Reports under this subsection shall be made on a fiscal year basis and the report for any fiscal year shall be submitted within 90 days after the end of the fiscal year for which it is submitted. (Aug. 10, 1956, ch. 1041, 70A Stat. 11; Dec. 8, 1967, Pub. L.

90–168, § 2(6), 81 Stat. 521; Nov. 19, 1969, Pub. L. 91–121, title III, § 303, 83 Stat. 206.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
264 (a)	50: 1007 (a) (1st sentence).	July 9, 1952, ch. 608, § 256, 66 Stat. 496.
264 (b)	50: 1007 (a) (less 1st sentence).	
264 (c)	50: 1007 (less (a)).	

In subsection (b), the words "the jurisdiction of" are omitted as surplusage.

In subsection (c), the last sentence is substituted for 50:1007 (b) (last sentence).

AMENDMENTS

1969—Subsec. (c). Pub. L. 91–121 increased limitation for submission of reports from 60 to 90 days.

1967—Subsec. (a). Pub. L. 90–168 redesignated former subsec. (c) as subsec. (a) and, in subsec. (a) as so redesignated, substituted "may designate" for "shall designate" and added Chief, Office of Army Reserve, and Chief, Office of Air Force Reserve, to the enumeration of offices the functions of which were not affected by this subsection. Former subsec. (a), directing the Secretary of Defense to designate an Assistant Secretary of Defense to have, in addition to his other duties, principal responsibility for reserve affairs of the Department of Defense, was eliminated.

Subsec. (b). Pub. L. 90–168 added subsec. (b). Former subsec. (b), placing upon the Secretary or, as he might prescribe, the Under Secretary or an Assistant Secretary of his department, the principal responsibility for supervising the activities of the reserve components under that department, was eliminated.

Subsec. (c). Pub. L. 90–168 added subsec. (c). Former subsec. (c) redesignated as subsec. (a) and amended.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of Title 10, Armed Forces.

CROSS REFERENCES

Reserve Forces Policy Board, see section 175 of this title.

§ 265. Policies and regulations: participation of reserve officers in preparation and administration.

Within such numbers and in such grades and assignments as the Secretary concerned may prescribe, each armed force shall have officers of its reserve components on active duty (other than for training) at the seat of government, and at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components. While so serving, such an officer is an additional number of any staff with which he is serving. (Aug. 10, 1956, ch. 1041, 70A Stat. 11.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
265	50: 1003.	July 9, 1952, ch. 608, § 252, 66 Stat. 496.

50: 1003 (39th through 69th words) is omitted as covered by the last sentence of the revised section. The words "members", "charged with", "duty", "assist and", and "considered" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3019, 8019 of this title.

§ 266. Boards for appointment, promotion, and certain other purposes: composition.

(a) Each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board. (Aug. 10, 1956, ch. 1041, 70A Stat. 11.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
266 (a)	50: 1005 (a).	July 9, 1952, ch. 608, § 254, 66 Stat. 496.
266 (b)	50: 1005 (b).	

In subsection (a), the words "under * * * prescribed" are substituted for the words "in accordance * * * established".

In subsection (b), the words "in rank" and "by that board" are inserted for clarity.

§ 267. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members.

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status. (Aug. 10, 1956, ch. 1041, 70A Stat. 12.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
267 (a)	50: 930; 50: 924.	July 9, 1952, ch. 608, §§ 204, 210, 212, 66 Stat. 483, 485.
267 (b)	50: 932.	

In subsection (a), 50: 930 is omitted as covered by the last sentence of the revised subsection.

In subsection (b), 50: 932 (a) is omitted as covered by the last sentence. The second sentence of the revised subsection is substituted for 50: 932 (b) (less 1st 12 words) and (c). The words "All other" are substituted for the word "except", in 50: 932 (b) (1st 12 words).

§ 268. Ready Reserve.

(a) The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in sections 672 and 673 of this title. The authorized strength of the Ready Reserve is 2,900,000.

(b) Within the Ready Reserve of each of the Reserve components defined in section 261 of this title, there is a Selected Reserve, consisting of units, and, as designated by the Secretary concerned, of Reserves, trained as prescribed in section 270(a)(1) of

this title or section 502(a) of title 32, United States Code, as appropriate.

(c) The organization and unit structure of the Selected Reserve shall be approved—

(1) in the case of the Coast Guard Reserve, by the Secretary of Transportation upon the recommendation of the Commandant of the Coast Guard, and

(2) in the case of all other Reserve components, by the Secretary of Defense based upon recommendations from the military departments as approved by the Joint Chiefs of Staff in accordance with contingency and war plans.

(Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85-861, § 1 (3), 72 Stat. 1437; Dec. 1, 1967, Pub. L. 90-168, § 2(8), 81 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
268	50: 925.	July 9, 1952, ch. 608, § 205, 66 Stat. 483.

The words "aggregate personnel" are omitted as surplusage. The word "is" is substituted for the words "shall not exceed a total of", since the words "authorized strength" mean a maximum figure. 50: 925 (a) (last 31 words) is omitted since the active duty requirements for members of the Ready Reserve are covered by sections 672 and 673 of this title.

AMENDMENTS

1967—Pub. L. 90-168 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1958—Pub. L. 85-861 substituted "2,900,000" for "1,500,000".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90-168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90-168, set out as a note under section 136 of this title.

§ 269. Ready Reserve: placement in; transfer from.

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is eligible to transfer to the Standby Reserve under subsection (e).

(b) The units and members of the Army National Guard of the United States and of the Air National Guard of the United States are in the Ready Reserve of the Army and the Ready Reserve of the Air Force, respectively.

(c) All Reserves assigned to units organized to serve as units and designated as units in the Ready Reserve are in the Ready Reserve.

(d) Under such regulations as the Secretary concerned may prescribe, any qualified Reserve may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve who is entitled to retired pay may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary concerned may not delegate his authority under the preceding sentence:

(e) Except in time of war or of national emergency declared by Congress, a Reserve who is not on active duty, or who is on active duty for training, shall, upon his request, be transferred to the Standby Reserve for the rest of his term of service, if—

(1) he served on active duty (other than for training) in the armed forces for an aggregate of at least five years; or

(2) he served on active duty (other than for training) in the armed forces for an aggregate of less than five years, but satisfactorily participated, as determined by the Secretary concerned, in an accredited training program in the Ready Reserve for a period which, when added to his period of active duty (other than for training), totals at least five years, or such shorter period as the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, may prescribe for satisfactory participation in an accredited training program designated by the Secretary concerned.

This subsection does not apply to a member of the Ready Reserve while he is serving under an agreement to remain in the Ready Reserve for a stated period.

(f) Subject to subsection (g), a member in the Ready Reserve may be transferred to the Standby Reserve or, if he is qualified and so requests, to the Retired Reserve, under such regulations as the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, may prescribe.

(g) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85-861, § 1 (4), 72 Stat. 1437; June 30, 1960, Pub. L. 86-599, § 1 (2) (A), 74 Stat. 264; Dec. 1, 1967, Pub. L. 90-168, § 2 (9), 81 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
269 (a)	50: 928 (a), (b).	July 9, 1952, ch. 608, § 208, 96 Stat. 484.
269 (b)	50: 928 (c).	
269 (c)	50: 928 (d).	
269 (d)	50: 928 (e).	
269 (e)	50: 928 (f), (h).	
269 (f)	50: 928 (i).	
269 (g)	50: 928 (g).	

In subsection (a), the word "under" is substituted for the words "pursuant to". The words "the remainder of" are omitted as surplusage. 50: 928 (b) is omitted as executed.

In subsection (c), the words "for the purpose of" are omitted as surplusage.

In subsection (d), the word "Under" is substituted for the words "Subject to". The words "at any time" are omitted as surplusage.

In subsection (e), the words "hereafter" and "the remainder of" are omitted as surplusage.

In subsection (e) (1), the words "an aggregate" are substituted for the words "a total".

In subsection (e) (2), the words "an aggregate" are substituted for the words "a total". The words "such shorter" are substituted for the words "such lesser".

In subsection (e) (3), the words "after December 6, 1941, and before September 3, 1945" are substituted for the words "between December 7, 1941, and September 2,

1945". The words "in addition thereto" are omitted as surplusage.

In subsection (e) (1)—(4), the words "at least" are substituted for the words "not less than".

In subsection (e) (3) and (4), the words "an aggregate of" are inserted for clarity and to conform to subsection (e) (1) and (2).

In subsection (f), the words "and so requests" are substituted for the words "if he makes application therefor". The word "under" is substituted for the words "in accordance with such". The words "the reserve components in" are omitted as surplusage.

In subsection (g), the words "A * * * may be * * * only with" are substituted for the words "No * * * shall be * * * without".

AMENDMENTS

1967—Subsec. (e). Pub. L. 90–168 redesignated former par. (4) as par. (2) and eliminated former par. (2) which referred to Reserves who served on active duty for at least one year and as a member of a unit of the Ready Reserve after being transferred under section 1014(a) of Title 50, for a period totalling four years, par. (3) referring to Reserves who satisfactorily completed an enlistment under section 1014(b) of Title 50, par. (5) referring to Reserves who served on active duty for an aggregate of at least 12 months after December 6, 1941, and before September 3, 1945, and for an aggregate of at least 12 months after June 25, 1950, and par. (6) referring to Reserves who were members of one or more reserve components for an aggregate of at least eight years after September 2, 1945.

1960—Subsec. (d). Pub. L. 86–559 prohibited a member of the Retired Reserve who is entitled to retired pay from being placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services are indispensable, and prohibited the Secretary from delegating his authority.

1958—Subsec. (e). Pub. L. 85–861 added clauses (2) and (3) and redesignated former clauses (2)—(4) as clauses (4)—(6).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 270 of this title.

§ 270. Ready Reserve: training requirements.

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is inducted, enlisted, or appointed in an armed force after August 9, 1955, and who becomes a member of the Ready Reserve under any provision of law except section 269 (b) of this title, shall be required, while in the Ready Reserve, to—

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year;

(2) serve on active duty for training not more than 30 days during each year.

(b) A member of the Ready Reserve covered by this section who fails in any year to satisfactorily perform the training duty prescribed in subsection (a), as determined by the Secretary concerned under regulations to be prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

(c) Any person who becomes a member of the Army National Guard of the United States or the Air National Guard of the United States after the enactment of this subsection and who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State or territory, Puerto Rico, or the Canal Zone, or the commanding general of the District of Columbia National Guard, whichever is concerned, be ordered, without his consent, to perform additional active duty for training for not more than forty-five days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be. (Added Pub. L. 85–861, § 1(5)(A), Sept. 2, 1958, 72 Stat. 1438, and amended Pub. L. 87–378, § 2, Oct. 4, 1961, 75 Stat. 807; Pub. L. 88–110, § 4, Sept. 3, 1963, 77 Stat. 136; Pub. L. 90–168, § 2(10), Dec. 1, 1967, 81 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
270 (a)	50: 928 (f) (1st sentence).	Aug 9, 1955, ch. 665, § 2 (b), 69 Stat. 598.
270 (b)	50: 928 (f) (less 1st sentence).	

In subsection (a), the words "or any component thereof" are omitted as covered by the words "armed force". The words "when it is not operating as a service in the Navy" are inserted for clarity, since the Secretary of the Treasury has no jurisdiction over the Coast Guard when it is operating as a service in the Navy. The word "under" is substituted for the words "by reason of". 50: 928 (f) (2) is omitted as covered by section 263 of the Armed Forces Reserve Act of 1952 (69 Stat. 602).

In subsection (b), the words "until he performs" are substituted for the words "for such time * * * as may be required for the performance by such member".

REFERENCES IN TEXT

After the enactment of this subsection, referred to in subsec. (c), means after the enactment of Pub. L. 87–378, which was approved Oct. 4, 1961.

AMENDMENTS

1967—Subsec. (a)(1). Pub. L. 90–168 substituted "active duty for training of not less than 14 days (exclusive of traveltime) during each year" for "active duty for training not more than 17 days during each year."

1963—Subsec. (b). Pub. L. 88–110 deleted ", other than one enlisted under section 456 (c) (2) (C) of Title 50, Appendix," preceding "who fails in any year."

1961—Subsec. (c). Pub. L. 87–378 added subsec. (c).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80

Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 268, 1201, 1202, 1203, 3687, 3721, 6148, 8687, 8721 of this title; title 50 App. section 456.

§ 271. Ready Reserve: continuous screening.

Under regulations to be prescribed by the President, each armed force shall provide a system of continuous screening of units and members of the Ready Reserve to insure that—

(1) there will be no significance attrition of those members or units during a mobilization;

(2) there is a proper balance of military skills;

(3) except for those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills;

(4) with due regard to national security and military requirements, recognition will be given to participation in combat; and

(5) members whose mobilization in an emergency would result in an extreme personal or community hardship are not retained in the Ready Reserve.

(Added Pub. L. 85-861, § 1 (5) (A), Sept. 2, 1958, 72 Stat. 1438.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
271	50: 928 (k).	Aug. 9, 1955, ch. 665, § 2 (d) (less last par.), 69 Stat. 599.

The words "Reserve Forces" are omitted as surplusage, since they are unidentified in the source statute and since the revised section covers all members of the Ready Reserve.

EX. ORD. NO. 11190. SCREENING OF READY RESERVE

Ex. Ord. No. 11190, Dec. 29, 1964, 29 F.R. 19183, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is delegated to the Secretary of Defense (and to the Secretary of Transportation with regard to the United States Coast Guard) the authority vested in the President by section 271 of title 10 of the United States Code [this section] to prescribe regulations for the screening of units and members of the Ready Reserve of the Armed Forces.

SEC. 2. Executive Order No. 10651 of January 6, 1956, is revoked.

LYNDON B. JOHNSON

§ 272. Ready Reserve: transfer back from Standby Reserve.

Under regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists. (Added Pub. L. 85-861, § 1 (5) (A), Sept. 2, 1958, 72 Stat. 1438.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
272	50: 928 (*l*).	Aug. 9, 1955, ch. 665, § 2 (d) (last par.), 69 Stat. 599.

The words "when it is not operating as a service in the Navy" are inserted for clarity, since the Secretary of the Treasury has no jurisdiction over the Coast Guard when it is operating as a service in the Navy.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

§ 273. Standby Reserve: composition; inactive status list.

(a) The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in sections 672 and 674 of this title.

(b) An inactive status list shall be maintained in the Standby Reserve. Whenever an authority designated by the Secretary concerned considers that it is in the best interest of the armed force concerned, a member in the Standby Reserve who is not required to remain a Reserve, and who cannot participate in prescribed training, may, if qualified, be transferred to the inactive status list under regulations to be prescribed by the Secretary concerned. These regulations shall fix the conditions under which such a member is entitled to be returned to an active status.

(c) While in an inactive status, a Reserve is not eligible for pay or promotion. (Aug. 10, 1956, ch. 1041, 70A Stat. 13.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
273 (a)	50: 926 (a) (1st 28 words).	July 9, 1952, ch. 608, §§ 206 (a) (1st 28 words), 211 (a), (b) (1st 16 words), 66 Stat. 483 485.
273 (b)	50: 931 (a).	
273 (c)	50: 931 (b) (1st 16 words).	

In subsection (a), the words "only as provided in sections 672 and 674 of this title" are inserted for clarity.

In subsection (b), the word "under" is substituted for the words "in accordance with". The last sentence is substituted for 50: 931 (a) (last sentence).

§ 274. Retired Reserve.

The Retired Reserve consists of Reserves—

(1) who are or have been retired under section 3911, 6323, or 8911 of this title or under section 232 of title 14; or

(2) who—

(A) have been transferred to it upon their request;

(B) retain their status as Reserves; and

(C) are otherwise qualified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 13; June 30, 1960, Pub. L. 86-559, § 1(2)(B), 74 Stat. 264.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
274	50: 927 (a) (1st 11 words); 50: 927 (b) (last 7 words of 1st sentence).	July 9, 1952, ch. 608, § 207 (a) (1st 11 words), (b) (last 7 words of 1st sentence), 66 Stat. 483.

Clause (2) is inserted for clarity, since a person may leave the Reserve and continue to be eligible for retired pay.

REFERENCES IN TEXT

Section 232 of title 14, referred to in the text, was repealed by Pub. L. 88-130, § 1(10)(A), Sept. 24, 1963, 77 Stat. 177. See section 291 of Title 14, Coast Guard.

AMENDMENTS

1960—Pub. L. 86-559 included Reserves who are or have been retired under section 3911, 6323, or 8911 of this title or under section 232 of Title 14.

§ 275. Personnel records.

(a) Each armed force shall maintain adequate and current personnel records of each member of its reserve components showing—

(1) his physical condition;

(2) his dependency status;

(3) his military qualifications;

(4) his civilian occupational skills;

(5) his availability for service; and

(6) such other information as the Secretary concerned may prescribe.

(b) Under regulations to be prescribed by the Secretary of Defense, each military department shall prepare and maintain a record of the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for training and inactive duty training with pay. (Aug. 10, 1956, ch. 1041, 70A Stat. 13; Sept. 2, 1958, Pub. L. 85-861, § 1 (5) (B), 72 Stat. 1439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
275	50: 1009.	July 9, 1952, ch. 608, § 258, 66 Stat. 498.

The words "for service", in clause (5), are inserted for clarity.

AMENDMENTS

1958—Pub. L. 85-861 designated existing provisions as subsec. (a), and added subsec. (b).

§ 276. Mobilization forces: maintenance.

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued organization and training of the reserve components not mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section "partial mobilization" means the mobilization resulting from action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty for a limited expansion of the active armed forces. (Aug. 10, 1956, ch. 1041, 70A Stat. 13.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
276 (a)	50: 966.	July 9, 1952, ch. 608, §§ 101 (j), 238, 66 Stat. 482, 492.
276 (b)	50: 901 (j).	

In subsection (a), the word "for" is substituted for the words "to insure". The words "make the fullest practicable use" are substituted for the words "to utilize to the fullest extent practicable".

In subsection (b), the words "mobilization resulting from" are inserted for clarity. The words "under any" are substituted for the words "pursuant to any provision of". The word "bring" is substituted for the words "effect the entry". The words "to serve" are substituted for the words "for the purpose of serving". The words "active duty" are substituted for the words "the active military service of the United States". The words "and members thereof" and "as are required" are omitted as surplusage.

§ 277. Regular and reserve components: discrimination prohibited.

Laws applying to both Regulars and Reserves shall be administered without discrimination—

(1) among Regulars;

(2) among Reserves; and

(3) between Regulars and Reserves.

(Aug. 10, 1956, ch. 1041, 70A Stat. 14.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
277	50: 1001.	July 9, 1952, ch. 608, § 250, 66 Stat. 495.

§ 278. Dissemination of information.

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components. (Aug. 10, 1956, ch. 1041, 70A Stat. 14.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
278	50: 1010.	July 9, 1952, ch. 608, § 259, 66 Stat. 498.

The word "current" is substituted for the word "up-to-date". The words "in general" are omitted as surplusage.

§ 279. Training reports.

The Secretary of Defense shall report to the President and to Congress, in January of each year, the status of training of each reserve component, and the progress made in strengthening the reserve components, during the preceding fiscal year. (Added Pub. L. 85-861, § 1 (5) (C), Sept. 2, 1958, 72 Stat. 1439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
279	50: 1011 (b).	Aug. 9, 1955, ch. 665, § 2 (h) (last par.), 69 Stat. 599.

The words "shall report" are substituted for the words "shall transmit * * * a report". The words "which shall contain an account" are omitted as surplusage.

§ 280. Regulations.

Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, 35, 39, and 59, and sections 715, 1003, 1004, 1032, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3354, 3495, 3498, 3685, 3686, 5251, 5252, 5456, 5597, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8354, 8495, 8498, 8685, and 8686 of this title. The Secretary of the Treasury, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as he considers necessary to carry out chapters 11, 35, 39, and 59, and sections 715, 1003, 1004, 1032, 1376, 2001, and 2511 of this title, so far as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy. So far as practicable, regulations for all reserve components shall be uniform. (Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(2), 72 Stat. 1564; Sept. 7, 1962, Pub. L. 87–651, title I, § 101, 76 Stat. 506; Sept. 11, 1967, Pub. L. 90–83, § 3(1), 81 Stat. 220.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
280	50: 1002 (less applicability to 50: 974).	July 9, 1952, ch. 608, § 251 (less applicability to § 243), 66 Stat. 495.

The words "the Secretary of each military department" are substituted for the words "the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force". The word "prescribe" is substituted for the words "make and publish". The specific enumeration of sections is substituted for the word "chapter", since certain sections of this title relating to reservists are not based on this source statute. The second sentence of the revised section is substituted for 50: 1002 (1st 14 words), for clarity. The words "except when the Coast Guard is operating as a service in the Navy" are inserted to make it clear that the power of the Secretary of the Treasury is so limited.

AMENDMENTS

1967—Pub. L. 90–83 eliminated reference to section 6150 of this title.

1962—Pub. L. 87–651 eliminated references to sections 513 and 742 of this title.

1958—Pub. L. 85–861 substituted "3354" for "3353" and "8354" and "8353".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective on Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

§ 281. Adjutants general and assistant adjutants general: reference to other officers of National Guard.

In any case in which, under the laws of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, an officer of the National Guard of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the reference in section 1002(c), 3218, 3364, 3370(d), 3392, 3845, 3851, 3852, 8218, 8844, 8845, 8851, or 8852 of this title to the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general. (Added Pub. L. 86–559, § 1(2)(C), June 30, 1960, 74 Stat. 264.)

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

Chapter 13.—THE MILITIA

Sec.
311. Militia: composition and classes.
312. Militia duty: exemptions.

§ 311. Militia: composition and classes.

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are commissioned officers of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia. (Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, Pub. L. 85–861, § 1 (7), 72 Stat. 1439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
311 (a)	32: 1 (less last 19 words).	June 3, 1916, ch. 134, § 57, 39 Stat. 197; June 28, 1947, ch. 162, § 7 as applicable to § 57 of the Act of June 3, 1916, ch. 134), 61 Stat. 192.
311 (b)	32: 1 (last 19 words).	

In subsection (a), the words "who have made a declaration of intention" are substituted for the words "who have or shall have declared their intention". The words "at least 17 years of age and * * * under 45 years of age" are substituted for the words "who shall be more than seventeen years of age and * * * not more than forty-five years of age". The words "except as provided in section 313 of title 32" are substituted for the words "except as hereinafter provided", to make explicit the exception as to maximum age.

In subsection (b), the words "The organized militia, which consists of the National Guard and the Naval Militia" are substituted for the words "the National Guard, the Naval Militia", since the National Guard and the Naval Militia constitute the organized militia.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 included female citizens of the United States who are commissioned officers of the National Guard.

CROSS REFERENCES

Congressional power to provide for organization, equipment, discipline, and government of Militia, see Const. Art. 1, § 8, cl. 16.

Declaration of intention to become a citizen of the United States, see section 1445 (f) of Title 8, Aliens and Nationality.

§ 312. Militia duty: exemptions.

(a) The following persons are exempt from militia duty:

(1) The Vice President.

(2) The judicial and executive officers of the United States, the several States and Territories, Puerto Rico, and the Canal Zone.

(3) Members of the armed forces, except members who are not on active duty.

(4) Customhouse clerks.

(5) Persons employed by the United States in the transmission of mail.

(6) Workmen employed in armories, arsenals, and naval shipyards of the United States.

(7) Pilots on navigable waters.

(8) Mariners in the sea service of a citizen of, or a merchant in, the United States.

(b) A person who claims exemption because of religious belief is exempt from militia duty in a combatant capacity, if the conscientious holding of that belief is established under such regulations as the President may prescribe. However, such a person is not exempt from militia duty that the President determines to be noncombatant. (Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
312 (a)	32: 3 (less last 67 words).	June 3, 1916, ch. 134, § 59, 39 Stat. 197.
312 (b)	32: 3 (last 67 words).	

In subsection (a), the words "Members of the armed forces" are substituted for the words "persons in the military or naval service". The words "except members who are not on active duty" are inserted to reflect an opinion of the Judge Advocate General of the Army (JAGA 1952/4374, 9 July 1952). The word "artificers" is omitted as covered by the word "workmen". The words "naval shipyards" are substituted for the words "navy yards" to reflect modern terminology. The words "on navigable waters" are inserted to preserve the original coverage of the word "pilots". The words "actually" and "without regard to age" are omitted as surplusage.

CROSS REFERENCES

Deferments and exemptions from training and service under Universal Military Training and Service Act, see section 456 of Appendix to Title 50, War and National Defense.

Chapter 15.—INSURRECTION

Sec.
331. Federal aid for State governments.
332. Use of militia and armed forces to enforce Federal authority.
333. Interference with State and Federal law.
334. Proclamation to disperse.
335. Guam included as "State".[1]
336. Virgin Islands included as "State".[2]

§ 331. Federal aid for State governments.

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection. (Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
331	50: 201.	R. S. 5297.

The words "armed forces" are substituted for the words "land or naval forces of the United States". The word "governor" is substituted for the word "executive". The word "may" is substituted for the words "it shall be lawful * * * to". The words "into Federal service" are substituted for the word "forth" for uniformity and clarity.

CROSS REFERENCES

Army National Guard in Federal service, call, see section 3500 of this title.

Use of Army and Air Force as posse comitatus, see section 1385 of Title 18, Crimes and Criminal Procedure.

§ 332. Use of militia and armed forces to enforce Federal authority.

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion. (Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
332	50: 202.	R. S. 5298.

50: 202 (last 22 words) is omitted as surplusage. The words "armed forces" are substituted for the words "land and naval forces of the United States". The words "call into Federal service such of the militia" are substituted for the words "call forth the militia of any or all the States" for clarity and uniformity. The word "may" is substituted for the words "it shall be lawful". The words "faithful execution of the" and "in whatever State or Territory thereof the laws of the United States may be forcibly opposed" are omitted as surplusage.

EX. ORD. NO. 10730. ASSISTANCE FOR REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

Ex. Ord. No. 10730, Sept. 24, 1957, 22 F. R. 7628, provided:

WHEREAS on September 23, 1957, I issued Proclamation No. 3204 [set out as a note under section 334 of this title] reading in part as follows:

* * * * *

WHEREAS the command contained in that Proclamation has not been obeyed and wilful obstruction of enforcement of said court orders still exists and threatens to continue:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and Statutes of the United States, including Chapter 15 of Title 10, particularly sections 332, 333 and 334 thereof, and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. I hereby authorize and direct the Secretary of Defense to order into the active military service of the United States as he may deem appropriate to carry

[1] Pub. L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847, added section 335 without reflecting addition in chapter analysis.

[2] Pub. L. 90–496, § 12, Aug. 23, 1968, 82 Stat. 841, added section 336 without reflecting addition in chapter analysis.

out the purposes of this Order, any or all of the units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders.

SEC. 2. The Secretary of Defense is authorized and directed to take all appropriate steps to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstruction of justice in the State of Arkansas with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas. In carrying out the provisions of this section, the Secretary of Defense is authorized to use the units, and members thereof, ordered into the active military service of the United States pursuant to Section 1 of this Order.

SEC. 3. In furtherance of the enforcement of the aforementioned orders of the United States District Court for the Eastern District of Arkansas, the Secretary of Defense is authorized to use such of the armed forces of the United States as he may deem necessary.

SEC. 4. The Secretary of Defense is authorized to delegate to the Secretary of the Army or the Secretary of the Air Force, or both, any of the authority conferred upon him by this Order.

EX. ORD. NO. 11053. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF MISSISSIPPI

Ex. Ord. No. 11053, Sept. 30, 1962, 27 F.R. 9681, provided:

WHEREAS on September 30, 1962, I issued Proclamation No. 3497 [set out as a note under section 334 of this title] reading in part as follows:

"WHEREAS the Governor of the State of Mississippi and certain law enforcement officers and other officials of that State, and other persons, individually and in unlawful assemblies, combinations and conspiracies, have been and are willfully opposing and obstructing the enforcement of orders entered by the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit; and

"WHEREAS such unlawful assemblies, combinations and conspiracies oppose and obstruct the execution of the laws of the United States, impede the course of justice under those laws and make it impracticable to enforce those laws in the State of Mississippi by the ordinary course of judicial proceedings; and

"WHEREAS I have expressly called the attention of the Governor of Mississippi to the perilous situation that exists and to his duties in the premises, and have requested but have not received from his adequate assurances that the orders of the courts of the United States will be obeyed and that law and order will be maintained:

"NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States, under and by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code [this chapter], particularly sections 332, 333 and 334 thereof, do command all persons engaged in such obstructions of justice to cease and desist therefrom and to disperse and retire peaceably forthwith;" and

WHEREAS the commands contained in that proclamation have not been obeyed and obstruction of enforcement of those court orders still exists and threatens to continue:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 [this chapter], particularly Sections 332, 333 and 334 thereof, and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is authorized and directed to take all appropriate steps to enforce all orders of the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit and to remove all obstructions of justice in the State of Mississippi.

SEC. 2. In furtherance of the enforcement of the aforementioned orders of the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit, the Secretary of Defense is authorized to use such of the armed forces of the United States as he may deem necessary.

SEC. 3. I hereby authorize the Secretary of Defense to call into the active military service of the United States, as he may deem appropriate to carry out the purposes of this order, any or all of the units of the Army National Guard and of the Air National Guard of the State of Mississippi to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders. In carrying out the provisions of Section 1, the Secretary of Defense is authorized to use the units, and members thereof, ordered into the active military service of the United States pursuant to this section.

SEC. 4. The Secretary of Defense is authorized to delegate to the Secretary of the Army or the Secretary of the Air Force, or both, any of the authority conferred upon him by this order.

JOHN F. KENNEDY

EX. ORD. NO. 11111. ASSISTANCE FOR REMOVAL OF OBSTRUCTIONS OF JUSTICE AND SUPPRESSION OF UNLAWFUL COMBINATIONS WITHIN THE STATE OF ALABAMA

Ex. Ord. No. 11111, June 11, 1963, 28 F.R. 5709, provided:

WHEREAS on June 11, 1963, I issued Proclamation No. 3542 [set out as a note under section 334 of this title], pursuant in part to the provisions of section 334 of Title 10, United States Code; and

WHEREAS the commands contained in that Proclamation have not been obeyed, and the unlawful obstructions of justice and combinations referred to therein continue:

NOW THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code [this chapter], particularly sections 332, 333 and 334 thereof and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is authorized and directed to take all appropriate steps to remove obstructions of justice in the State of Alabama, to enforce the laws of the United States within that State, including the orders of the United States District Court for the Northern District of Alabama referred to in the said Proclamation, and to suppress unlawful assemblies, combinations, conspiracies and domestic violence which oppose or obstruct the execution of the laws of the United States or impede the course of justice under those laws within that State.

SEC. 2. In furtherance of the authorization and direction contained in section 1 hereof, the Secretary of Defense is authorized to use such of the Armed Forces of the United States as he may deem necessary.

SEC. 3. I hereby authorize and direct the Secretary of Defense to call into the active military service of the United States, as he may deem appropriate to carry out the purposes of this order, any or all of the units of the Army National Guard and of the Air National Guard of the State of Alabama to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders. In carrying out the provisions of section 1, the Secretary of Defense is authorized to use the units, and members thereof, called into the active military service of the United States pursuant to this section.

SEC. 4. The Secretary of Defense is authorized to delegate to the Secretary of the Army or the Secretary of the Air Force, or both, any of the authority conferred upon him by this order.

JOHN F. KENNEDY

EX. ORD. NO. 11118. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF ALABAMA

Ex. Ord. No. 11118, Sept. 10, 1963, 28 F.R. 9863, provided:

WHEREAS, on September 10, 1963, I issued a proclamation entitled "Obstructions of Justice in the State of Alabama" [set out as a note under section 334 of this title] pursuant in part to the provisions of section 334 of Title 10 of the United States Code and

WHEREAS the commands contained in that proclamation have not been obeyed, and the unlawful obstructions of justice, assemblies, combinations, and conspiracies referred to therein continue:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, including chapter 15 of Title 10 of the United States Code [this chapter], particularly sections 332, 333 and 334 thereof, and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is authorized and directed to take all appropriate steps to remove obstructions of justice in the State of Alabama, to enforce the laws of the United States within that State, including any orders of United States Courts relating to the enrollment and attendance of students in public schools in the State of Alabama, and to suppress unlawful assemblies, combinations, conspiracies, and domestic violence which oppose, obstruct, or hinder the execution of the law or impede the course of justice under the law within that State.

SEC. 2. In furtherance of the authorization and direction contained in Section 1 hereof, the Secretary of Defense is authorized to use such of the Armed Forces of the United States as he may deem necessary.

SEC. 3. I hereby authorize and direct the Secretary of Defense to call into the active military service of the United States, as he may deem appropriate to carry out the purposes of this order, any or all of the units of the Army National Guard and of the Air National Guard of the State of Alabama to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders. In carrying out the provisions of Section 1, the Secretary of Defense is authorized to use the units, and members thereof, of the Army National Guard and of the Air National Guard of the State of Alabama called into the active military service of the United States pursuant to this section or otherwise.

SEC. 4. The Secretary of Defense is authorized to delegate to the Secretary of the Army or the Secretary of the Air Force, or both, any of the authority conferred upon him by this order.

JOHN F. KENNEDY

§ 333. Interference with State and Federal law.

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution. (Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
333	50: 203.	R. S. 5299.

The words "armed forces" are substituted for the words "land or naval forces of the United States". The word "shall" is substituted for the words "it shall be lawful for * * * and it shall be his duty".

§ 334. Proclamation to disperse.

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time. (Aug. 10, 1956, ch. 1041, 70A Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
334	50: 204.	R. S. 5300.

The words "militia or the armed forces" are substituted for the words "military forces" for clarity and to conform to sections 331, 332, and 333 of this title.

PROC. NO. 3204. OBSTRUCTION OF JUSTICE IN THE STATE OF ARKANSAS

Proc. No. 3204, Sept. 23, 1957, 22 F. R. 7628, provided:

Whereas certain persons in the State of Arkansas, individually and in unlawful assemblages, combinations, and conspiracies, have wilfully obstructed the enforcement of orders of the United States District Court for the Eastern District of Arkansas with respect to matters relating to enrollment and attendance at public schools, particularly at Central High School, located in Little Rock School District, Little Rock, Arkansas; and

Whereas such wilful obstruction of justice hinders the execution of the laws of that State and of the United States, and makes it impracticable to enforce such laws by the ordinary course of judicial proceedings; and

Whereas such obstruction of justice constitutes a denial of the equal protection of the laws secured by the Constitution of the United States and impedes the course of justice under those laws:

Now, therefore, I, DWIGHT D. EISENHOWER, President of the United States, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, including Chapter 15 of Title 10 of the United States Code, particularly sections 332, 333 and 334 thereof, do command all persons engaged in such obstruction of justice to cease and desist therefrom, and to disperse forthwith.

Assistance for removal of obstruction of justice in Arkansas, see Ex. Ord. 10730, set out as a note under section 332 of this title.

PROC. NO. 3497. OBSTRUCTION OF JUSTICE IN THE STATE OF MISSISSIPPI

Proc. No. 3497, Sept. 30, 1962, 27 F.R. 9681, provided:

WHEREAS the Governor of the State of Mississippi and certain law enforcement officers and other officials of that State, and other persons, individually and in unlawful assemblies, combinations and conspiracies have been and are willfully opposing and obstructing the enforcement of orders entered by the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit; and

WHEREAS such unlawful assemblies, combinations and conspiracies oppose and obstruct the execution of the laws of the United States, impede the course of justice under those laws and make it impracticable to enforce those laws in the State of Mississippi by the ordinary course of judicial proceedings; and

WHEREAS I have expressly called the attention of the Governor of Mississippi to the perilous situation that exists and to his duties in the premises, and have requested but have not received from him adequate assurances that the orders of the courts of the United States will be obeyed and that law and order will be maintained:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States, under and by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code [this chapter], particularly sections 332, 333 and 334 thereof, do command all persons engaged in such obstructions of justice to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to to affixed.

DONE at the City of Washington this 30th day of September in the year of our Lord nineteen hundred and sixty-two, and of the Independence of the United States of America the one hundred and eighty-seventh.

[SEAL]

JOHN F. KENNEDY

Assistance for removal of unlawful obstructions of justice in Mississippi, see Ex. Ord. No. 11053, Sept. 30, 1962, 27 F.R. 9693, set out as a note under section 332 of this title.

PROC. NO. 3542. UNLAWFUL OBSTRUCTION OF JUSTICE AND COMBINATIONS IN THE STATE OF ALABAMA

Proc. No. 3542, June 11, 1963, 28 F.R. 5707, provided:

WHEREAS on June 5, 1963, the United States District Court for the Northern District of Alabama entered an order enjoining the Governor of the State of Alabama, together with all persons acting in concert with him, from blocking or interfering with the entry of certain qualified Negro students to the campuses of the University of Alabama at Tuscaloosa and Huntsville, Alabama, and from preventing or seeking to prevent by any means the enrollment or attendance at the University of Alabama of any person entitled to enroll in or attend the University pursuant to the order of the court of July 1, 1955, in the case of *Lucy* v. *Adams*; and

WHEREAS both before and after the entry of the order of June 5, 1963, the Governor of the State of Alabama has declared publicly that he intended to oppose and obstruct the orders of the United States District Court relating to the enrollment and attendance of Negro students at the University of Alabama and would, on June 11, 1963, block the entry of two such students to a part of the campus of the University of Alabama at Tuscaloosa; and

WHEREAS I have requested but have not received assurances that the Governor and forces under his command will abandon this proposed course of action in violation of the orders of the United States District Court and will enforce the laws of the United States in the State of Alabama; and

WHEREAS this unlawful obstruction and combination on the part of the Governor and others against the authority of the United States will, if carried out as threatened, make it impracticable to enforce the laws of the United States in the State of Alabama by the ordinary course of judicial proceeding; and

WHEREAS this unlawful combination opposes the execution of the laws of the United States and threatens to impede the course of justice under those laws:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, including Chaper 15 of Title 10 of the United States Code [this chapter], particularly sections 332, and 333 and 334 thereof, do command the Governor of the State of Alabama and all other persons engaged or who may engage in unlawful obstructions of justice, assemblies, combinations, conspiracies or domestic violence in that State to cease and desist therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this eleventh day of June in the year of our Lord nineteen hundred [SEAL] and sixty-three, and of the Independence of the United States of America the one hundred and eighty-seventh.

JOHN F. KENNEDY

Assistance for removal of obstructions of justice and suppression of unlawful combinations in Alabama, see Ex. Ord. No. 11111, June 11, 1963, 28 F.R. 5709, set out as a note under section 332 of this title.

PROC. NO. 3554. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3554, Sept. 10, 1963, 28 F.R. 9861, provided:

WHEREAS the Governor of the State of Alabama, together with certain other officials of that State, and other persons, individually and in unlawful assemblies, combinations, and conspiracies, have been and are willfully opposing and obstructing the execution of the laws of the United States, including the enforcement of orders entered by the United States District Courts in the State of Alabama relating to the enrollment and attendance of students in public schools in that State, and have been and are impeding the course of justice under those laws; and

WHEREAS such unlawful assemblies, combinations, and conspiracies make it impracticable to enforce the laws of the United States in the State of Alabama by the ordinary course of judicial proceedings; and

WHEREAS such unlawful assemblies, combinations, and conspiracies so hinder the execution of the laws of the State of Alabama, and of the United States within the State of Alabama, that a part or class of its people is deprived of rights, privileges, immunities, and protections named in the Constitution and secured by law, and the constituted authorities of that State refuse to protect such rights, privileges, or immunities, or to give that protection:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States, under and by virtue of the authority vested in me by the Constitution and laws of the United States, including chapter 15 of Title 10 of the United States Code [this chapter], particularly sections 332, 333, and 334 thereof, do command all persons engaged in such unlawful obstructions of justice, assemblies, combinations, and conspiracies to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this tenth day of September in the year of our Lord nineteen hun- [SEAL] dred and sixty-three, and of the Independence of the United States of America the one hundred and eighty-eighth.

JOHN FITZGERALD KENNEDY

Assistance for removal of unlawful obstructions of justice in Alabama, see Ex. Ord. No. 11118, Sept. 10, 1963, 28 F.R. 9863, set out as a note under section 332 of this title.

§ 335. Guam included as "State".[1]

For purposes of this chapter, "State" includes the unincorporated territory of Guam. (Added Pub. L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847.)

EFFECTIVE DATE

Section 11 of Pub. L. 90–497 provided in part that this section shall be effective on the date of enactment of Pub. L. 90–497, which was approved on September 11, 1968.

§ 336. Virgin Islands included as "State".[1]

For the purposes of this chapter, "State" includes the unincorporated territory of the Virgin Islands. (Added Pub. L. 90–496, § 12, Aug. 23, 1968, 82 Stat. 841.)

EFFECTIVE DATE

Section 12 of Pub. L. 90–496 provided in part that this section shall be effective on the date of enactment of Pub. L. 90–496, which was approved Aug. 23, 1968.

Chapter 17.—ARMING OF AMERICAN VESSELS

Sec.
351. During war or threat to national security.

§ 351. During war or threat to national security.

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

[1] Section catchline has been supplied editorially since section was enacted without a catchline.

(c) Section 463 of title 22 does not apply to vessels armed under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
351 (a)	50: 481 (1st sentence, less 1st 7 words).	June 29, 1948, ch. 715, 62 Stat. 1095.
351 (b)	50: 481 (1st 7 words of 1st sentence and 2d sentence).	
351 (c)	50: 481 (less 1st and 2d sentences).	

In subsection (a), the wording of the special definition of "vessel" and "American vessel", contained in section 16 of the Neutrality Act of 1939, 54 Stat. 12 (22 U. S. C. 456), is substituted for the words "any American vessel as defined in the Neutrality Act of 1939".

In subsection (b), the words "or national emergency" are omitted, since the words of the source statute defining that term have been substituted for it.

In subsection (c), the words "(relating to bonds from armed vessels on clearing)" are omitted as surplusage.

PART II.—PERSONNEL

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AMENDMENTS

1968—Pub. L. 90–377, § 2, July 5, 1968, 82 Stat. 288, added chapter 48.

1967—Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220, struck out chapter 80, covering Exemplary Rehabilitation Certificates.

1966—Pub. L. 89–690, § 2, Oct. 15, 1966, 80 Stat. 1017, added chapter 80.

1962—Pub. L. 87–649, § 3(2), Sept. 7, 1962, 76 Stat. 493, added chapter 40.

1961—Pub. L. 87–381, § 1(2), Oct. 4, 1961, 75 Stat. 810, substituted "Retired Servicemen's Family Protection Plan" for "Annuities Based on Retired or Retainer Pay" in the heading of chapter 73.

1958—Pub. L. 85–861, §§ 1 (21), (26), (33), 33 (a) (4) (B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted "General Service Requirements" for "Service Requirements for Reserves" in the heading of chapter 37, "971" for "[No present sections]" in the heading of chapter 49, "Medical and Dental Care" for "Voting by Members of Armed Forces" in the heading of chapter 55, and eliminated "Care of the Dead" and substituted "1475" for "1481" in the heading of chapter 75.

CROSS REFERENCES

Particular provisions relating to personnel—

Air Force, see section 8201 et seq. of this title.

Army, see section 3201 et seq. of this title.

Coast Guard, see section 211 et seq. of Title 14, Coast Guard.

National Guard, see section 301 et seq. of Title 32, National Guard.

Navy and Marine Corps, see section 5401 et seq. of this title.

Chapter 31.—ENLISTMENTS

Sec.
501. Definition.
502. Enlistment oath: who may administer.
503. Enlistments: recruiting campaigns.
504. Persons not qualified.
505. Regular components: qualifications, term, grade.
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515. Reenlistment after discharge as warrant officer.
516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman.
517. Authorized daily average: members in pay grades E–8 and E–9.
518. Temporary enlistments.
519. Temporary enlistments: during war or emergency.

AMENDMENTS

1968—Pub. L. 90–623, § 2(2), Oct. 22, 1968, 82 Stat. 1314, struck out "or national emergency" following "extension of enlistments during war" in item 506.

Pub. L. 90–235, § 2(a) (1) (C), Jan. 2, 1968, 81 Stat. 755, redesignated item 501 as 502, and added items 501, 503, 504, 505, 506, 507, 508, 509, 518 and 519.

1962—Pub. L. 87–649, § 2(2), Sept. 7, 1962, 76 Stat. 492, added item 517.

1958—Pub. L. 85–861, § 1(9) (B), (C), Sept. 2, 1958, 72 Stat. 1440, deleted item 513 and added item 516.

§ 501. Definition.

In this chapter "enlistment" means original enlistment or reenlistment. (Added Pub. L. 90–235, § 2(a) (1) (B), Jan. 2, 1968, 81 Stat. 754.)

PRIOR PROVISIONS

A former section 501 of this title was redesignated 502 by Pub. L. 90–235, § 2(a) (1) (A), Jan. 2, 1968, 81 Stat. 753.

§ 502. Enlistment oath: who may administer.

Each person enlisting in an armed force shall take the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God."

This oath or affirmation may be taken before any commissioned officer of any armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 17, § 502, formerly § 501, as amended Oct. 5, 1962, Pub. L. 87–751, § 1, 76 Stat. 748, and renumbered Jan. 2, 1968, Pub. L. 90–235, § 2(a) (1) (A), 81 Stat. 753.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
501	50: 737.	May 5, 1950, ch. 169, § 8, 64 Stat. 146.

The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1. The words "of any armed force" are inserted in the last sentence, since they are necessarily implied by their use in the source statute.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the oath, is classified to chapter 47 of this title.

AMENDMENTS

1962—Pub. L. 87-751 substituted "support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same" for "bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever" and inserted "So help me God" in the oath, and "or affirmation" in the text.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87-751 provided that: "This Act [amending this section and section 304 of Title 32, National Guard] does not affect any oath taken before one year after its enactment [Oct. 5, 1962]."

CROSS REFERENCES

Authority to administer oath, see section 1031 of this title.

National Guard, enlistment oath, see section 304 of Title 32, National Guard.

"Oath" as including affirmation, see section 1 of Title 1, General Provisions.

Uniform Code of Military Justice, see section 801 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 510 of this title.

§ 503. Enlistments: recruiting campaigns.

The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard. (Added Pub. L. 90-235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 504. Persons not qualified.

No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies. (Added Pub. L. 90-235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 505. Regular components: qualifications, term, grade.

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age in the case of male persons and not less than eighteen years of age in the case of female persons, nor more than thirty-five years of age. However, no male person under eighteen years of age, or female person under twenty-one years of age, may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be—

(1) of male persons for the duration of their minority or for a period of two, three, four, five, or six years; and

(2) of female persons for a period of two, three, four, five, or six years.

(d) In the Regular Army, female persons may be enlisted only in the Women's Army Corps.

(e) The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of two, three, four, five, or six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment. (Added Pub. L. 90-235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 519 of this title.

§ 506. Regular components: extension of enlistments during war.

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war. (Added Pub. L. 90-235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 507. Extension of enlistment for members needing medical care or hospitalization.

(a) An enlisted member of an armed force on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment, or it is determined that recovery to that extent is impossible.

(b) This section does not prevent the retention in service, without his consent, of an enlisted member of an armed force under section 972 of this title. (Added Pub. L. 90-235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 508. Reenlistment: qualifications.

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, under

such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard under any other provision of law. (Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 509. Voluntary extension of enlistments: periods and benefits.

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharged from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended. (Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 906.

§ 510. Reserve components: qualifications.

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 3261 or 8261 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8; or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) Women may be enlisted as Reserves of the armed forces. Women are enlisted in the grades and ratings authorized for enlisted women of the regular component of the armed force concerned. Any female former enlisted member of an armed force may, if otherwise qualified, be enlisted as a Reserve of that armed force in the highest grade or rating in which she previously served satisfactorily on active duty (other than for training).

(d) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 17; Dec. 23, 1963, Pub. L. 88–236, 77 Stat. 474; Nov. 8, 1967, Pub. L. 90–130, § 1(2), 81 Stat. 374; Oct. 22, 1968, Pub. L. 90–623, § 2(3), 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
510 (a)	50: 952 (less proviso).	July 9, 1952, ch. 608, §§ 217 (less (c), as applicable to enlistments), 228 (less proviso), 232 (as applicable to enlistments), 66 Stat. 486, 488, 489.
510 (b)	50: 941 (a) (as applicable to enlistments).	
510 (c)	50: 941 (b) (as applicable to enlistments).	
510 (d)	50: 956 (as applicable to enlistments).	

In subsection (a), the last sentence is inserted to reflect sections 3261 and 8261 of this title.

In subsection (b), the word "However" is substituted for the words "Subject to the limitation that". The words "as Reserves in the armed forces under his jurisdiction" are substituted for the words "of Reserve members of the Armed Forces of the United States". The words "its Territories" are omitted as surplusage, since citizens of the Territories are citizens of the United States.

In subsection (c), the words "armed force concerned" are substituted for the words "of the appropriate Armed Force of the United States". The words "in which she previously served satisfactorily" are substituted for the words "satisfactorily held by her".

In subsection (d), the words "under the jurisdiction of that Secretary" are inserted for clarity. The words "general or special" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–623 substituted "section 502" for "section 501".

1967—Subsec. (c). Pub. L. 90–130 struck out provision limiting the reserve components in which women may be enlisted as Reserves of the armed forces to the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve.

1963—Subsec. (b)(1). Pub. L. 88–236 substituted "he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8" for "he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

CROSS REFERENCES

National Security Training Corps, see section 454 of Appendix to Title 50, War and National Defense.

Transfers—

Air Force Reserve, see sections 8259, 8260 of this title.

Army Reserve, see sections 3259, 3260 of this title.

Reserve components, see section 512 of this title.

Standby Reserve, see section 269 of this title.

§ 511. Reserve components: terms.

(a) Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary concerned, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under sections 451—473 of title 50, appendix, may be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve,

Marine Corps Reserve, or Coast Guard Reserve, for a term of six years. Each person enlisted under this subsection shall serve—

(1) on active duty for a period of two years;

(2) satisfactorily as a member of the Ready Reserve for a period that, when added to his active duty under clause (1), totals five years; and

(3) the rest of his period of enlistment as a member of the Standby Reserve.

(c) In time of war or of national emergency declared by Congress the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is under 26 years of age, who is qualified for induction for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act of 1967 (50 App. U.S.C. 451–473), except as provided in section 6(c)(2)(A) (ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of six years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than four months to commence insofar as practicable within 180 days after the date of that enlistment. (Aug. 10, 1956, ch. 1041, 70A Stat. 18; Sept. 2, 1958, Pub. L. 85–861, § 1(8), 72 Stat. 1439; Sept. 3, 1963, Pub. L. 88–110, § 3, 77 Stat. 135; Dec. 1, 1967, Pub. L. 90–168, § 2(11), 81 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
511 (a)	50: 951 (less (c)).	July 9, 1952, ch. 608, § 227, 66 Stat. 488.
511 (b)	50: 951 (c).	

In subsection (a), the first sentence is substituted for 50: 951 (a). The words "as Reserves in the Armed Forces of the United States" and "the existence of" are omitted as surplusage.

In subsections (a) and (b), the word "hereafter" is omitted as surplusage. The words "the expiration of" are inserted for clarity.

In subsection (b), the word "continues" is substituted for the words "shall * * * be extended".

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–168 substituted the Secretary of Transportation for the Secretary of the Treasury as the prescribing authority for regulations covering the Coast Guard when not operating as part of the Navy, inserted exception as provided in section 6(c)(2)(A) (ii) and (iii) of the Military Selective Service Act of 1967, added requirement that the initial period of four months' service commence insofar as practicable within 180 days after the date of enlistment, and struck out provision that the remainder of the period of service after the initial period of four months be served, subject to section 269 (e)(4) of this title, as a member of the Ready Reserve.

1963—Subsec. (d). Pub. L. 88–110 added subsec. (d).

1958—Subsec. (b). Pub. L. 85–861, § 1(8)(A), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–861, § 1(8)(B), redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

CROSS REFERENCES

Extension of enlistment term of officer candidates, see section 600 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 564 of this title; title 5 section 2108; title 38 sections 1652, 1701.

§ 512. Reserve components: transfers.

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under sections 451—473 of title 50, appendix, is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under sections 451—473 of title 50, appendix. However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 18.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
512 (a)	50: 929 (a) (less 2d sentence, as applicable to enlistments).	July 9, 1952, ch. 608, § 209 (as applicable to enlistments), 66 Stat. 484.
512 (b)	50: 929 (a) (2d sentence, as applicable to enlistments).	
512 (c)	50: 929 (b) (as applicable to enlistments).	

In subsection (a), the words "is entitled * * * to be enlisted in any armed force that he chooses" are substituted for the words "shall * * * be permitted to enlist * * * in such Armed Force of the United States as he may elect". The second sentence is substituted for 50: 929 (a) (words within parentheses). The words "of an Armed Force of the United States" are omitted as surplusage.

In subsection (b), the word "rest" is substituted for the words "remaining period". The words "be required to" are omitted as surplusage.

In subsection (c), the words "This section does not" are substituted for the words "Nothing in this section shall be construed". The word "change" is substituted

for the words "reduce, limit, or modify". The words "which any person may undertake to perform" are omitted as surplusage.

CROSS REFERENCES

Active duty agreements, see sections 679, 680 of this title.

§ 513. Repealed. Pub. L. 85-861, § 36B (1), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 18, related to promotion of enlisted members of Reserve components.

§ 514. Bounties prohibited; substitutes prohibited.

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person. (Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
514 (a)	50 App.: 458 (1st sentence, less applicability to induction).	June 24, 1948, ch. 625, § 8 (less applicability to induction), 62 Stat. 614.
514 (b)	50 App.: 458 (last sentence, less applicability to induction).	

In subsection (b), the words "active duty" are substituted for the words "training and service". The word "may" is substituted for the words "shall be permitted or allowed". The last sentence is substituted for 50 App.: 458 (words between 1st and last semicolons). 50 App.: 458 (words after last semicolon) is omitted as applicable only to induction.

CROSS REFERENCES

Bounties for induction and substitutes for training and service in an armed force prohibited, see section 458 of Appendix to Title 50, War and National Defense.

Clothing allowance for enlisted personnel, see section 418 of Title 37, Pay and Allowances of the Uniformed Services.

§ 515. Reenlistment after discharge as warrant officer.

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
515	10: 600d (last 36 words of last sentence); 34: 135d (last 36 words of last sentence); 10: 600m (last 21 words of 3d sentence); 34: 430a (last 21 words of 3d sentence).	May 29, 1954, ch. 249, §§ 6 (last 36 words of last sentence), 15 (last 21 words of 3d sentence), 68 Stat. 159, 164.

The first 20 words are inserted for clarity. The word "request" is substituted for the word "application".

CROSS REFERENCES

Enlistment instead of discharge of warrant officer on second failure of promotion, see section 564 (a) (3) (A) of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165, 1166 of this title; title 14 section 438.

§ 516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman.

(a) The enlistment or period of obligated service of an enlisted member of the armed forces who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Naval Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Naval Reserve, to the compensation and emoluments of a midshipman in the Naval Reserve.

(b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Naval Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his enlisted status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service. (Added Pub. L. 85-861, § 1 (9) (A), Sept. 2, 1958, 72 Stat. 1439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
516 (a)	50: 1411.	June 25, 1956, ch. 439, §§ 1, 2, 70 Stat. 333.
516 (b)	50: 1412.	

In subsection (a), the words "on or after June 25, 1956" are omitted as executed. The words "Regular, Reserve" and "during the continuation of the cadet or midshipman status of such member" are omitted as surplusage. The words "if he is a midshipman in the Naval Reserve * * * of a midshipman in the Naval Reserve" are substituted for the words "accruing to such reserve midshipman by virtue of his status in the Naval Reserve".

In subsection (b), the words "a person covered by subsection (a)" are substituted for 50: 1412 (1st 84 words of 1st sentence). The words "his appointment as a commissioned officer of" are substituted for the words "the acceptance of a commission in". The words "and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged" are substituted for 50: 1412 (2d sentence). The words "promoted or" are omitted as unnecessary, since the only kind of promotion involved is that to officer, in which case the member is discharged

from his enlisted status. The words "as service under that enlistment" are substituted for the words "as time served under such contract".

§ 517. Authorized daily average: members in pay grades E–8 and E–9.

Except as provided in section 307 of title 37, the authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 in a calendar year may not be more than 2 percent and 1 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on January 1 of that year. (Added Pub. L. 87–649, § 2(1), Sept. 7, 1962, 76 Stat. 492.)

HISTORICAL AND REVISION NOTES

Section of title 10	Source (U.S. Code)	Source (Statutes at Large)
517	37:232(c) (last sentence).	Oct. 12, 1949, ch. 681, § 201(c) (last sentence); added May 20, 1958, Pub. L. 85–422, § 1(3) (last sentence), 72 Stat. 124.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 518. Temporary enlistments.

Temporary enlistments may be made only in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, without specification of component. (Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1172 of this title.

§ 519. Temporary enlistments: during war or emergency.

Except as provided in section 505 of this title and except for enlistments as Reserves of an armed force—

(1) temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months; and

(2) only persons at least eighteen years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

Chapter 33.—APPOINTMENTS IN REGULAR COMPONENTS

Sec.
541. Graduates of the United States Military, Naval, and Air Force Academies.
555. Warrant officers: grades.
556. Warrant officers: original appointment; service credit.
557. Warrant officers: promotion; qualifications.
558. Warrant officers: promotion; selection boards.
559. Warrant officers: eligibility for promotion.
560. Warrant officers: promotion; selection procedure.
561. Warrant officers: effect of failure of selection for promotion.
562. Warrant officers: disapproval of promotion by Secretary concerned, President, or Senate.
563. Warrant officers: promotion; effective date.
564. Warrant officers: effect of second failure of promotion.
565. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

CROSS REFERENCES

Particular provisions relating to appointments—

Regular Air Force, see section 8281 et seq. of this title.

Regular Army, see section 3281 et seq. of this title.

Regular Coast Guard, see sections 212, 214 of Title 14, Coast Guard.

Regular Navy and Regular Marine Corps, see section 5571 et seq. of this title.

§ 541. Graduates of the United States Military, Naval, and Air Force Academies.

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
541 (a)	10: 1092c–1 (a) (1st 59 words of 1st sentence); 10: 1856 (a) (1st 59 words of 1st sentence); 34: 1057–1 (a) (1st 59 words of 1st sentence).	Apr. 1, 1954, ch. 127, § 8, 68 Stat. 48.
541 (b)	10: 1092c–1 (a) (1st sentence, less 1st 59 words); 10: 1856 (a) (1st sentence, less 1st 59 words); 34: 1057–1 (a) (1st sentence, less 1st 59 words).	
541 (c)	10: 1902c–1 (less (a)); 10: 1856 (less (a)); 34: 1057–1 (less (a)).	

In subsection (a), the words "is entitled * * * to" are substituted for the words "shall * * * be afforded an opportunity to".

In subsection (b), the words "is entitled" are substituted for the word "shall".

In subsection (c), the words "and fair" are omitted as surplusage. 10:1092c–1 (c), 10:1856 (c), and 34:1057–1 (c) are omitted as covered by section 51 (a) of the bill.

EFFECTIVE DATE

Section 52 (a) of act Aug. 10, 1956, provided that: "Section 541 of title 10, United States Code [this section], enacted by section 1 of this Act, takes effect (1) in the

year in which the initial class graduates from the United States Air Force Academy, or (2) upon the rescission of the agreement under which graduates of the United States Military Academy and the United States Naval Academy may volunteer for appointment in the Air Force, whichever is earlier."

APPOINTMENT OF UNITED STATES MILITARY ACADEMY GRADUATES IN AIR FORCE

Section 44 of act Aug. 10, 1956, provided that:

"(a) Notwithstanding any other provision of law, a cadet who graduates from the United States Military Academy may, upon graduation and before the effective date of section 541 of title 10 [this section], United States Code, be appointed a second lieutenant in the Regular Air Force.

"(b) Notwithstanding any other provision of law, no person who was a cadet at the United States Military Academy may be originally appointed in a commissioned grade in the Regular Air Force under this section before the date on which his classmates at the Academy are graduated and appointed as officers. No person who was a cadet at, but did not graduate from, the Academy may be credited, upon appointment as a commissioned officer of the Regular Air Force, with longer service than that credited to any member of his class at the Academy whose service in the Air Force, or in the Army and the Air Force, has been continuous since graduation.

"(c) A graduate of the United States Military Academy who is originally appointed a second lieutenant in the Regular Air Force under this section is not entitled to any service credit under this section.

"(d) Rank among graduates of each class of the United States Military Academy who, upon graduation, are appointed in the Regular Air Force under this section shall be fixed under regulations prescribed by the Secretary of the Air Force.

"(e) The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade."

CROSS REFERENCES

Commission on graduation—
Cadets, see sections 4353, 9353 of this title.
Midshipmen, see section 5573 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3212, 8212 of this title.

§ 555. Warrant officers: grades.

(a) The regular warrant officer grades in each armed force corresponding to the pay grades prescribed for warrant officers by section 201(d) of title 37 are as follows:

Warrant officer grade:
Chief warrant officer, W–4
Chief warrant officer, W–3
Chief warrant officer, W–2
Warrant officer, W–1

(b) Appointments of regular chief warrant officers of the Army and the Air Force shall be made by warrant by the Secretary concerned. Permanent appointments of regular chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be made by commission by the President, by and with the advice and consent of the Senate. Permanent appointments of regular warrant officers, W–1, shall be made by warrant by the Secretary concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 20; Sept. 7, 1962, Pub. L. 87–649, §§ 6(f)(2), 14c(2), 76 Stat. 494, 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
555 (a)	10: 600a (a) (less 3d and last sentences, as applicable to permanent regular appointments); 34: 135a (a) (less last sentence, as applicable to permanent regular appointments).	May 29, 1954, ch. 249, §§ 3 (a) (less last sentence, as applicable to permanent regular appointments), 5 (a) (less last sentence), 5 (a) (last sentence, as applicable to permanent regular appointments), 68 Stat. 157, 159.
555 (b)	10: 600a (a) (3d sentence, as applicable to permanent regular appointments); 10: 600c (a) (less last sentence); 10: 600c (a) (last sentence, as applicable to permanent regular appointments); 34: 135a (a) (last sentence, as applicable to permanent regular appointments); 34: 135c (a) (less last sentence); 34: 135c (a) (last sentence, as applicable to permanent regular appointments.)	

In subsection (a), the words "hereby established" are omitted as executed. The words "each armed force" are substituted for the enumeration of those forces.

In subsection (b), the words "W–4, W–3, and W–2" and "persons" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–649 substituted "section 201(d) of title 37" for "section 232(a) of title 37", and repealed provisions which related to pay grade. See section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649, effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Definition of warrant officer, see section 101 (16) of this title.

Grades—
Applicability to permanent reserve warrant officers, see section 597 (a) of this title.
Navy and Marine Corps, see section 5503 of this title.

Pay grades, see section 201 of Title 37, Pay and Allowances of the Uniformed Services.

Qualifications for original appointment—
Army and Air Force, see sections 3310, 8310 of this title.
Coast Guard, see section 213 of Title 14, Coast Guard.

Reserve warrant officers, appointment, see section 597 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Temporary appointments—
Army, see section 3448 of this title.
Coast Guard, see section 214 of Title 14, Coast Guard.
Naval Reserve and Marine Corps Reserve, see section 5598 of this title.
Navy and Marine Corps, see sections 5596, 5597 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 556, 597, 3448, 8448 of this title; title 14 section 438.

§ 556. Warrant officers: original appointment; service credit.

For the purposes of promotion, persons originally appointed in regular warrant officer grades under section 555 of this title shall be credited with such service as the Secretary concerned may prescribe. However, such a person may not be credited with

a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 20.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
556	10:600c (b); 34:135c (b)	May 29, 1954, ch. 249, § 5 (b), 68 Stat. 159.

The revised section is limited to service credit upon original appointment, since section 559 of this title prescribes service credit for promotion purposes. The words "Except as otherwise provided in sections 591, 591a, 593, 594, 600—600r, and 631a of this title" are omitted because, with this change, they are no longer necessary. The words "actually", "while holding a temporary or permanent appointment or commission", and "warrant officer or commissioned" are omitted as surplusage.

CROSS REFERENCES

Eligibility for promotion, see section 559 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 557. Warrant officers: promotion; qualifications.

(a) The promotion of permanent regular warrant officers to permanent regular warrant officer grades shall be governed by such regulations relating to physical, moral, and professional qualifications as the Secretary concerned may prescribe. However, the physical qualifications for promotion must be the same as those prescribed for retention on active duty.

(b) A regular warrant officer who is selected for promotion to the next higher regular warrant officer grade under this chapter, but who, within such time as may be prescribed by the Secretary concerned, fails to meet the moral and professional qualifications prescribed by the Secretary under subsection (a), shall be treated as if he had twice failed of selection for promotion. (Aug. 10, 1956, ch. 1041, 70A Stat. 20.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
557 (a)	10:600e (less last sentence); 34:330 (less last sentence).	May 29, 1954, ch. 249, §§ 7 (less last sentence), 12, 68 Stat. 159, 161.
557 (b)	10:600j; 34:330e.	

In subsection (a), the words "by this Act" are omitted as covered by the sections of this revised chapter.

In subsection (b), the words "shall not be appointed to that higher grade" are omitted as surplusage. The words "shall be treated" are substituted for the words "his case shall be governed". The words "by section 13 of this Act" are omitted as covered by the words "shall be treated as if he had twice failed of selection for promotion".

CROSS REFERENCES

Promotion of permanent reserve warrant officers, see section 598 of this title.

Second failure of promotion, see section 564 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 563, 564 of this title; title 14 section 438.

§ 558. Warrant officers: promotion; selection boards.

(a) Whenever the Secretary concerned determines that the needs of the service so require, but at least once a year, he shall appoint selection boards to consider permanent regular warrant officers for promotion to permanent regular warrant officer grades. Each board shall be composed of at least five officers of the armed force concerned who hold a permanent regular grade above major or lieutenant commander.

(b) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(c) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum. (Aug. 10, 1956, ch. 1041, 70A Stat. 20.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
558 (a)	10: 600f (a) (less last sentence); 34: 330a (a) (less last sentence).	May 29, 1954, ch. 249, § 8, 68 Stat. 159.
558 (b)	10: 600f (a) (last sentence); 34:330a (a) (last sentence).	
558 (c)	10: 600f (less (a)); 34: 330a (less (a)).	

In subsection (a), the words "who hold a permanent regular grade above major or lieutenant commander" are substituted for 10: 600f (a) (2d sentence) and 34: 330a (a) (2d sentence). The words "one or more" are omitted as surplusage.

CROSS REFERENCES

Suspension during war or emergency, see section 565 of this title.

§ 559. Warrant officers: eligibility for promotion.

Each permanent regular warrant officer shall be considered by a selection board for promotion to the next higher permanent regular warrant officer grade far enough in advance of the date upon which he will complete (1) three years of service in his permanent regular warrant officer grade, if he is in the grade of warrant officer, W–1, or (2) six years of service in his permanent regular warrant officer grade, if he is in the grade of chief warrant officer, W–2, or chief warrant officer, W–3, so that he may be promoted as of the day after the date on which he will complete that service. (Aug. 10, 1956, ch. 1041, 70A Stat. 21.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
559	10: 600g (a); 34: 330b (a).	May 29, 1954, ch. 249, § 9 (a), 68 Stat. 160.

The words "far enough in advance of the date upon which he will complete (1) three years of service in his permanent regular warrant officer grade, if he is in the grade of warrant officer, W–1, or (2) six years of service

in his permanent regular warrant officer grade, if he is in the grade of chief warrant officer, W-2, or chief warrant officer, W-3" are substituted for the words "sufficiently in advance of the date on which he completes the service in permanent warrant grade in the regular service prescribed in this section" and clauses (1), (2), and (3). 10: 600g (a) (words within parentheses) and 34: 330b (a) (words within parentheses) are omitted as covered by section 556 of this title. The words "as prescribed by the Secretary" and "subject to the provisions of this Act" are omitted as surplusage.

CROSS REFERENCES

Date of appointment, see section 563 of this title.

Grades, see section 555 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Service credit on original appointment, see section 556 of this title.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 561, 563 of this title; title 14 section 438.

§ 560. Warrant officers: promotion; selection procedure.

(a) The Secretary concerned shall furnish each selection board a list of all permanent regular warrant officers, in order of seniority in permanent regular grade, who are eligible to be considered for promotion to the next higher permanent regular warrant officer grade.

(b) From the list of warrant officers, W-1, the selection board shall select those whom it considers fully qualified for promotion. It shall also report the names of those whom it recommends for termination under section 1165 of this title.

(c) The Secretary concerned shall prescribe the number of warrant officers who may be selected under this section for promotion to each of the grades of chief warrant officer, W-3 and chief warrant officer, W-4. The number so prescribed by him for a grade may not be less than 80 percent of the number of warrant officers who are being considered for the first time for promotion to that grade.

(d) From the list of chief warrant officers, W-2, and chief warrant officers, W-3, the selection board shall select for promotion to the next higher permanent regular warrant officer grade those whom it considers best qualified for promotion, but not more than the number specified by the Secretary.

(e) Under such regulations as the Secretary may prescribe, the selection board shall report the names of those chief warrant officers considered by it whose records and reports establish, in its opinion, their unfitness or unsatisfactory performance in their permanent regular grades. A warrant officer whose name is so reported shall be retired, enlisted, or separated under section 1165 or 1166 of this title.

(f) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of seniority in permanent regular grade.

(g) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report. (Aug. 10, 1956, ch. 1041, 70A Stat. 21; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (3), 72 Stat. 1564.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
560 (a)	10: 600h (a), (less (1) and (2)); 34: 330c (a) (less (1) and (2)).	May 29, 1954, ch. 249, § 10 (less (c)), 68 Stat. 160.
560 (b)	10: 600h (a) (1); 34: 330c (a) (1).	
560 (c)	10: 600h (a) (2) (2d sentence); 34: 330c (a) (2) (2d sentence).	
560 (d)	10: 600h (a) (2) (less 2d, 3d, and last sentences); 34: 330c (a) (2) (less 2d, 3d, and last sentences).	
560 (e)	10: 600h (a) (2) (3d and last sentence); 34: 330c (a) (2) (3d and last sentence).	
560 (f)	10: 600h (b) (1st sentence); 34: 330c (b) (1st sentence).	
560 (g)	10: 600h (b) (less 1st sentence); 34: 330c (b) (less 1st sentence).	

In subsection (a), the words "under subsections (a) and (b) of section 600g of this title" and "by that selection board" are omitted as surplusage.

In subsection (b), the words "which the Secretary has submitted to it" and "to the grade of chief warrant officer, W-2" are omitted as surplusage. The words "for termination under section 1164 of this title" are substituted for the words "for termination of their appointment under section 600d of this title" to reflect section 1164 of this title.

In subsection (c), the first sentence is inserted for clarity. The words "may not be less than" are substituted for the words "shall be equal to not less than".

In subsection (d), the words "but not more than the number" are substituted for the words "in numbers not exceeding the number". The words "which the Secretary has submitted to it" are omitted as surplusage.

In subsection (e), the words "considered by it" are substituted for the words "among those eligible for consideration". The words, "permanent regular" are substituted for the word "present". The words "shall be retired, enlisted, or separated under section 1164 or 1165 of this title" are substituted for the words "governed by section 600m of this title", to reflect those revised sections. The words "of duty" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "section 1165 of this title" for "section 1164 of this title".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 563, 564, 1166 of this title; title 14 section 438.

§ 561. Warrant officers: effect of failure of selection for promotion.

A regular warrant officer who has been considered by a selection board for promotion under section 559 of this title, but not selected, shall be considered for promotion by each later selection board that considers officers in his permanent regular grade, until he is retired, separated, or selected for promotion. (Aug. 10, 1956, ch. 1041, 70A Stat. 22.)

HISTORICAL AND REVISION NOTES

Revised section	Sourse (U. S. Code)	Sourse (Statutes at Large)
561	10: 600g (less (a)); 34: 330b (less (a)).	May 29, 1954, ch. 249, §9 (less (a)), 68 Stat. 160.

The words "not selected" are substituted for the words "who fails to be selected for promotion to the next higher permanent grade in the regular service".

CROSS REFERENCES

Second failure of promotion, effect, see section 564 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 562. Warrant officers: disapproval of promotion by Secretary concerned, President, or Senate.

(a) If the Secretary concerned, the President, or the Senate disapproves the promotion of a permanent regular warrant officer before it takes effect, his name shall be removed from the list of those selected for the promotion and he continues to be eligible for consideration for promotion.

(b) If the next selection board selects that warrant officer for promotion, his name shall be replaced without prejudice on the list from which it was removed. If he is promoted, his date of appointment is the date it would have been had his name not been removed.

(c) If the next selection board does not select him for promotion, or if his name is again removed under subsection (a) from the list of officers selected by the next selection board, he shall be treated as if he had twice failed of selection for promotion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 22.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
562 (a)	10: 600h (c); 10: 600i (c) (less (1) and (2)); 34: 330c (c); 34: 330d (c) (less (1) and (2)).	May 29, 1954, ch. 249, §§ 10 (c), 11 (c), 68 Stat. 161.
562 (b)	10: 600i (c) (1); 34: 330d (c) (1).	
562 (c)	10: 600i (c) (2); 34: 330d (c) (2).	

In subsection (a), 10: 600h (c) (2d through 9th words) and 34: 330c (c) (2d through 9th words) and the words "his case shall be governed by section 600i of this title", 10: 600i (c) (1st 32 words), and 34: 330d (c) (1st 32 words) are omitted as surplusage.

In subsection (b), the words "ensuing" and "by reason of its having been removed therefrom" are omitted as surplusage.

In subsection (c), the words "he shall be treated" are substituted for the words "his case shall be governed". The words "under subsection (a)" are substituted for the words "in accordance with section 600h (c) of this title". The words "by section 600k of this title" are omitted as surplusage.

CROSS REFERENCES

Second failure of promotion, effect, see section 564 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 564 of this title; title 14 section 438.

§ 563. Warrant officers: promotion; effective date.

(a) A permanent regular warrant officer who is selected for promotion to the next higher permanent regular warrant officer grade by the first selection board that considered him for promotion to that grade, and who is qualified under section 557 (a) of this title, shall be promoted to that grade. His date of appointment in that grade is the day after he completes the service prescribed in section 559 of this title.

(b) A permanent regular warrant officer who is selected for promotion to the next higher permanent regular warrant officer grade after having previously failed of selection for promotion to that grade, and who is qualified under section 557 (a) of this title, shall be promoted to that grade. His date of appointment in that grade is the earlier of the following dates:

(1) One year after the date upon which his promotion would have been effective had he been selected by the last selection board that failed to select him.

(2) The earliest date upon which any warrant officer who did not fail of selection, and whose name follows his on the list submitted to the Secretary under section 560 (g) of this title, is promoted to that grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 22.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
563 (a)	10: 600i (a); 34: 330d (a).	May 29, 1954, ch. 249, § 11 (less (c)), 68 Stat. 161.
563 (b)	10: 600i (b); 34: 330d (b).	

In subsections (a) and (b), the words "and who is qualified under section 557 (a) of this title" are substituted for the words "has met such qualifications as the Secretary may have prescribed under section 600e of this title".

In subsection (b), the words "after having previously failed of selection for promotion to that grade" are substituted for the words "who has previously failed of selection for promotion to the next higher permanent warrant officer grade". The words "by a later selection board" are omitted as surplusage.

CROSS REFERENCES

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 564. Warrant officers: effect of second failure of promotion.

(a) Unless retired or separated under some other provision of law, a permanent regular warrant officer who has twice failed of selection for promotion to the next higher permanent regular warrant officer grade shall—

(1) if he has more than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) on (A) the date when the

Secretary concerned approves the report of the board under section 560(g) of this title, (B) the date when his name was removed from the recommended list under section 562(a) of this title, or (C) the date prescribed by the Secretary concerned under section 557(b) of this title, whichever applies, be retired 60 days after that date, except as provided by section 8301 of title 5, with retired pay computed under section 1401 of this title;

(2) if he has at least 18 but not more than 20 years of such active service on (A) the date when the Secretary concerned approves the report of the board under section 560 (g) of this title, (B) the date when his name was removed from the recommended list under section 562 (a) of this title, or (C) the date prescribed by the Secretary concerned under section 557 (b) of this title, whichever applies, be retired 60 days after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5, with retired pay computed under section 1401 of this title, unless he is selected for promotion to the next higher permanent regular grade before that date; or

(3) if he has less than 18 years of such active service on (A) the date when the Secretary concerned approves the report of the board under section 560 (g) of this title, (B) the date when his name was removed from the recommended list under section 562 (a) of this title, or (C) the date prescribed by the Secretary concerned under section 557 (b) of this title, whichever applies, be separated 60 days after that date with severance pay computed under section 1167 of this title, unless—

(A) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(B) he is serving on active duty in a grade above chief warrant officer, W-4, and elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty as a commissioned officer and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W-4, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date when he is so retired or separated. (Aug. 10, 1956, ch. 1041, 70A Stat. 22; Sept. 7, 1962, Pub. L. 87-649, § 6 (f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
564 (a)	10: 600 (c); 10: 600 (d) (as applicable to 10: 600k); 10: 600k (a); 10: 600r (c) (as applicable to 10: 600k (a)); 34: 135 (c); 34: 135 (d) (as applicable to 34: 330f); 34: 330f (a); 34: 430c (as applicable to 34: 330f (a)).	May 29, 1954, ch. 249, §§ 2 (c), 2 (d) (as applicable to § 14), 13, 14 (e) (as applicable to § 13), 21 (c) (as applicable to § 13), 68 Stat. 157, 162, 163, 168.
564 (b)	10: 600l (e) (as applicable to 10: 600k); 34: 430 (e) (as applicable to 34: 330f).	
564 (c)	10: 600k (b); 34: 330f (b).	
564 (c)	10: 600k (c); 34: 330f (c).	
564 (d)	10: 600k (c); 34: 330f (c).	

10: 600 (c) and 34: 135 (c) are executed by substituting them for the words "the date of his second failure of selection for promotion" in subsection (a).

In subsection (a), the words "on that date which is" are omitted as surplusage.

In subsection (a) (2), the words "unless he is * * * before that date" are substituted for the words "if he has not by that time been".

In subsection (a) (3), the words "be separated" are substituted for the words "have his appointment as a permanent warrant officer in the regular service terminated and be separated", to conform to section 1164 of this title. The words "prescribed by the Secretary" are substituted for the words "such * * * as the Secretary may direct".

In subsections (a) (3) and (d), the words "a grade above chief warrant officer, W-4," are substituted for the words "as a commissioned officer".

In subsection (b), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "not more than" are substituted for the words "a period not to exceed". The words "he would otherwise be required to retire under this section" are substituted for the words "retirement * * * would otherwise be required". The words "which is required", "possible", and "a period of" are omitted as surplusage.

In subsection (c), the words "in the discretion of" are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in subsec. (a)(1), is set out as a note under this section.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "8301" for "47a" wherever appearing.

1962—Subsec. (a)(1). Pub. L. 87-649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

RETIRED AND RETAINER PAY OF MEMBERS ON RETIRED LISTS OR RECEIVING RETAINER PAY

Section 511 of act Oct. 12, 1949, ch. 681, title V, 63 Stat. 829, as amended May 19, 1952, ch. 310, § 4, 66 Stat. 80; Apr. 23, 1956, ch. 208, § 1, 70 Stat. 114, provided that:

"On and after the effective date of this section [Oct. 1, 1949] (1) members of the uniformed services heretofore retired for reasons other than for physical disability, (2) members heretofore transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, and (3) members of the Army Nurse Corps or the Navy Nurse Corps heretofore retired under the Act of May 13, 1926 (44 Stat. 513), shall be entitled to receive retired pay, retirement pay, retainer pay, or equivalent pay, in the amount whichever is the greater, computed by one of the following methods: (a) The monthly retired pay,

retainer pay, or equivalent pay in the amount authorized for such members and former members by provisions of law in effect on the day immediately preceding the date of enactment of this Act [Oct. 12, 1949], or (b) monthly retired pay, retirement pay, retainer pay, or equivalent pay equal to 2½ per centum of the monthly basic pay of the highest federally recognized rank, grade, or rating, whether under a permanent or temporary appointment, satisfactorily held, by such member or former member, as determined by the Secretary concerned, and which such member, former member, or person would be entitled to receive if serving on active duty in such rank, grade, or rating, multiplied by the number of years of active service creditable to him: *Provided*, That for the purpose of the computation of (b) above, the retired or retirement pay of each commissioned officer of the Coast Guard who, upon retirement, was advanced one grade pursuant to the provisions of the Act of January 12, 1923 (Public Law 381, Sixty-seventh Congress), shall, unless a higher rank or grade is authorized by any provision of law, be based upon the commissioned officer grade authorized for such officer by such Act: *Provided further*, That for the purpose of the computation of (b) above, fractions of one-half year or more of active service shall be counted as a whole year: *Provided further*, That in no case shall such retired pay, retainer pay, or equivalent pay exceed 75 per centum of the monthly basic pay upon which the computation is based: *Provided further*, That for the purposes of this section, the term 'active service' as used herein shall mean all service as a member or as a former member of the uniformed services, service as a cadet or midshipman in the case of those members appointed to the United States Military Academy prior to August 24, 1912, or to the United States Naval Academy prior to March 4, 1913, if such service was creditable for longevity pay purposes at the time of retirement, or as a nurse, or as a contract nurse prior to February 2, 1901, or as a reserve nurse subsequent to February 2, 1901, or as a contract surgeon, or as a contract dental surgeon, or as an acting dental surgeon, or as a veterinarian in the Quartermaster Department, Cavalry, or Field Artillery, or as an Army field clerk or as a field clerk, Army Quartermaster Corps, while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in other provisions of law, including participation in exercises or performance of the duties provided for by sections 5, 81, 92, 94, 97, and 99 of the National Defense Act, as amended, and in the case of commissioned officers of the Public Health Service, that service which is creditable pursuant to part (3) of section 412 of this Act: *Provided further*, That the retired or retirement pay of each member referred to in (3) above shall, unless a higher rank or grade is authorized by any provision of law, be based upon the commissioned-officer grade authorized for such member by the Act of May 7, 1948 (Public Law 517, Eightieth Congress): *Provided further*, That (a) enlisted persons or former enlisted persons of the Regular Army or Regular Air Force who have been transferred prior to the effective date of this section to the Enlisted Reserve Corps or to the enlisted section of the Air Force Reserve and placed on the retired list of the Regular Army or the Regular Air Force, respectively, under the provisions of section 4 of the Act of October 6, 1945 (59 Stat. 539; 10 U.S.C. 948) [former section 948 of this title], as amended, and (b) enlisted persons or former enlisted persons of the Regular Navy or Regular Marine Corps who have been transferred prior to the effective date of this section to the Fleet Reserve or the Fleet Marine Corps Reserve under the provisions of title II of the Naval Reserve Act of 1938, as amended, shall not be entitled to have their retired pay or retainer pay computed on the basis of the highest officer or warrant-officer grade held by them as authorized by this section until they have completed thirty years of service, to include the sum of their active service and their service on the retired list or in the Fleet Reserve or in the Fleet Marine Corps Reserve, as rquired by existing law: *And provided further*, That enlisted persons and warrant officers of the uniform services, heretofore or hereafter advanced on the retired list to a higher officer rank or grade pursuant to any provision of law shall, if application therefore is made to the Secretary concerned within one year from the effective date of this section or within one year after the date of advancement on the retired list, whichever is the later, and subject to the approval of the Secretary concerned, be restored to their former retired enlisted or warrant-officer status, as the case may be, and shall thereafter be deemed to be enlisted or warrant-officer personnel, as appropriate, for all purposes, including the computation of their retired pay based on such enlisted or warrant-officer rank, grade, or rating, as the case may be."

CROSS REFERENCES

Active service, definition, see section 101 (24) of this title.

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Reenlistment after discharge, see section 515 of this title.

Retirement of Coast Guard warrant officers in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1167, 1401 of this title; title 14 sections 334, 438.

§ 565. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent regular warrant officers of any armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 24.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
565	10: 600p (less applicability to reserve and temporary warrant officers); 34: 330g (less applicability to reserve warrant officers); 34: 430d (less applicability to reserve and temporary warrant officers).	May 29, 1954, ch. 249, § 18 (less applicability to reserve and temporary warrant officers), 68 Stat. 165.

The word "may" is substituted for the words "is authorized, in his discretion". The words "any provision of law" are substituted for the words "all or any part or parts of the several provisions of law".

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(4) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

Permanent reserve warrant officers of any armed force, suspension of laws, see section 599 of this title.

CROSS REFERENCES

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

Chapter 35.—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reserve components: qualifications.
592. Commissioned officer grades.
593. Commissioned officers: appointment, how made; term.
594. Commissioned officers: original appointment; limitation.
595. Officers: appointment upon transfer.
597. Warrant officers: grades; appointment, how made; term.
598. Warrant officers: promotion.
599. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.
600. Officer candidates.

AMENDMENTS

1958—Pub. L. 85-861, § 1(11), Sept. 2, 1958, 72 Stat. 1440, added item 592 and deleted item 596.

CROSS REFERENCES

Particular provisions relating to appointments as reserve officers—

Air Force, see section 8351 et seq. of this title.

Army, see section 3351 et seq. of this title.

Coast Guard Reserve, see section 751a et seq. of Title 14, Coast Guard.

Naval Reserve and Marine Corps Reserve, see sections 5581, 5598 of this title.

Regulations to carry out this chapter, see section 280 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 280 of this title.

§ 591. Reserve components: qualifications.

(a) To become an officer of a reserve component a person must be appointed as a Reserve of an armed force in a grade corresponding to a grade authorized for the regular component of the armed force concerned and subscribe to the oath prescribed by section 3331 of title 5. In addition, to become an officer of the Army National Guard of the United States or the Air National Guard of the United States, he must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard, as the case may be.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, except as provided in section 454 (i) (7) of title 50, appendix, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8; or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) Women may be appointed as Reserves of the armed forces for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve. Women who are otherwise qualified may be appointed as Reserves of the armed forces with a view to serving in the Army National Guard of the United States or the Air National Guard of the United States. Women are appointed in grades corresponding to the grades authorized for female officers of the regular component of the armed force concerned. Any female former officer of an armed force may, if otherwise qualified, be appointed as a Reserve of that armed force in the highest grade in which she previously served satisfactorily on active duty (other than for training).

(d) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be appointed as a Reserve of any armed force under the jurisdiction of that Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 24; Sept. 2, 1958, Pub. L. 85-861, § 1(10)(A), 72 Stat. 1440; Dec. 23, 1963, Pub. L. 88-236, 77 Stat. 474; Nov. 2, 1966, Pub. L. 89-718, § 4, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90-130, § 1 (3), 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
591 (a)	50: 946.	July 9, 1952, ch. 608, §§ 217 (less (c), and less applicability to enlistments), 222, 232 (less applicability to enlistments), 66 Stat. 486, 487, 489.
591 (b)	50: 941 (a) (less applicability to enlistments).	
591 (c)	50: 941 (b) (less applicability to enlistments).	
591 (d)	50: 956 (less applicability to enlistments).	

In subsection (a), 50: 946 (a) (last 12 words of proviso) is omitted as covered by section 312 of title 32, 50: 946 (b) is omitted as covered by the revised subsection.

In subsection (b), the word "However" is substituted for the words "Subject to the limitation that". The exception as to section 4 (i) (7) of the Universal Military Training and Service Act is inserted for clarity. The words "as Reserves of the armed forces under his jurisdiction" are substituted for the words "of Reserve members of the Armed Forces of the United States". The words "unless he is at least 18 years of age" are substituted for 50: 941 (a) (last sentence). The words "its Territories" are omitted as surplusage, since citizens of the Territories are citizens of the United States.

In subsection (c), the words "armed force concerned" are substituted for the words "of the appropriate Armed Force of the United States". The words "in the grades corresponding to the grades authorized for female officers of the" are substituted for the words "in the same grades * * * as are authorized for women in the", to conform to subsection (a). The words "in which she previously served satisfactorily" are substituted for the words "satisfactorily held by her".

In subsection (d), the words "under the jurisdiction of that Secretary" are inserted for clarity. The words "general or special" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90-130 struck out provision limiting the areas of service of women in the Army National Guard of the United States and the Air National Guard of the United States to service as nurses or medical specialists.

1966—Subsec. (a). Pub. L. 89-718 substituted "3331" for "16".

1963—Subsec. (b)(1). Pub. L. 88-236 substituted "he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8" for "he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof".

1958—Subsec. (c). Pub. L. 85-861 permitted appointment of women as Reserves of the armed forces with a view to serving as nurses or medical specialists in the Army National Guard of the United States or the Air National Guard of the United States.

CROSS REFERENCES

National Guard, Federal recognition of commissioned officers, see sections 305—308 of Title 32, National Guard.

Women, appointment in Naval Reserve in Medical Corps, Dental Corps, and Medical Service Corps, see section 5581 of this title.

§ 592. Commissioned officer grades.

Except for commissioned warrant officers, the reserve commissioned officer grades in each armed force are those authorized for regular commissioned officers of that armed force. (Added Pub. L. 85-861, § 1 (10) (B), Sept. 2, 1958, 72 Stat. 1440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
592	50: 1181 (1) (as applicable to 50: 1201). 50: 1201.	Sept. 3, 1954, ch. 1257, §§ 102 (1) (as applicable to § 211), 211, 68 Stat. 1149, 1153.

The words "including those heretofore or hereafter transferred to the Retired Reserve", "permanent", and "pursuant to the Officer Personnel Act of 1947, as amended" are omitted as surplusage. The rule as to the Coast Guard is consolidated with the rule applicable to the other armed forces, since 14: 754 prescribes the same substantive result as that prescribed by 50: 1201 for the other armed forces.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 593. Commissioned officers: appointment, how made; term.

(a) Appointments of Reserves in commissioned grades below general officer and flag officer, except commissioned warrant officer, shall be made by the President alone. Appointments of Reserves as general and flag officers shall be made by the President, by and with the advice and consent of the Senate, except as provided in section 3352 of this title.

(b) Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 25; Sept. 2, 1958, Pub. L. 85-861, § 1 (10) (C), 72 Stat. 1440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
593 (a) 593 (b)	50: 942; 50: 943. 50: 945; 50: 948 (less 3d and 4th sentences, as applicable to commissioned officers).	July 9, 1952, ch. 608, §§ 21,8 219, 221, 224 (less 3d and 4th sentences, as applicable to commissioned officers), 66 Stat. 487.

In subsection (a), the word "alone" is inserted for clarity. The exception as to commissioned warrant officers is inserted to reflect section 597 of this title, since reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard are appointed by commission by the Secretary concerned.

In subsection (b), 50: 948 (2d and last sentences) is omitted as executed.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 inserted ", except as provided in section 3352 of this title" following "consent of the Senate".

INDEFINITE APPOINTMENTS FOR CERTAIN RESERVE OFFICERS

Section 41 of act Aug. 10, 1956, provided that: "Each person who was a reserve officer on July 9, 1952, and who did not hold an appointment for an indefinite term on that date, shall be given an appointment for an indefinite term in place of the appointment he then held, if after written notification by competent authority before July 2, 1953, the officer agrees in writing to have that appointment continued for an indefinite term. In the event such officer does not agree in writing, the term of his current appointment shall not be changed by this section."

CROSS REFERENCES

Coast Guard Reserve officers, appointment as prescribed in this section, see section 271(d) of Title 14, Coast Guard.

Leave of absence of Reserves and National Guardsmen when on active duty or engaged in field or coast defense training, see section 6323 of Title 5, Government Organization and Employees.

Reserve warrant officers, appointment, see section 597 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3352 of this title; title 14 section 271.

§ 594. Commissioned officers: original appointment; limitation.

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force; or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 25.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
594 (a) 594 (b)	50: 941 (c) (less 1st 21 words). 50: 941 (c) (1st 21 words).	July 9, 1952, ch. 608 § 217 (c), 66 Stat. 487.

In subsection (a), the words "unless * * * he was formerly" are substituted for the words "has not held an appointment as". The words "or any component thereof" are omitted as surplusage.

§ 595. Officers: appointment upon transfer.

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under sections 451—473 of title 50, appendix, is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under sections 451—473 of title 50, appendix. However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any

other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 25.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
595 (a)	50: 929 (a) (less 2d sentence, less applicability to enlistments).	July 9, 1952, ch. 608, § 209 (less applicability to enlistments), 66 Stat. 484.
595 (b)	50: 929 (a) (2d sentence, and less applicability to enlistments).	
595 (c)	50: 929 (b) (less applicability to enlistments).	

In subsection (a), the words "is entitled * * * to be appointed as an officer of any armed force that he chooses" are substituted for the words "shall be permitted to * * * accept an appointment in such armed force of the United States as he may elect". The last sentence is substituted for 50: 929 (a) (words within parentheses). The words "of an armed force of the United States" are omitted as surplusage.

In subsection (b), the word "rest" is substituted for the words "remaining period". The words "be required to" are omitted as surplusage.

In subsection (c), the words "This section does not" are substituted for the words "Nothing in this section shall be construed". The word "change" is substituted for the words "reduce, limit, or modify". The words "which any person may undertake to perform" are omitted as surplusage.

CROSS REFERENCES

Active duty agreements, see sections 679, 680 of this title.

§ 596. Repealed. Pub. L. 85-861, § 36B (2), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 25, related to promotion of officers in the Reserve components.

§ 597. Warrant officers: grades; appointment, how made; term.

(a) The permanent reserve warrant officer grades in each armed force are those prescribed for regular warrant officers by section 555 (a) of this title.

(b) Reserve chief warrant officers of the Army and the Air Force shall be appointed in those grades, by warrant, by the Secretary concerned. Permanent reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be appointed in those grades, by commission, by the Secretary concerned. Permanent reserve warrant officers, W-1, shall be appointed in those grades, by warrant, by the Secretary concerned.

(c) Appointments as Reserves in permanent warrant officer grades are for an indefinite term and are held during the pleasure of the Secretary concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 26.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
597 (a)	10: 600a (a) (less 3d and last sentences, as applicable to permanent reserve appointments); 34: 135a (a) (less last sentence, as applicable to permanent reserve appointments).	May 29, 1954, ch. 249, §§ 3 (a) (less last sentence, as applicable to permanent reserve appointments), 5 (a) (last sentence, as applicable to permanent reserve appointments), 68 Stat. 157, 159.

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
597 (b)	10: 600a (a) (3d sentence, as applicable to permanent reserve appointments); 10: 600c (a) (last sentence, as applicable to permanent reserve appointments); 34: 135a (a) (last sentence, as applicable to permanent reserve appointments); 34: 135c (a) (last sentence, as applicable to permanent reserve appointments); 50: 944.	July 9, 1952, ch. 608, §§ 220, 223, 224 (less 3d and 4th sentences, and less applicability to commissioned officers), 66 Stat. 487.
597 (c)	50: 947; 50: 948 (less 3d and 4th sentences, and less applicability to commissioned officers).	

In subsection (b), the words "W-4, W-3, and W-2" and "persons" are omitted as surplusage.

In subsection (c), the words "After July 9, 1952" are omitted as executed. 50: 948 (2d and last sentence) is omitted as executed.

CROSS REFERENCES

Regular warrant officers, appointment, see section 555 (b) of this title.

Reserve warrant officers of Army or Air Force, additional appointments during war or emergency, see sections 3445, 8445, of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 598. Warrant officers: promotion.

The promotion of permanent reserve warrant officers to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe. (Aug. 10, 1956, ch. 1041, 70A Stat. 26.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
598	10: 600e (last sentence, less applicability to temporary promotions); 34: 330 (last sentence, less applicability to temporary promotions).	May 29, 1954, ch. 249, § 7 (last sentence, less applicability to temporary promotions), 68 Stat. 159.

CROSS REFERENCES

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 599 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 599. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 26.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
599	10: 600p (as applicable to reserve warrant officers); 34: 330g (as applicable to reserve warrant officers); 34: 430d (as applicable to reserve warrant officers).	May 29, 1954, ch. 249, § 18 (as applicable to reserve warrant officers), 68 Stat. 165.

The word "may" is substituted for the words "is authorized, in his discretion". The words "any provision of law" are substituted for the words "all or any part or parts of the several provisions of law".

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(4) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Permanent regular warrant officers of any armed force, suspension of laws, see section 565 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 600. Officer candidates.

(a) Within such numbers as the Secretary concerned may prescribe, enlisted Reserves may, with their consent, be selected for training as officer candidates. Enlisted Reserves so selected shall be designated as officer candidates during that training. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be so selected or designated unless—

(1) he is on active duty; or

(2) the governor or other appropriate authority of the jurisdiction concerned consents.

(b) The enlistment or term of service of a Reserve who is designated as an officer candidate under this section is extended to include any period, beyond its normal expiration date, during which he is an officer candidate.

(c) While he is on active duty, other than active duty for training without pay, or performing authorized travel to and from that duty, an officer candidate designated under this section is entitled to the pay and allowances of his enlisted grade, but not less than those prescribed for pay grade E-2.

(d) An officer candidate designated under this section may not participate in the program of a reserve officer training corps of any armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 26.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
600 (a)	50: 935 (a).	July 9, 1952, ch. 608, §§ 215 (a), 230, 242, 66 Stat. 486, 489, 492.
600 (b)	50: 954 (a).	
600 (c)	50: 973.	
600 (d)	50: 954 (b).	

In subsection (a), the words "who is not in active Federal service" are substituted for the words "when not in the active military service of the United States". The word "during" is substituted for the words "for the period of".

In subsection (c), the words "active duty other than active duty for training without pay" are substituted for the words "active duty or active duty for training with pay". The words "enlisted members of the reserve components designated as", "enlisted", and "under the Career Compensation Act of 1949, as amended" are omitted as surplusage.

CROSS REFERENCES

Basic pay and allowances, see sections 203, 402 of Title 37, Pay and Allowances of the Uniformed Services.

Chapter 37.—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.

AMENDMENTS

1958—Pub. L. 85-861, § 33(a)(4)(A), Sept. 2, 1958, 72 Stat. 1564, substituted "General Service Requirements" for "Service Requirements for Reserves" in the chapter heading.

§ 651. Members: required service.

(a) Each male person who after August 9, 1955, becomes a member of an armed force before his twenty-sixth birthday, other than a person deferred under the next to the last sentence of section 456(d)(1) of title 50, appendix, shall serve in the armed forces for a total of six years, unless he is sooner discharged because of personal hardship under regulations prescribed by the Secretary of Defense or, if he is a member of the Coast Guard while it is not operating as a service in the Navy, by the Secretary of the Treasury. Any part of such service that is not active duty or is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 27; Sept. 2, 1958, Pub. L. 85-861, §§ 1 (12), 36B (3), 72 Stat. 1440, 1570; Nov. 2, 1966, Pub. L. 89-718, § 5, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
651 (a)	50 App.: 454 (d) (3) (1st sentence, and less applicability to members of National Security Training Corps).	June 24, 1948, ch. 625, § 4 (d) (3) (less 4th sentence, and less applicability to members of National Security Training Corps); added June 19, 1951, ch. 144, § 1 (g) (last par., less 4th sentence, and less applicability to members of National Security Training Corps), 65 Stat. 79; July 9, 1952, ch. 608, § 813, 66 Stat. 509.
651 (b)	50 App.: 454 (d) (3) (2d sentence, and less applicability to members of National Security Training Corps).	
651 (c)	50 App.: 454 (d) (3) (3d and last sentences).	

In subsection (a), the word "male" is inserted, since the source statute (Universal Military Training and Service Act (50 U. S. C. App. 451 et seq.)) applies only to male persons. The words "subsequent to the date of enactment of this paragraph [June 19, 1951]" are omitted as executed. The words "becomes a member" are substituted for the words "is inducted, enlisted, or appointed * * * in". The words "in the armed forces" are substituted for the words "on active training and service in the Armed Forces * * * and in a reserve component". The last sentence is substituted for the words "or in training in the National Security Training Corps". The words "under any provision of law" and "including the reserve components thereof" are omitted as surplusage.

In subsection (b), the words "who is not a Reserve" are inserted, since the eight year obligation for Reserves is covered by subsection (a). The words "active duty" are substituted for the words "active training and service". The last eight words are substituted for the words "and shall serve therein for the remainder of the period which he is required to serve under this paragraph".

The words "physically and mentally" and 50 App.: 454 (d) (3) (last 15 words of 2d sentence) are omitted as surplusage.

In subsection (c), the words "who is released from active duty" are inserted for clarity. The words "shall become a member" are substituted for the words "it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to". The words "there is a vacancy" are substituted for the words "enlistment, enrollment, or appointment in, or assignment to". 50 App.: 454 (d) (3) (last sentence) is omitted as surplusage.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 struck out reference to persons who enlisted under section 1013 of title 50 in the description of persons not required to serve in the armed forces for a total of six years.

1958—Subsec. (a). Pub. L. 85-861, § 1(12), restricted section to male persons who became members of the armed forces after Aug. 9, 1955, excluded persons enlisted under section 1013 of Title 50 or deferred under the next to last sentence of section 456(d)(1) of Title 50, Appendix, reduced from eight to six years the required period of service, required any part of such service that is not active duty or is active duty for training to be performed in a reserve component, and eliminated provisions which permitted members of the armed forces to count service in the National Security Training Corps as if it were service in the armed forces for the purposes of this subsection.

Subsec. (c). Pub. L. 85-861, § 36B(3), repealed subsec. (c), which required members released from active duty to become members of an organized unit of a reserve component of an officers' training program.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

CROSS REFERENCES

Appointment as officer in armed force instead of transfer to reserve component, see section 595 of this title.

Enlistment in armed force instead of transfer to reserve component, see section 512 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 512, 595, 1005, 4348, 9348 of this title.

Chapter 39.—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
671a. Members: service extension during war.
671b. Members: service extension when Congress is not in session.
672. Reserve components generally.
673. Ready Reserve.
673a. Ready Reserve: members not assigned to, or participating satisfactorily in, units.
674. Standby Reserve.
675. Retired Reserve.
676. Retention after becoming qualified for retired pay.
677. Reserve officers: use of in expansion of armed forces.
678. Reserves: for organizing, administering, etc., reserve components.
679. Active duty agreements.
680. Active duty agreements: release from duty.
681. Reserves: release from active duty.
682. Reserves: kinds of duty.
683. Reserves: duty with or without pay.
684. Payment of certain Reserves while on duty.
685. Reserves: theological students; limitations.
686. Reports to Congress.
687. Non-Regulars: readjustment payment upon involuntary release from active duty.

AMENDMENTS

1968—Pub. L. 90-235, § 1(a)(1)(B), Jan. 2, 1968, 81 Stat. 753, added items 671a and 671b.

1967—Pub. L. 90-40, § 6(2), June 30, 1967, 81 Stat. 106, added item 673a.

1962—Pub. L. 87-651, title I, § 102(b), Sept. 7, 1962, 76 Stat. 508, added item 687.

1958—Pub. L. 85-861, § 1(16), Sept. 2, 1958, 72 Stat. 1441, added items 684 and 685.

CROSS REFERENCES

Non-regular service, recall to active status of member on inactive status list, see section 1335 of this title.

Particular provisions relating to active duty—
Air Force, see section 8491 et seq. of this title.
Army, see section 3491 et seq. of this title.
Navy, see section 5442 et seq. of this title.

Regulations to carry out this chapter, see section 280 of this title.

Retired pay for non-regular service, limitation on active duty, see section 1337 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 280 of this title.

§ 671. Members not to be assigned outside United States before completing training.

No member of an armed force may be assigned to active duty on land outside the United States and its Territories and possessions, until he has had four months of basic training or its equivalent. (Aug. 10, 1956, ch. 1041, 70A Stat. 27.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
671	50 App.: 454 (a) (words between semicolon and proviso of 6th par.).	June 24, 1948, ch. 625, § 4 (a) (words between semicolon and proviso of 6th par.); restated June 19, 1951, ch. 144, § 1 (d) (words between semicolon and proviso of 6th par.), 65 Stat. 78.

The words "four months of basic training or its equivalent" are substituted for the words "the equivalent of at least four months of basic training". The words "who is enlisted, inducted, appointed, or ordered to active duty after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act [June 19, 1951]" and "at any installation located" are omitted as surplusage.

§ 671a. Members: service extension during war.

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter. (Added Pub. L. 90-235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§ 671b. Members: service extension when Congress is not in session.

(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the Armed Forces of the United States, that expire before the thirtieth day after Congress next convenes or reconvenes.

(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of

extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order. (Added Pub. L. 90–235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§ 672. Reserve components generally.

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter. However—

(1) a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available; and

(2) a member of the Standby Reserve may not be ordered to active duty under this subsection unless the Director of Selective Service determines that the member is available for active duty.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State or Territory, Puerto Rico, or the Canal Zone, or the commanding general of the District of Columbia National Guard, as the case may be.

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty (other than for training), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being ordered to active duty (other than for training).

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned.

(e) A reasonable time shall be allowed between the date when a Reserve ordered to active duty (other than for training) is alerted for that duty and the date when he is required to enter upon that duty. Unless the Secretary concerned determines that the military requirements do not allow it, this period shall be at least 30 days. (Aug. 10, 1956, ch. 1041, 70A Stat. 27; Sept. 2, 1958, Pub. L. 85–861, §§ 1 (13), 33 (a) (5), 72 Stat. 1440, 1564.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
672 (a)	50: 961 (a).	July 9, 1952, ch. 608, §§ 233 (less (b) and (f)), 234 (1st sentence), 66 Stat. 489, 490.
672 (b)	50: 961 (c).	
672 (c)	50: 961 (g).	
672 (d)	50: 961 (d); 50: 962 (1st sentence).	
672 (e)	50: 961 (e).	

In subsection (a), the word "hereafter" is omitted as surplusage. The words "there are not enough * * * who are" are substituted for the words "adequate numbers of * * * are not". The words "without the consent of the persons affected" and "under the jurisdiction of that Secretary" are inserted for clarity. The words "and the members thereof" are omitted as surplusage.

In subsection (b), the words "without the consent of the persons affected" are substituted for the words "without his consent", since units as well as individuals are covered by the revised subsection. The words "and the members thereof", "and required to perform", "or required to serve on", and "in the service of the United States" are omitted as surplusage.

In subsections (b) and (d), the words "active duty for training" are omitted as covered by the words "active duty".

In subsection (c), the words "to active duty" are substituted for the words "into the active military service of the United States", in 50: 961 (g) (1st and last sentences). The words "to serve" are substituted for the words "for the purpose of serving". The words "without their consent" are substituted for the word "involuntarily". The words "to that duty" are substituted for the words "into active duty". The last sentence of the revised subsection is substituted for 50: 961 (g) (last sentence).

In subsection (d), the words "the consent of that member" are substituted for the words "his consent". The words "under his jurisdiction" are inserted for clarity. 50: 962 (last 15 words of 1st sentence) is omitted as covered by 50: 961 (d).

In subsection (e), the words "to active duty (other than for training)" are substituted for the words "into the active military service of the United States". The words "period of" are omitted as surplusage. The word "requirements" is substituted for the word "condition" for clarity.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861, §§ 1(13), 33(a)(5), inserted "(other than for training)" following "active duty", substituted "inactive National Guard" for "inactive Army National Guard or in the inactive Air National Guard", and added provisions prohibiting a member of the Standby Reserve from being ordered to active duty under this subsection unless the Director of Selective Service determines that the member is available for active duty, in two instances.

Subsec. (c). Pub. L. 85–861, § 33(a)(5), inserted "(other than for training)" following "active duty".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsecs. (a) and (c) of this section by section 33(a)(5) of Pub. L. 85–861 effective Aug. 10 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Ready Reserve, composition and authorized strength of, see section 268 of this title.

Standby Reserve, composition of, see section 273 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 268, 272, 674, 678, 3080, 8080 of this title.

§ 673. Ready Reserve.

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time. (Aug. 10, 1956, ch. 1041, 70A Stat. 28; Sept. 2, 1958, Pub. L. 85-861, §§ 1 (14), 33 (a) (5), 72 Stat. 1441, 1564.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
673 (a)	50: 961 (b) (1).	July 9, 1952, ch. 608, § 233 (b), 66 Stat. 489.
673 (b)	50: 961 (b) (2).	

In subsection (a), the words "after January 1, 1953" are substituted for the word "hereafter", to reflect the effective date of the source statute. The words "without the consent of the persons concerned" are substituted for the word "involuntarily".

The words "under the jurisdiction of that Secretary" are inserted for clarity. The last sentence of the revised subsection is substituted for 50: 961 (b) (1) (proviso). The words "and the members thereof" and "and required to perform" are omitted as surplusage.

In subsection (b), the words "to achieve" are substituted for the words "in the interest of". The words "without their consent" are substituted for the word "involuntarily". The words "who are being considered for" are inserted for clarity. The words "prescribe such policies and procedures" are substituted for the words "promulgate such policies and establish such procedures". The words "as he considers necessary" are substituted for the words "as may be required in his opinion". The words "this subsection" are substituted for the words "our intent here declared". The words "at least once a year" are substituted for the words "from time to time, and at least annually". The words "Senate and the House of Representatives" are substituted for the word "Congress". 50: 961 (b) (2) (1st 18 words) is omitted as surplusage. The words "with the objective" and "found to be" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861, §§ 1(14)(A), 33(a)(5), inserted "(other than for training)" following "active duty", and eleminated provisions that made subsection inapplicable unless Congress determined how many members of the reserve components were necessary, in the interest of national security, to be ordered to active duty.

Subsec. (c). Pub. L. 85-861, § 1(14)(B), added subsec. (c).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) of this section by section 33(a)(5) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Composition and authorized strength of Ready Reserve, see section 268 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 268 of this title.

§ 673a. Ready Reserve: members not assigned to, or participating satisfactorily in, units.

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

(Added Pub. L. 90-40, § 6(1), June 30, 1967, 81 Stat. 105).

EX. ORD. NO. 11366. AUTHORIZATION TO ORDER READY RESERVE TO ACTIVE DUTY; EXTENSION OF MILITARY SERVICE

Ex. Ord. No. 11366, Aug. 4, 1967, 32 F.R. 11411, provided: By virtue of the authority vested in me by section 673a of title 10 of the United States Code [this section], and by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Secretary of Defense is hereby authorized and empowered to exercise the authority vested in the President by section 673a of title 10 of the United States Code [this section], to order to active duty any member of the Ready Reserve of an armed force (except the Coast Guard when not operating as a service in the Navy) who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) In pursuance of the provisions of section 673a of title 10 of the United States Code [this section], the Secretary of Defense is hereby authorized to require a member ordered to active duty under the authority of

this Order to serve on active duty until his total service on active duty equals 24 months. If the enlistment or period of military service of a member of the Ready Reserve ordered to active duty under this authority would expire before he has served the required period of active duty prescribed herein, his enlistment or period of military service may be extended until he has served the required period.

(c) In pursuance of the provisions of section 673a of title 10 of the United States Code [this section], and in order to achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this authority, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

SEC. 2. The Secretary of Transportation is hereby authorized and empowered to exercise the authority vested in the President by section 673a of the title 10 of the United States Code [this section], with respect to any member of the Ready Reserve of the Coast Guard when it is not operating as a service in the Navy, under the same conditions as such authority may be exercised by the Secretary of Defense under this Order with respect to any member of the Ready Reserve of any other armed force.

SEC. 3. (a) The Secretary of Defense may designate any of the Secertaries of the military departments of the Department of Defense to exercise the authority vested in him by section 1 of this Order.

(b) The Secretary of Transportation may designate the Commandant of the United States Coast Guard to exercise the authority vested in him by section 2 of this Order.

SEC. 4. Executive Order No. 11327 of February 15, 1967, is superseded except with respect to members of the Ready Reserve ordered to active duty under the authority of that Order.

LYNDON B. JOHNSON.

EX. ORD. NO. 11406. ASSIGNING AUTHORITY TO ORDER READY RESERVE TO ACTIVE DUTY

Ex. Ord. No. 11406, Apr. 10, 1968, 33 F.R. 5735, provided:

By virtue of the authority vested in me by paragraph (e) of title I of the Department of Defense Appropriation Act, 1967 (80 Stat. 981), and by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

The Secretary of Defense, and, when designated by him for this purpose, any of the Secretaries of the military departments of the Department of Defense, are hereby authorized and empowered to exercise the authority vested in the President until June 30, 1968, by paragraph (e) of title I of the Department of Defense Appropriation Act, 1967 (80 Stat. 981) to order any unit in the Ready Reserve of an armed force to active duty for a period of not to exceed 24 months.

LYNDON B. JOHNSON

ORDERING READY RESERVE TO ACTIVE DUTY DURING NATIONAL EMERGENCIES

For additional provisions authorizing ordering of Ready Reserve to active duty during national emergencies, see section 263 of this title and notes thereunder.

§ 674. Standby Reserve.

(a) Units and members in the Standby Reserve may be ordered to active duty (other than for training) only as provided in section 672 of this title.

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty (other than for training), unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29; Sept. 7, 1962, Pub. L. 87–651, title I, § 130, 76 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
674 (a)	50: 926 (a) (less 1st 28 words).	July 9, 1952, ch. 608, § 206 (less 1st 28 words of (a)), 66 Stat. 483.
674 (b)	50: 926 (b).	

In subsection (b), the words "to serve" are substituted for the words "for the purpose of serving". The words "there are not enough * * * that are" are substituted for the words "adequate numbers of * * * are not". The words "(other than for training)" are inserted, since the words "active duty" were defined in the source statute cited above to exclude "active duty for training".

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–651 substituted "only as provided in section 672 of this title" for "only in time of war, of national emergency declared by Congress, or when otherwise authorized by law."

CROSS REFERENCES

Composition of Standby Reserve, see section 273 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 272 of this title.

§ 675. Retired Reserve.

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 672 (a) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 29.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
675	50: 927 (c).	July 9, 1952, ch. 608, § 207 (c), 66 Stat. 483.

CROSS REFERENCES

Composition of Retired Reserve, see section 274 of this title.

Retired lists, see section 1376 of this title.

§ 676. Retention after becoming qualified for retired pay.

Any person who has qualified for retired pay under chapter 67 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 1332 (b) of this title. A member so retained shall be credited with that service for all purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 29.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
676	10: 1036a (e); 34: 440i (e).	June 29, 1948, ch. 708, § 302 (e), 62 Stat. 1088.

The words "active duty, or in service, in a reserve component other than that listed in section 1332 (b) of this title" are inserted to reflect the words "Federal service", as used in Title III of the source statute. The words "that service for all purposes" are substituted for 10: 1036a (e) (last 11 words) and 34: 4401 (e) (last 11 words). The words "upon attaining the age of sixty years" are omitted as surplusage.

§ 677. Reserve officers: use of in expansion of armed forces.

When an expansion of the active armed forces requires that officers of the reserve components who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 29.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
677	50: 961 (f).	July 9, 1952, ch. 608, § 233 (f), 66 Stat. 490.

The words "without their consent" are substituted for the word "involuntarily". The words "it shall be the policy" are omitted as surplusage. The words "to active duty (other than for training)" are substituted for the words "into the active military service".

§ 678. Reserves: for organizing, administering, etc., reserve components.

(a) A Reserve ordered to active duty under section 672 (d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be ordered in his reserve grade. While so serving he continues to be eligible for promotion as a Reserve, if he is otherwise qualified.

(b) To assure that a Reserve on duty under subsection (a) receives periodic refresher training in the categories for which he is qualified, the Secretary concerned may detail him to duty with any armed force, or otherwise as the Secretary sees fit. (Aug. 10, 1956, ch. 1041, 70A Stat. 30.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
678 (a)	50: 962 (2d sentence).	July 9, 1952, ch. 608, § 234, (less 1st sentence), 66 Stat. 490.
678 (b)	50: 962 (less 1st and 2d sentences).	

In subsection (a), the words "to active duty under section 672 (d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components" are substituted for the words "into the active military service of the United States under the provisions of this section". The words "his reserve grade" are substituted for the words "held by them in the Reserve of their Armed Force". The words "as a Reserve", in the last sentence of the revised subsection, are substituted for the words "in the Reserve of their Armed Force". The word "Hereafter" is omitted as surplusage.

Subsection (b) is substituted for 50: 962 (less 1st and 2d sentences).

§ 679. Active duty agreements.

(a) To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This subsection does not apply in time of war declared by Congress.

(b) An agreement may not be made under subsection (a) unless the specified period of duty is at least 12 months longer than any period of active duty that the member is otherwise required to perform.

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of the Treasury for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(d) If an agreement made under subsection (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 30.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
679 (a)	50: 963 (a) (less last sentence); 50: 963 (c); 50: 963 (f).	July 9, 1952, ch. 608, §§ 235 (less last sentence of (a), and less (b)), 236, 66 Stat. 491.
679 (b)	50: 963 (d).	
679 (c)	50: 963 (e).	
679 (d)	50: 964.	

In subsection (a), the words "To provide definite terms of active duty for" are substituted for the words "In order that * * * may remain on or be ordered to active duty * * * for terms of service of definite duration". The words "with their consent" are substituted for the word "voluntarily". The words "requiring the member to serve" are substituted for 50: 963 (c). The words "more than" are substituted for the words "to exceed". The second sentence is substituted for 50: 963 (a) (2d sentence). The word "hereafter" is omitted as surplusage. 50: 963 (f) is omitted as executed. The words "under his jurisdiction" are inserted for clarity.

In subsection (b), the words "is at least * * * longer" are substituted for the words "exceeds by at least". The words "active duty that the member is otherwise required to perform" are substituted for the words "obligated or involuntary active duty to which he is otherwise liable".

In subsection (c) the words "for the armed forces under his jurisdiction" are inserted for clarity.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 680 of this title.

§ 680. Active duty agreements: release from duty.

(a) Each agreement made under section 679 (a) of this title shall provide that the member may not

be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a Reserve Officer who is not serving under such an agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 679 (a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

(1) released for a reason described in subsection (a) (2) (A)—(C);

(2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;

(3) eligible for retired pay or severance pay under another provision of law;

(4) placed on a temporary disability retired list; or

(5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30; June 28, 1962, Pub. L. 87-509, § 2, 76 Stat. 121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
680 (a) 680 (b)	50: 963 (a) (last sentence). 50: 963 (b).	July 9, 1952, ch. 608; § 235 (a) (last sentence), (b), 66 Stat. 491.

In subsections (a) and (b), the words "without his consent" are substituted for the word "involuntary".

In subsection (a) (1), the word "because" is substituted for the words "by reason". The words "actual personnel strength" are substituted for the words "numerical strength of the military personnel".

In subsection (a) (2), the words "for any other reason" are substituted for the words "for reasons other than that prescribed in paragraph (1)". The words "dismissed or discharged" are inserted for clarity. The words "at least" are substituted for the word "duration". The words "is convicted and sentenced * * * and the sentence has become final" are substituted for the words "final conviction and sentence". The words "from active duty" are omitted as surplusage.

In subsection (b), the words "before the end of" are substituted for the words "prior to the expiration of the period of service under". The words "computed by multiplying * * * and fractions of a year of his unexpired period of service under the agreement by the sum of one month's * * * pay, and allowances" are substituted for the words "equal to one month's pay and allowances multiplied by * * * (including any pro rata part thereof) remaining as the unexpired period of his agreement for active duty". The words "basic * * * special pay * * * to which he is entitled on the day of his release" are substituted for 50:963 (b) (2d sentence). The third sentence is substituted for 50:963 (b) (last sentence). The last sentence is substituted for 50:963 (b) (words within 1st parentheses).

In subsection (b) (2), the words "because of" are substituted for the words "when such release is due to".

In subsection (b) (5), the words "to accept" are substituted for the words "for the purpose of accepting". The words "of an armed force" are inserted for clarity.

AMENDMENTS

1962—Subsec. (a)(2). Pub. L. 87-509 added cl. (D).

CROSS REFERENCES

Basic pay, special pay, and allowances, see section 203 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

Disability from intentional misconduct or willful neglect, separation, see section 1207 of this title.

Temporary disability retired lists, see sections 1202, 1205 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687 of this title.

§ 681. Reserves: release from active duty.

(a) Except as otherwise provided in this title, the Secretary concerned may at any time release a Reserve under his jurisdiction from active duty.

(b) In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if—

(1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply to an armed force during a period of demobilization or reduction in strength of that armed force. (Aug. 10, 1956, ch. 1041, 70A Stat. 31.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
681 (a) 681 (b)	50: 967 (a). 50: 967 (less (a)).	July 9, 1952, ch. 608, § 239, 66 Stat. 492.

In subsection (a), the word "title" is substituted for the word "chapter". The provisions of this title relating to active duty of Reserves are based on the Armed Forces Reserve Act of 1952. The words "under his jurisdiction" are inserted for clarity. The words "or active duty for training" are omitted as covered by the words "active duty".

Subsection (b) is substituted for 50: 967 (b). Clause (3) is inserted, since other provisions of law are necessarily exceptions to the general rule here stated.

§ 682. Reserves: kinds of duty.

Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may, under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 31.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
682	50: 965.	July 9, 1952, ch. 608, § 237, 66 Stat. 492.

The words "armed force concerned" are substituted for the words "Armed Forces of the United States". The words "now or hereafter" and "officers and enlisted" are omitted as surplusage. The words "other than for training" are inserted, since the words "active duty" were defined in the source statute cited above to exclude active duty for training.

§ 683. Reserves: duty with or without pay.

(a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty—

(1) with the pay and allowances provided by law; or

(2) with his consent, without pay.

Duty without pay shall be considered for all purposes as if it were duty with pay.

(b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status. (Aug. 10, 1956, ch. 1041, 70A Stat. 31.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
683 (a)	50: 971.	July 9, 1952, ch. 608, §§ 240, 241, 66 Stat. 492.
683 (b)	50: 972.	

In subsection (a), the word "title" is substituted for the word "chapter". The provisions of this title relating to active duty of reservists are based on the Armed Forces Reserve Act of 1952. The words "shall be considered * * * as if it were" are substituted for the words "shall be counted * * * the same as like".

In subsections (a) and (b), the words "active duty for training" are omitted as covered by the words "active duty".

In subsection (b), the word "kept" is substituted for the words "retained or continued". The words "pursuant to law" are omitted as surplusage.

CROSS REFERENCES

Readjusted pay and allowances, see section 101 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

§ 684. Payment of certain Reserves while on duty.

(a) Except as provided by subsection (b), a Reserve of the Army, Navy, Air Force, or Marine Corps who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either—

(1) the payments to which he is entitled because of his earlier military service; or

(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(b) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a) (2), a Reserve of the Army, Navy, Air Force, or Marine Corps who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a) (2). Other rights and benefits of the member or his dependents are unaffected by this subsection. (Added Pub. L. 85–861, § 1 (15), Sept. 2, 1958, 72 Stat. 1441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
684 (a)	10 App.: 369b (less proviso and last 3 sentences). 34 App.: 853e–1 (less provisos and last 3 sentences).	Aug. 2, 1946, ch. 756, § 10; restated Sept. 27, 1950, ch. 1053, § 1, 64 Stat. 1067; July 12, 1955, ch. 337, §§ 1, 4, 69 Stat. 300, 301.
684 (b)	10 App.: 369b (proviso and last 3 sentences). 34 App.: 853e–1 (provisos and last 3 sentences).	Sept. 27, 1950, ch. 1053, § 2, 64 Stat. 1067; July 12, 1955, ch. 337, §§ 2, 4, 69 Stat. 301.

In subsections (a) and (b), the words "retirement pay" are omitted as covered by the words "retired pay".

In subsection (a), the words "Except as provided by subsection (b)" are inserted for clarity. The words "who performs duty for which he is entitled to compensation, may elect to receive for that duty" are substituted for the words "may elect, with reference to periods of active duty, active duty for training, drill, training, instruction, or other duty for which they may be entitled to receive compensation pursuant to any provisions of law". The words "Notwithstanding the provisions of any other law", in 10 App.: 369b, and "or relinquish" are omitted as surplusage.

Subsection (a) (1) is substituted for clause (2) of 10 App.: 369b and clause (2) of 34 App.: 853e–1.

In subsection (a) (2), the words "pay and allowances authorized by law for the duty that he is performing" are substituted for clause (1) of 10 App.: 369b and 34 App.: 853e–1.

In subsection (b), the word "extended", the next to the last sentence of 10 App.: 369b and of 34 App.: 853e–1, and the first proviso of 34 App.: 853e–1 are omitted as surplusage.

§ 685. Reserves: theological students; limitations.

A Reserve may not be required to serve on active duty, or to participate in inactive duty training, while preparing for the ministry in a recognized

theological or divinity school. (Added Pub. L. 85-861, § 1 (15), Sept. 2, 1958, 72 Stat. 1441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
686	50: 961 (h) (last sentence).	Aug. 9, 1955, ch. 665, § 2 (g) (last sentence), 69 Stat. 599.

The words "active training and service, active duty for training" are omitted as covered by the words "active duty" as defined in section 101 (22) of this title.

§ 686. Reports to Congress.

The Secretary of each military department shall report to the Committees on Armed Services of the Senate and the House of Representatives, not later than January 30 of each year—

(1) the estimated requirements of the armed forces under the jurisdiction of his department in members on active duty during the next fiscal year;

(2) the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year; and

(3) an analysis of the distribution by grade of commissioned officers on active duty at that time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
686	10: 506d-4; 10: 1850; 34: 5a-2.	May 5, 1954, ch. 180, § 404, 68 Stat. 70.

Clause (1) is substituted for the words "estimated active duty requirements for his respective service for the next fiscal year". The words "by permanent or temporary appointment" are omitted since there are no other kinds of appointments.

§ 687. Non-Regulars: readjustment payment upon involuntary release from active duty.

(a) Except for members covered by subsection (b), a member of a reserve component or a member of the Army or the Air Force without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service (other than in time of war or of national emergency declared by Congress after June 28, 1962), but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. However, a member who is released from active duty because his performance of duty has fallen below standards prescribed by the Secretary concerned, or because his retention on active duty is not clearly consistent with the interests of national security, is entitled to a readjustment payment computed on the basis of one-half of one month's basic pay of the grade in which the member is serving at the time of his release from active duty. A person covered by this subsection may not be paid more than two years' basic pay of the grade in which he is serving at the time of his release or $15,000, whichever amount is the lesser. For the purposes of this subsection—

(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;

(2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded; and

(3) a period for which the member concerned has received readjustment pay under another provision of law may not be included.

(b) Subsection (a) does not apply to a member who—

(1) is released from active duty at his request;

(2) is released from active duty for training;

(3) under regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, is released from active duty because of moral or professional dereliction;

(4) upon release from active duty, is immediately eligible for retired pay or retainer pay based entirely on his military service;

(5) upon release from active duty, is immediately eligible for severance pay (other than under section 680 of this title) based on his military service and who elects to receive that severance pay; or

(6) upon release from active duty, is immediately eligible for disability compensation under a law administered by the Veterans' Administration and who elects to receive that compensation.

However, a member covered by clause (6) may receive a readjustment payment under this section and disability compensation if an amount equal to 75 percent of the readjustment payment is deducted from the disability compensation. This subsection does not prevent a member who elects to receive a readjustment payment under this section from becoming entitled to disability compensation based on his service performed after he makes that election.

(c) A member to whom a readjustment payment is made under this section is not entitled to mustering-out pay under the Mustering-Out Payment Act of 1944 (58 Stat. 8), the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 663), or chapter 43 of title 38. If he was paid mustering-out pay under one of those provisions before he became entitled to a readjustment payment under this section, the amount of that mustering-out pay shall be deducted from the amount to which he is entitled under this section.

(d) Any readjustment payment to which a member becomes entitled under this section shall be reduced by the amount of any previous payment made to him under this section that he has not repaid to the United States. If he has repaid that amount to the United States, the period covered by it shall be treated as a period for which a payment has not been made under this section.

(e) Repealed. Pub. L. 89-718, § 6(4), Nov. 2, 1966, 80 Stat. 1116.

(f) If a member who received a readjustment payment under this section after June 28, 1962, qualifies for retired pay under any provision of this title or title 14 that authorizes his retirement upon completion of twenty years of active service, an amount equal to 75 percent of that payment, without interest, shall be deducted immediately from his retired pay. (Added Pub. L. 87–651, title I, § 102(a), Sept. 7, 1962, 76 Stat. 506, and amended Pub. L. 89–718, § 6, Nov. 2, 1966, 80 Stat. 1115.)

REFERENCES IN TEXT

The Mustering-Out Payment Act of 1944 and the Veteran's Readjustment Assistance Act of 1952 referred to in subsec. (c) of this section are now covered by chapter 43 of Title 38, Veteran's Benefits.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718, § 6(1), (2), excepted active service in time of war or national emergency declared by Congress after June 28, 1962, from the computation of years of active service in the formula for determining readjustment pay, substituted two months' basic pay of the grade in which the member is serving at the time of his release for one-half of one month's basic pay as the factor to be multiplied by the years of active service in determining readjustment pay, added provisions for a reduced readjustment pay for persons released from active duty because of sub-standard performance of duty, limited readjustment pay to two years' basic pay of the grade in which he is serving at the time of his release or $15,000, whichever amount is the lesser, and substituted reference to "readjustment pay" for reference to "severance pay" in clause (3).

Subsec. (b). Pub. L. 89–718, § 6(3), inserted "(other than under section 680 of this title)" following "severance pay" in clause (5) and added provision allowing a member covered by clause (6) to receive a readjustment payment under this section and disability compensation if an amount equal to 75 percent of the readjustment payment is deducted from the disability compensation.

Subsec. (e). Pub. L. 89–718, § 6 (4), struck out subsec. (e) which provided that a member's acceptance of a readjustment payment under this section would not affect his entitlement to retired pay, retainer pay, or other retirement benefits from the United States.

Subsec. (f). Pub. L. 89–718, § 6(4), added subsec. (f).

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

SEPARATION PAY OR READJUSTMENT PAY FOR RESERVES ON ACTIVE DUTY ON JULY 9, 1956

Section 302 of Pub. L. 87–651 provided that:

"A member of a reserve component who was serving on active duty on July 9, 1956, under an agreement entered into under section 235 of the Armed Forces Reserve Act of 1952 (66 Stat. 491), if he is involuntarily released from active duty before the expiration of that agreement, may elect to receive either—

"(1) the separation pay provided by that section; or

"(2) any readjustment payment to which he is entitled under section 687 of title 10, United States Code [this section]."

Chapter 40.—LEAVE

Sec.
701. Entitlement and accumulation.
702. Cadets and midshipmen.
703. Reenlistment leave.
704. Use of leave; regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a.

§ 701. Entitlement and accumulation.

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;

(2) absence over leave; and

(3) confinement as the result of a sentence of a court-martial.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsection (f), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) Repealed. Pub. L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586.

(e) Leave taken before discharge is considered to be active service.

(f) Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 may accumulate 90 days' leave. Leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the fiscal year after the fiscal year in which the service terminated. (Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492, and amended Pub. L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586; Pub. L. 90–245, § 1, Jan. 2, 1968, 81 Stat. 782.)

HISTORICAL AND REVISION NOTES

Section of title 10	Source (U.S. Code)	Source (Statutes at Large)
701(a)	37:31a(a) (1st, 2d, and last sentences).	Aug. 9, 1946, ch. 931, § 3(a) (less 4th, 5th, 6th, and 7th sentences), (b) (less proviso), 60 Stat. 963; Sept. 23, 1950, ch. 998, § 1, 64 Stat. 978; Aug. 10, 1956, ch. 1041, § 23, 70A, Stat. 630.
701(b)	37:31a(b) (less proviso).	
701(c)	37:31a(a) (8th sentence).	
701(d)	37:31a(a) (3d sentence).	
701(e)	37:31a(a) (9th sentence).	

In subsection (a), the 2d sentence of section 31a(a) of existing title 37 is omitted as inconsistent with subsection (b).

In subsection (b), the words "(other than a member on terminal leave on September 1, 1946)" and "at any time after August 31, 1946" are omitted as executed. The words "or regulation" are omitted, since a regulation cannot override a statute. The words "or have to his credit" are omitted as surplusage.

In subsections (b) and (c), the word "accrued" is omitted as covered by the word "accumulated".

In subsection (e), the words "before or after August 9, 1946" and section 31a(a) (words after semicolon in 9th sentence) of existing title 37 are omitted as executed.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–245, § 1(1), inserted reference to subsec. (f).

Subsec. (f). Pub. L. 90–245, § 1(2), added subsec. (f).

1965—Subsec. (d). Pub. L. 89–151 repealed subsec. (d), which provided that accumulated leave did not survive the death of a member during active service.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90–245 provided that: "Section 1 of this Act [which amended subsec. (b) of this section and added subsec. (f) of this section] applies only to active duty performed after January 1, 1968."

EFFECTIVE DATE OF 1965 AMENDMENT

Repeal of subsec. (d) by Pub. L. 89–151 effective only in the case of members who die on or after Aug. 28, 1965, see section 4 of Pub. L. 89–151, set out as a note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 703 of this title; title 37 section 502.

§ 702. Cadets and midshipmen.

(a) Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a regular component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation. Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) Sections 701, 702(a), 703, and 704 of this chapter do not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, midshipmen at the United States Naval Academy, or cadets or midshipmen serving elsewhere in the armed forces. The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen. (Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492.)

HISTORICAL AND REVISION NOTES

Section of title 10	Source (U.S. Code)	Source (Statutes at Large)
702(a)	37:31a(c).	Aug. 9, 1946, ch. 931, § 3(c); added June 2, 1950, ch. 217, § 1, 64 Stat. 194.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.
702(b)	37:38 (less applicability to payment for leave).	Aug. 9, 1946, ch. 931, § 10 (less applicability to payment for leave); added Aug. 4, 1947, ch. 475, § 3 (less applicability to payment for leave), 61 Stat. 749.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 9.

In subsection (a), the words "outside the United States or in Alaska or Hawaii" are substituted for the words "outside the continental limits of the United States" to conform to the interpretation of those words in other sections of title 10 and revised title 37.

In subsections (a) and (b), the words ", or his designated representative," are substituted for the last 8 words of section 32(f) of existing title 37.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 703. Reenlistment leave.

(a) Leave for not more than 90 days may be authorized, in the discretion of the Secretary concerned, or his designated representative, to a member of an armed force who reenlists. Leave authorized under this section shall be deducted from leave accrued during active service before reenlistment or charged against leave that may accrue during future active service, or both.

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in section 310(a)(2) of title 37 and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be—

(1) authorized not more than thirty days of leave, exclusive of travel time, at an authorized place selected by the member; and

(2) transported at the expense of the United States to and from that place.

Leave under this subsection may not be charged or credited to leave that accrued or that may accrue under section 701 of this title. The provisions of this subsection shall be effective only in the case of members who extend their required tours of duty on or before June 30, 1972. (Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493, and amended Pub. L. 89–735, Nov. 2, 1966, 80 Stat. 1163; Pub. L. 90–330, June 5, 1968, 82 Stat. 170; Pub. L. 91–302, July 2, 1970, 84 Stat. 368.)

HISTORICAL AND REVISION NOTES

Section of title 10	Source (U.S. Code)	Source (Statutes at Large)
703	37:31a(a) (4th and 7th sentences).	Aug. 9, 1946, ch. 931, § 3(a) (4th and 7th sentences), 60 Stat. 963.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

The 4th sentence of section 31a(a) of existing title 37 is omitted as executed. The words ", or his designated representative," are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–302 substituted "June 30, 1972" for "June 30, 1970".

1968—Subsec. (b). Pub. L. 90–330 substituted "June 30, 1970" for "June 30, 1968."

1966—Pub. L. 89–735 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

§ 704. Use of leave; regulations.

(a) Under regulations prescribed by the Secretary concerned, or his designated representative, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(Added Pub. L. 87-649, § 3(1), Sept. 7, 1962, 76 Stat. 493.)

HISTORICAL AND REVISION NOTES

Section of title 10	Source (U.S. Code)	Source (Statutes at Large)
704(a) 704(b)	37:31a(a) (5th sentence). 37:31a(a) (6th sentence). 37:33(e) 37:32(f) (last 8 words).	Aug. 9, 1946, ch. 391, §§ 3(a) (5th and 6th sentences), 4(e), 60 Stat. 963; Aug. 4, 1947, ch. 475, § 1 (5th par.), 61 Stat. 749. Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the 1st 18 words of the 5th sentence of section 31a(a) of existing title 37 are omitted as executed. The words ", or his designated representative," are substituted for the last 8 words of section 32(f) of existing title 37.

In subsection (b), 37:33(e) (less 1st sentence) is omitted as executed.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

Chapter 41.—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
711. Senior members of Military Staff Committee of United Nations: appointment.
711a. American National Red Cross: detail of commissioned officers.
712. Foreign governments: detail to assist.
713. State Department: assignment or detail as couriers and building inspectors.
715. Reserve components: detail of members of regular and reserve components to assist.
716. Commissioned officers: transfers between armed forces.
717. Members of the armed forces: participation in international sports.
718. Secretary of Defense: detail of officers to assist.
719. Department of Commerce: assignment or detail to Environmental Science Services Administration.

AMENDMENTS

1970—Pub. L. 91-392, § 2, Sept. 1, 1970, 84 Stat. 834, substituted "armed forces" for "Army, Navy, Air Force, and Marine Corps" in item 716.

1968—Pub. L. 90-235, § 4(a)(1)(B), Jan. 2, 1968, 81 Stat. 759, added item 711a.

1966—Pub. L. 89-683, § 1(2), Oct. 15, 1966, 80 Stat. 960, added item 719.

1962—Pub. L. 87-651, title I, § 103(b), title II, § 205(b), Sept. 7, 1962, 76 Stat. 508, 519, redesignated item 716 which relates to the participation of members of the armed forces in international sports as 717, and added item 718.

1960—Pub. L. 86-533, § 1(5)(B), June 29, 1960, 74 Stat. 246, repealed item 714.

1958—Pub. L. 85-861, § 1 (18), Sept. 2, 1958, 72 Stat. 1442, added item 716, relating to participation by members of the armed forces in international sports.

Pub. L. 85-599, § 11 (1), Aug. 6, 1958, 72 Stat. 521, added item 716, relating to transfers of commissioned officers.

CROSS REFERENCES

Particular provisions relating to special assignments, etc.—

Air Force, see section 8531 et seq. of this title.

Army, see section 3531 et seq. of this title.

Coast Guard, see section 148 et seq. of Title 14, Coast Guard.

National Guard, see section 316 of Title 32, National Guard.

Navy, see section 5981 et seq. of this title.

§ 711. Senior members of Military Staff Committee of United Nations: appointment.

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 32.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
711	10: 506b (c) (less last 12 words).	Aug. 7, 1947, ch. 512, § 504 (c) (less last 12 words), 61 Stat 886.

The words "Within the limitations as to numbers in grade prescribed in this Act", so far as they relate to the Army and the Air Force, are omitted as executed by the declaration of the national emergency on December 16, 1950, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1951/6180, 17 Oct. 1951). So far as they relate to the Navy and the Marine Corps they are omitted as surplusage. The words "may appoint" are inserted to make it explicit that the revised section prescribes the appointment as well as the rank and pay that go with it. The word "grade" is substituted for the word "rank". The words "Navy or Marine Corps" are substituted for the words "Navy, including the Marine Corps". The words "Army, * * * Air Force" are substituted for the words "Army less the Air Corps * * * Air Corps". The words "pay and allowances of a vice admiral or lieutenant general" are omitted as surplusage, since this is implicit upon appointment to the grade. The words "and Naval" are omitted to conform to the name "Military Staff Committee" established by Article 47 of the United Nations Charter.

CROSS REFERENCES

Grade on retirement of Army and Air Force members, see sections 3962 (a), 8962 (a) of this title.

§ 711a. American National Red Cross: detail of commissioned officers.

(a) Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with the Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first-aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or

(C) a medical officer of the Air Force.

(Added Pub. L. 90–235, § 4(a)(1)(A), Jan. 2, 1968, 81 Stat. 759, and amended Pub. L. 90–329, June 4, 1968, 82 Stat. 170.)

AMENDMENTS

1968—Subsec. (a)(1)(A). Pub. L. 90–329 redesignated the "Army Medical Service" as the "Army Medical Department."

§ 712. Foreign governments: detail to assist.

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions. (Aug. 10, 1956, ch. 1041, 70A Stat. 32; June 30, 1958, Pub. L. 85–477, ch. V, § 502 (k), 72 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
712 (a)	10: 540 (less provisos); 34: 441a (less provisos).	May 19, 1926, ch. 334, 44 Stat, 565; May 14, 1935, ch. 109, 49 Stat. 218; Oct. 1, 1942. ch. 571, 56 Stat. 763.
712 (b)	10: 540 (provisos); 34: 441a (provisos).	

In subsection (a), the words "and the Commonwealth of the Philippine Islands", in the Act of May 19, 1926, ch. 334, added by the Act of May 14, 1935, ch. 109, 49 Stat. 218, are not contained in 10: 540 or 34: 441a. They are also omitted from the revised section, since Proclamation No. 2695, effective July 4, 1946, 60 Stat. 1352 (48 U. S. C. 1240 (note)), proclaimed the independence of the Philippine Islands. Similar provisions relating to the Philippines are now contained in section 5 of the Act of June 26, 1946, ch. 500, 60 Stat. 315. The word "members" is substituted for the words "officers and enlisted men", in 10: 540 and 34: 441a.

In subsection (b), the words "entitled to credit for all service" are substituted for the words "and shall be allowed the same credit for longevity, retirement, and for all other purposes", in 10: 540 and 34: 441a.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–477 eliminated provisions which authorized members of the armed forces to accept compensation or emoluments from countries to which they are detailed, and inserted provisions permitting arrangements for reimbursement or other sharing of cost.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 502 (k) of Pub. L. 85–477 provided in part that the amendment of subsec. (b) of this section by Pub. L. 85–477 shall take effect nine months after June 30, 1958.

CROSS REFERENCES

Detail of specially qualified employees to foreign governments, see sections 1451—1453 of Title 22, Foreign Relations and Intercourse.

Readjusted pay and allowances, see section 101 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

§ 713. State Department: assignment or detail as couriers and building inspectors.

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State. (Aug. 10, 1956, ch. 1041. 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
713 (a)	22: 956 (words before semicolon of 1st sentence).	Aug. 13, 1946, ch. 957, § 561, 60 Stat. 1011.
713 (b)	22: 956 (less words before semicolon of 1st sentence).	

In subsection (a), the words "members of the armed forces under his jurisdiction" are substituted for the words "military and naval personnel serving under their supervision".

In subsection (b), the words "The Secretary concerned may" are substituted for the words "in the discretion of the head of the department concerned".

CROSS REFERENCES

Travel expenses for officers of Foreign Service, see section 1136 of Title 22, Foreign Relations and Intercourse.

§ 714. Repealed. Pub. L. 86–533, § 1(5)(A), June 29, 1960, 74 Stat. 246.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to reports to Congress on length of tours of duty outside the United States by members of the Army and Air Force.

§ 715. Reserve components: detail of members of regular and reserve components to assist.

The Secretary concerned shall detail such members of the regular and reserve components under

his jurisdiction as are necessary to effectively develop, train, instruct, and administer those reserve components. (Aug. 10, 1956, ch. 1041, 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
715	50: 1004.	July 9, 1952, ch. 608, § 253, 66 Stat. 496.

The words "under his jurisdiction" are inserted for clarity.

CROSS REFERENCES

Detail of regular members of Army and Air Force to duty with National Guard, see section 315 of Title 32, National Guard.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 716. Commissioned officers: transfers between armed forces.

Notwithinstanding any other provision of law, the President may, within authorized strengths, transfer any commissioned officer with his consent from his armed force to, and appoint him in, another armed force. The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments. An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before his transfer. (Added Pub. L. 85-599, § 11(2), Aug. 6, 1958, 72 Stat. 521, and amended Pub. L. 91-392, § 1, Sept. 1, 1970, 84 Stat. 834.)

AMENDMENTS

1970—Pub. L. 91-392 substituted "armed forces" for "Army, Navy, Air Force, and Marine Corps" in section catchline and "his armed force", "another armed force", "An officer transferred under this section may not be assigned", and "before his transfer" for "the Army, Navy, Air Force, or Marine Corps", "any other of those armed forces", "No officer transferred pursuant to this authority shall be assigned", and "prior to such transfer" in text, respectively, and authorized interservice transfers of officers of the Coast Guard.

§ 717. Members of the armed forces: participation in international sports.

(a) The Secretary of Defense, or the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) Pan-American Games and Olympic Games; and

(2) any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition.

(b) Repealed. Pub. L. 89-718, § 7, Nov. 2, 1966, 80 Stat. 1117.

(c) Subject to subsections (d), (e), and (f), the Secretary of Defense or the Secretary of the Treasury, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

(d) Not more than $800,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on March 14, 1955, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

(e) Not more than $100,000 may be spent during each successive four-year period beginning on March 14, 1955, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

(f) Appropriations available to the Department of Defense or to the Department of the Treasury, as the case may be, may be used to carry out this section. (Added Pub. L. 85-861, § 1 (17), Sept. 2, 1958, 72 Stat. 1442, renumbered Pub. L. 87-651, title I, § 103(a), Sept. 7, 1962, 76 Stat. 508, and amended Pub. L. 89-348, § 1(12), Nov. 8, 1965, 79 Stat. 1311; Pub. L. 89-718, § 7, Nov. 2, 1966, 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
716	22: 1981. 22: 1982. 22: 1983.	Mar. 14, 1955, ch. 11 (less last 2 pars.), 69 Stat. 11.

In subsection (a), the first 27 words are substituted for section 1 of the source statute. The reference to the Second Pan-American Games, the Seventh Olympic Winter Games, and the Games of the XVI Olympiad are omitted as covered by clause (1) of the revised subsection. The words "subject to the limitation contained in subsection (b) herein" are omitted as covered by revised subsection (b). The words "any other" are substituted for the words "other * * * not specified in (1) above".

In subsection (b), the word "entry" is substituted for the word "commitment" for clarity. The words "or the Secretary of the Treasury, as the case may be" are inserted since, under subsection (a), the Secretary of the Treasury has the prescribed authority with respect to members of the Coast Guard when it is not operating as a service in the Navy.

In subsection (c), the words "materiel, and equipment" are omitted as covered by the word "supplies" as defined in section 101 (26) of this title.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-718 repealed subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury to report to the Committees on Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition. See also Pub. L. 89-348, § 1(12), Nov. 8, 1965, 79 Stat. 1311, which earlier repealed the reporting requirement of subsec. (b).

1965—Subsec. (b). Pub. L. 89-348 repealed subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury, as the case may be, to report to the Committees on the Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to title 37 section 419.

§ 718. Secretary of Defense: detail of officers to assist.

Officers of the armed forces may be detailed for duty as assistants or personal aides to the Secretary of Defense. However, the Secretary may not establish a military staff other than that established by section 141(a) of this title. (Added Pub. L. 87-651, title II, § 205(a), Sept. 7, 1962, 76 Stat. 519.)

§ 719. Department of Commerce: assignment or detail to Environmental Science Services Administration

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the Environmental Science Services Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position. (Added Pub. L. 89-683, § 1(1), Oct. 15, 1966, 80 Stat. 960.)

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. —, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

Chapter 43.—RANK AND COMMAND

Sec.
741. Rank: commmissioned officers of Army, Navy, Air Force, and Marine Corps.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force.
744. Physician to White House: assignment; grade.
745. Warrant officers: rank.
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.

AMENDMENTS

1968—Pub. L. 90-235, § 5(a)(1)(B), Jan. 2, 1968, 81 Stat. 761, added items 747 and 749.

1958—Pub. L. 85-861, § 1 (19), Sept. 2, 1958, 72 Stat. 1442, deleted item 742.

CROSS REFERENCES

Particular provisions relating to rank and command—
Air Force, see section 8571 et seq. of this title.
Army, see section 3571 et seq. of this title.
Navy and Marine Corps, see sections 5508, 5941 et seq. of this title.

§ 741. Rank: commissioned officers of Army, Navy, Air Force, and Marine Corps.

(a) The commissioned officers listed below rank among themselves as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
Lieutenant general	Vice admiral.
Major general	Rear admiral entitled to pay of upper half.
Brigadier general	Rear admiral entitled to pay of lower half.
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) The rank, within each grade, among major generals of the Army, rear admirals entitled to the pay of the upper half of that grade in the Navy, major generals of the Air Force, and major generals of the Marine Corps, and among brigadier generals of the Army, rear admirals entitled to the pay of the lower half of that grade in the Navy, brigadier generals of the Air Force, and brigadier generals of the Marine Corps, is determined by their dates of rank.

(c) A commissioned officer of the Army or the Air Force who is senior in rank to a commissioned officer of the Regular Army or the Regular Air Force, as the case may be, is senior to a commissioned officer of the Navy or Marine Corps who is junior to that officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
741 (a)	10: 517 (1st and 2d sentences, less applicability to rank within grade); 14: 43; 34: 651 (less applicability to establishment of commissioned grades, and less applicability to rank within grade); 34: 241; 34: 241a (1st and 2d sentences, less applicability to rank within grade).	Aug. 7, 1947, ch. 512, §§ 314 (j), 516, 61 Stat. 865, 908. R. S. 1603 (less applicability to establishment of com missioned grades). R.S.1466 Aug. 4, 1949, ch. 393, § 1 (43), 63 Stat. 498.
741 (b)	10: 517 (1st and 2d sentences, as applicable to rank within grade); 34: 241a (1st and 2d sentences, as applicable to rank within grade); 34: 626-1 (j); 34: 651 (less applicability to establishment of commissioned grades, and as applicable to rank within grade).	
741 (c)	10: 517 (less 1st and 2d sentences); 34: 241a (less 1st and 2d sentences).	

In subsection (a), the word "Regular", pertaining to major generals and brigadier generals, in 10: 517 and 34: 241a, is omitted, since the last sentence of 10: 517 and 34: 241a establish the rank of nonregular officers of the Army and the Air Force, with respect to officers of the Regular Army and the Regular Air Force. The effect of establishing their rank with respect to regular officers, when read in connection with the provisions prescribing the rank of officers of the regular components with officers of the other services, under 10: 517 (less last sentence), 34: 241a (less last sentence), and 34: 241, is therefore to establish the rank of nonregular officers with respect to officers of the other listed services. This allows a consolidation of 10: 517 (less last sentence, as applicable to rank), 34: 241, and 34: 241a (less last sentence, as applicable to rank), together with 34: 651, into a table of rank among officers of the Army, Navy, Air Force, and Marine Corps. The words "lineal rank only being considered", in 34: 241, are covered by setting forth the grades in tabular form. The words "whether on the active or retired list", in 34: 241, are omitted, since retired officers

of the Navy continue to be officers of the Navy. The words "Lieutenant (junior grade)" are substituted for the word "masters", in R. S. 1466, to reflect the change made in the name of that grade by the Act of March 3, 1883, ch. 97 (2d par.), 22 Stat. 472.

In subsections (a) and (b), the words "entitled to pay" and "entitled to the pay", respectively, are inserted, since rear admiral is one grade with two ranks depending on the amount of pay to which the incumbent is entitled.

In subsection (b), the words "in such grades", in 10: 517 and 34: 241a, are omitted as surplusage.

In subsection (c), the words "A commissioned officer of the Army or the Air Force" are substituted for the words "All officers of the Army of the United States, including all components thereof", since rank among officers of the Regular Army and Regular Air Force is determined under sections 3573, 3574, 8573, and 8574 of this title.

CROSS REFERENCES

Rank of officers for pay purposes, see sections 201, 202, 403, 414 of Title 37, Pay and Allowances of the Uniformed Services.

§ 742. Repealed. Pub. L. 85-861, § 36B (4), Sept. 2. 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to rank of regular officers and reserve officers.

§ 743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force.

The Chief of Staff of the Army, the Chief of Naval Operations, and the Chief of Staff of the Air Force rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active list of the Army, Navy, Air Force, and Marine Corps, except the Chairman of the Joint Chiefs of Staff. (Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
743	5: 626c (b).	July 26, 1947, ch. 343, § 208 (b), 61 Stat. 503; Sept. 19, 1951, ch. 407, § 402, 65 Stat. 333.

5: 626c (b) (1st sentence) is omitted as superseded by sections 8031 (a) (1) and 8034 (a) of this title. 5: 626c (b) (2d sentence) is omitted as covered by section 8034 (d) of this title. 5: 626c (b) (3d and 4th sentences) is omitted as executed. 5: 626c (b) (5th sentence) is omitted as covered by section 8034 (b) of this title. 5: 626c (b) (proviso of last sentence) is omitted as executed, since the incumbents to whom it is applied no longer hold the offices mentioned. The exception as to the Chairman of the Joint Chiefs of Staff is included because of section 142 (c) of this title. The words "and the Marine Corps" are inserted, since under section 5081 of this title the Chief of Naval Operations takes precedence over all other officers of the naval service.

CROSS REFERENCES

Chief of Naval Operations, see section 5081 of this title.

Chief of Staff of the Air Force, see section 8034 of this title.

Chief of Staff of the Army, see section 3034 of this title.

Rank of Chairman of Joint Chiefs of Staff, see section 142 (c) of this title.

§ 744. Physician to White House: assignment; grade.

An officer of the Medical Corps of the Army, or a medical officer of the Air Force, who is below the grade of colonel and who is assigned to duty as physician to the White House has the rank, pay, and allowances of colonel while so serving. An officer of the Medical Corps of the Navy who is below the grade of captain and who is assigned to that duty has the rank, pay, and allowances of captain while so serving. (Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
744	10: 515; 34: 251a.	Apr. 4, 1930, ch. 104, 46 Stat. 140.

The word "temporary", in 10: 515 and 34: 251a, is omitted as surplusage.

§ 745. Warrant officers: rank.

A person serving in a warrant officer grade outranks all warrant officers in warrant officer grades of lower numerical designation. (Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
745	10: 600a (a) (last sentence); 34: 259a.	May 29, 1954, ch. 249, § 3 (a) (last sentence), 68 Stat. 158.

The word "outranks" is substituted for the words "shall have precedence over".

CROSS REFERENCES

Grades of warrant officers, see section 555 of this title.

Rank of warrant officers—

Air Force, see section 8575 of this title.

Army, see section 3575 of this title.

Section not applicable to warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.

When different commands of the Army, Navy, Air Force, Marine Corps, and Coast Guard join or serve together, the officer highest in rank in the Army, Navy, Air Force, Marine Corps, or Coast Guard on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President. (Added Pub. L. 90-235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

§ 749. Command: commissioned officers in same grade or corresponding grades on duty at same place.

(a) When the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, has on duty in the same area, field command, or organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.

(b) When officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard are on duty in the same area, field, command, or organization and two or more commissioned officers of different services, who are otherwise eligible to command, have the same grade or corresponding grades, the President may assign the command without regard to rank in that grade. (Added Pub. L. 90-235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

Chapter 45.—THE UNIFORM

Sec.
771. Unauthorized wearing prohibited.
771a. Disposition on discharge.
772. When wearing by persons not on active duty authorized.
773. When distinctive insignia required.
774. Applicability of chapter.

AMENDMENTS

1968—Pub. L. 90-235, § 8(1)(B). Jan. 2, 1968, 81 Stat. 764, added item 771a.

CROSS REFERENCES

Particular provisions relating to uniforms—

Coast Guard, see sections 483—485, 754, 891, 892 of Title 14, Coast Guard.

National Guard, see sections 701, 705 of Title 32, National Guard.

Naval service, see sections 6155, 6156, 6297 of this title.

§ 771. Unauthorized wearing prohibited.

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, or Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
771	10: 1393 (1st par., less provisos).	June 3, 1916, ch. 134, § 125 (1st par., less provisos), 39 Stat. 216.

The words "Except as otherwise provided by law" are inserted to give effect to exceptions in other revised sections of this title and to provisions of other laws giving such organizations as the Coast and Geodetic Survey and the Public Health Service permission to wear military uniforms under certain conditions.

CROSS REFERENCES

Foreign Service of United States, uniforms permitted in theater of military operations, see section 803 of Title 22, Foreign Relations and Intercourse.

Public Health Service, wearing of uniforms, see section 228 of Title 42, The Public Health and Welfare.

Punishment for unauthorized wearing, see section 702 of Title 18, Crimes and Criminal Procedure.

§ 771a. Disposition on discharge.

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.

(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than $30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than $25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, the Canal Zone, or the District of Columbia of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32. (Added Pub. L. 90-235, § 8(1)(A), Jan. 2, 1968, 81 Stat. 763.)

§ 772. When wearing by persons not on active duty authorized.

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade. However, a retired officer of the Navy Nurse Corps may wear the uniform of her retired grade under such conditions as the Secretary of the Navy may prescribe.

(d) A person who is discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Veterans' Administration may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, or Marine Corps, a civilian may wear the uniform prescribed by that armed force.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department. (Aug. 10, 1956, ch. 1041, 70A Stat. 35.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
772 (a)	10: 1393 (words before 1st semicolon of 1st proviso of 1st par.).	June 3, 1916, ch. 134, § 12 (words before 4th semicolon, and words after 7th semicolon, of 1st proviso of 1st par.; and last proviso of last par.), 39 Stat. 216; July 9, 1918, ch. 143, subch. XVII, § 10 (last proviso), 40 Stat 892; June 4, 1920, ch. 228, § 8, 41 Stat. 836; June 6, 1942, ch. 382, 56 Stat. 328; May 24, 1949, ch. 139, § 15 (b) (last proviso), 63, Stat. 91; July 6, 1953, ch. 180, § 1, 67 Stat. 140.
772 (b)	10: 1393 (15th through 18th words after 1st semicolon of 1st proviso of 1st par.).	
772 (c)	10: 1023 (1st sentence); 34: 43g (i); 34: 389 (less 1st and 3d sentences).	
772 (d)	10: 1393 (words between 3d and 4th semicolons of 1st proviso of 1st par.).	
772 (e)	10: 1028b; 10: 1393 (words between 2d and 3d semicolons of 1st proviso of 1st par.); 34: 399d.	
772 (f)	10: 1393 (words between 8th and 9th semicolons of 1st proviso of 1st par.).	R. S. 1256 (1st sentence).
772 (g)	10: 1393 (last proviso of last par.).	R. S. 1457 (less 1st and 3d sentences); May 5, 1950, ch. 169, § 14 (f), 64 Stat. 147.
772 (h)	10: 1393 (words between 7th and 8th semicolons of 1st proviso of 1st par.).	Apr. 16, 1947, ch. 38, § 207 (j), 61 Stat. 50; as redesignated (i); Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882.
772 (i)	10: 1393 (words after 9th semicolon of 1st proviso of 1st par.).	
772 (j)	10: 1393 (words between 1st and 2d semicolons of 1st proviso of 1st par., less 15th through 18th words).	June 21, 1930, ch. 563, § 2; restated Aug. 4, 1949, ch. 393, § 12, 63 Stat. 559; July 6, 1953, ch. 180, § 2, 67 Stat. 140.

In subsections (a, (b), (d), (f), (g), (h), (i), and (j), the rules stated in the corresponding clauses of the first proviso of the first paragraph, and the last proviso of the last paragraph, of 10: 1393, are restated to make positive the authority of the persons described in those subsections to wear the uniform prescribed for the appropriate organization or activity.

In subsection (c), the words "bear the title", in 34:43g (i), applicable only to retired officers of the Navy Nurse Corps, are made applicable to other retired officers, to make explicit what has heretofore been implicit, that a retired officer may continue to bear the title of his retired grade.

In subsection (e), the words between the second and third semicolons of the first proviso of the first paragraph of 10: 1939 are omitted as superseded by 10: 1028b and 34: 399d, which authorize the wearing of the uniform by members who are discharged honorably or under honorable conditions. The words "when authorized by regulations prescribed by" are substituted for the words "occasions authorized by regulations of".

In subsection (f), the words "while portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production" are substituted for the words "any person from wearing the uniform of the United States Army, Navy, or Marine Corps, in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character".

In subsection (g), the word "resident" is substituted for the word "members", since the word "members" related to members of the now disbanded National Home for disabled volunteer soldiers to which were admitted "members" of an organization called the "Disabled Volunteer Soldiers". The words "veterans' home" are substituted for the words "national home for veterans", since there are now no "national homes" administered by the Veterans' Administration.

In subsection (h), the words "authorized and" and "for wear during such course of instruction" are omitted as surplusage. The word "naval" is omitted as covered by the word "military". The words "Army, Navy, Air Force, or Marine Corps" are substituted for the words "military or naval authorities". The words "that armed force" are substituted for the words "such military or naval authorities".

In subsection (i), the words "Air Force school" are substituted for the words "Air Force advanced flying schools or Air Force service schools". The words "in such manner" are omitted as surplusage.

EX. ORD. NO. 10554. DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS

Ex. Ord. No. 10554, Aug. 18, 1954, 19 F. R. 5295, provided: The authority vested in the President (1) by section 125 of the act of June 3, 1916, 39 Stat. 216, as amended by the first section of the act of July 6, 1953, 67 Stat. 140, and (2) by section 2 of the act of June 21, 1930, 46 Stat. 793, as amended by section 2 of said act of July 6, 1953, to prescribe regulations authorizing occasions upon which the uniform may be worn by persons who have served honorably in the armed forces of the United States in time of war is hereby delegated to the Secretary of Defense so far as it pertains to the uniforms of the Army, Navy, Air Force, and Marine Corps, and to the Secretary of the Treasury so far as it pertains to the uniform of the Coast Guard.

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CROSS REFERENCES

Coast Guard, right to wear uniform, see section 483 of Title 14, Coast Guard.

Provisions respecting sale of exterior articles of uniform to persons discharged honorably from Army or Air Force as not modifying this section, see sections 4621 (f), 9621 (f) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 771a, 4621, 6156, 9621 of this title.

§ 773. When distinctive insignia required.

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 35; Mar. 28, 1958, Pub. L. 85–355, 72 Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
773 (a)	10: 1393 (words between 4th and 7th semicolons of 1st proviso, and 2d proviso, of 1st par.).	June 3, 1916, ch. 134, § 125 (words between 4th and 7th semicolons of 1st proviso, and 2d and last provisos, of 1st par.), 39 Stat. 216; June 4, 1920, ch. 228, § 8, 41 Stat. 836; Sept. 15, 1951, ch. 402, 65 Stat. 323; July 6, 1953, ch. 180, § 1, 67 Stat. 140.
773 (b)	10: 1393 (last proviso of 1st par.).	

In subsection (a), the word "mark" is omitted as surplusage.

In subsection (a) (2), the words "persons discharged honorably or under honorable conditions from" are substituted for the words "entirely of honorably discharged officers or enlisted men, or both, of". The words "Regular or Volunteer" are omitted as surplusage. The words "when authorized by regulations prescribed by" are substituted for the words "upon occasions authorized by regulations of".

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–355 added subsec. (c).

CROSS REFERENCES

Provisions respecting sale of exterior articles of uniform to person discharged honorably from Army or Air Force as not modifying this section, see sections 4621 (f), 9621 (f) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4621, 6156, 9621 of this title.

§ 774. Applicability of chapter.

This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction. (Aug. 10, 1956, ch. 1041, 70A Stat. 36.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
774	10: 1393 (less 1st and last pars.).	June 3, 1916, ch. 134, § 125 (less 1st and last pars.), 39 Stat. 216; Apr. 15, 1948, ch. 188, 62 Stat. 172; June 25, 1948, ch. 645, § 21 (as applicable to § 125 of the Act of June 3, 1916, ch. 134), 62 Stat. 864; May 24, 1949, ch. 139, §§ 15 (b) (less last par.), 142 (as applicable to the Act of Apr. 15, 1948, ch. 188), 63 Stat. 91, 110.

The words "the Canal Zone, Guam, American Samoa, and the Virgin Islands as well as to * * * other" are omitted as covered by the words "possessions, and all other places under its jurisdiction".

Chapter 47.—UNIFORM CODE OF MILITARY JUSTICE

Subchap.	Sec.	Art.
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AMENDMENTS

1958—Pub. L. 85–861, § 33 (a) (6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 951, 1037, 5148 of this title; title 5 sections 8312, 8336; title 28 section 535; title 49 section 1655.

Subchapter I.—General Provisions

Sec. Art.
801. 1. Definitions.
802. 2. Persons subject to this chapter.
803. 3. Jurisdiction to try certain personnel.
804. 4. Dismissed officer's right to trial by court-martial.
805. 5. Territorial applicability of this chapter.
806. 6. Judge advocates and legal officers.

§ 801. Article 1. Definitions.

In this chapter:

(1) "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) "Commanding officer" includes only commissioned officers.

(4) "Officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(6) "Cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) "Midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) "Military" refers to any or all of the armed forces.

(9) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) "Law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

(12) "Legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) "Judge advocate" means an officer of the Judge Advocate General's Corps of the Army or the Navy or an officer of the Air Force or the Marine Corps who is designated as a judge advocate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Oct. 15, 1966, Pub. L. 89–670, § 10(g), 80 Stat. 948; Dec. 8, 1967, Pub. L. 90–179, § 1 (1), (2), 81 Stat. 545; Oct. 24, 1968, Pub. L. 90–632, § 2(1), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
801	50: 551 (less (9)).	May 5, 1950, ch. 169, § 1 (Art. 1) (less (9)), 64 Stat. 108.

The words "In this chapter" are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word "chapter" is substituted for the word "code".

Clauses (1), (2), and (5) of 50: 551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words "commissioned officer" are substituted for the word "officer" for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50: 551, and is now covered by section 101 (14) of this title.

In clauses (1), (4)—(7), and (9)—(12) of the revised section, the word "means" is substituted for the words "shall be construed to refer to" and "shall be construed to refer * * * to".

In clause (1), the words "service in" are substituted for the words "part of" to conform to section 1 of title 14. The words "Department of the Treasury" are substituted for the words "Treasury Department".

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words "the United States Air Force Academy" are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word "refers" is substituted for the words "shall be construed to refer".

In clause (12), the words "Marine Corps" are inserted to make explicit that the clause applies to the Marine Corps. The word "commissioned" is inserted for clarity.

AMENDMENTS

1968—Cl. (10). Pub. L. 90–632 substituted "military judge" for "law officer" as the term being defined and added reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90–179, § 1(1), struck out "Navy or" preceding "Coast Guard".

Cl. (13). Pub. L. 90–179, § 1(2), added cl. (13).

1966—Pub. L. 89–670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in the definition of "Judge Advocate General" applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of Pub. L. 90–632 provided that:

"(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note under this section] shall become effective on the first day of the tenth month following the month in which it is enacted [Oct. 24, 1968].

"(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

"(c) The amendment made by paragraph (33) [amending section 873 of this title] shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968]."

EFFECTIVE DATE

Section 51 of act Aug. 10, 1956, provided that this chapter shall take effect Jan. 1, 1957.

SHORT TITLE OF 1968 AMENDMENT

Section 1 of Pub. L. 90–632 provided: "That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'."

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90–179, set out as a note under section 5148 of this title.

SAVINGS PROVISIONS

Rights, duties and proceedings not affected by Act establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90–179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Section 49 (e) of act Aug. 10, 1956, provided that: "In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter."

CROSS REFERENCES

Appointment and duties—

General Counsel of Department of Transportation, see section 1652(c) of Title 49, Transportation.

Judge Advocates General of the Army, Navy, and Air Force, see sections 3037, 5148 and 8072 of this title.

§ 802. Art. 2. Persons subject to this chapter.

The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the Environmental Science Services Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to

any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the following, the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; June 25, 1959, Pub. L. 86–70, § 6(b), 73 Stat. 142; July 12, 1960, Pub. L. 86–624, § 4(b), 74 Stat. 411; Sept. 7, 1962, Pub. L. 87–651, title I, § 104, 76 Stat. 508; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
802	50: 552.	May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

In clause (1), the words "Members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8), the words "of the United States" are omitted as surplusage.

In clause (3), the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4), the word "receive" is omitted as surplusage.

In clauses (4) and (5), the word "members" is substituted for the word "personnel".

In clause (8), the word "members" is substituted for the word "personnel".

In clauses (11) and (12), the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted, since section 101 (1) of this title defines the United States to include the States and the District of Columbia. The words "the provision of", "all", and "territories" are omitted as surplusage.

In clause (12), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

AMENDMENTS

1966—Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey" in clause (8).

1962—Pub. L 87–651 inserted "Guam," following "Puerto Rico," in clauses (11) and (12).

1960—Pub. L. 86–624 eliminated words "the main group of the Hawaiian Islands," preceding "Puerto Rico" in clauses (11) and (12).

1959—Pub. L. 86–70 eliminated words "that part of Alaska east of longitude 172 degrees west," preceding "the Canal Zone" in clauses (11) and (12).

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. —, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Serviecs Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

Every member of he armed forces of the United States is expected to measure up to the standards embodied in this Code of Conduct while he is in combat or in captivity. To ensure achievement of these standards, each member of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip him to counter and withstand all enemy efforts against him, and shall be fully instructed as to the behavior and obligations expected of him during combat or captivity.

The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

DWIGHT D. EISENHOWER

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American fighting man. I serve in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command I will never surrender my men while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am bound to give only name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American fighting man, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 803. Art. 3. Jurisdiction to try certain personnel.

(a) Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter,

an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service. (Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
803 (a)	50: 553 (a).	May 5, 1950, ch. 169, § 1 (Art. 3), 64 Stat. 109.
803 (b)	50: 553 (b).	
803 (c)	50: 553 (c).	

In subsection (a), the words "the provisions of" are omitted as surplusage. The words "no * * * may" are substituted for the words "any * * * shall not". The word "for" is substituted for the word "of" before the words "five years". The words "of a State, a Territory, or" are substituted for the words "any State or Territory thereof or of". The word "court-martial" is substituted for the word "courts-martial".

In subsection (b), the words "Each person" are substituted for the words "All persons". The words "who is later" are substituted for the word "subsequently". The words "his discharge is" are substituted for the words "said discharge shall * * * be". The words "the provisions of" are omitted as surplusage. The word "is" is substituted for the words "shall * * * be". The words "he is" are substituted for the words "they shall be". The word "before" is substituted for the words "prior to".

In subsection (c), the words "No * * * may" are substituted for the words "Any * * * shall not". The word "later" is substituted for the word "subsequent".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial.

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article. (Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
804 (a)	50: 554 (a).	May 5, 1950, ch. 169, § 1 (Art. 4), 64 Stat. 110.
804 (b)	50: 554 (b).	
804 (c)	50: 554 (c).	
804 (d)	50: 554 (d).	

In subsection (a), the word "If" is substituted for the word "When". The word "commissioned" is inserted before the word "officer". The word "considered" is substituted for the word "held".

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "If" is substituted for the word "Where". The words "the authority of" are omitted as surplusage. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not to a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position" for clarity. The word "receive" is omitted as surplusage.

In subsection (d), the word "If" is substituted for the word "When". The words "he has no" are substituted for the words "there shall not be a".

CROSS REFERENCES

Limitations on dismissal of commissioned officers, see section 1161 of this title.

§ 805. Art. 5. Territorial applicability of this chapter.

This chapter applies in all places. (Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
805	50: 555.	May 5, 1950, ch. 169, § 1 (Art. 5), 64 Stat. 110.

The word "applies" is substituted for the words "shall be applicable".

§ 806. Art. 6. Judge advocates and legal officers.

(a) The assignment for duty of judge advocates of the Army, Navy, and Air Force and law specialists of the Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case. (Aug. 10, 1956, ch. 1041, 70A Stat. 39; Dec. 8, 1967, Pub. L. 90–179, § 1(3), 81 Stat. 545; Oct. 24, 1968, Pub. L. 90–632, § 2(2), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
806 (a)	50: 556 (a).	May 5, 1950, ch. 169, § 1 (Art. 6), 64 Stat. 110.
806 (b)	50: 556 (b).	
806 (c)	50: 556 (c).	

In subsection (b), the word "entitled" is substituted for the word "authorized".

In subsection (c), the words "may later" are substituted for the words "shall subsequently".

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–632 substituted "military judge" for "law officer".

1967—Subsec. (a). Pub. L. 90–179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Judge Advocate General's Corps of the Army, see section 3072 of this title.

Judge Advocates of the Air Force, see section 8067 (g) of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

Subchapter II.—Apprehension and Restraint

Sec. Art.
807. 7. Apprehension.
808. 8. Apprehension of deserters.
809. 9. Imposition of restraint.
810. 10. Restraint of persons charged with offenses.
811. 11. Reports and receiving of prisoners.
812. 12. Confinement with enemy prisoners prohibited.
813. 13. Punishment prohibited before trial.
814. 14. Delivery of offenders to civil authorities.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 937 of this title.

§ 807. Art. 7. Apprehension.

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein. (Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
807 (a)	50: 561 (a).	May 5, 1950, ch. 169, § 1 (Art. 7), 64 Stat. 111.
807 (b)	50: 561 (b).	
807 (c)	50: 561 (c).	

In subsection (a), the words "into custody" and "of a person" are transposed.

In subsection (c), the words "All" and "shall" are omitted as surplusage. The word "Commissioned" is inserted before the word "officers" for clarity. The word "therein" is substituted for the words "in the same".

REWARD FOR APPREHENSION OF DESERTERS, PRISONERS, AND MEMBERS ABSENT WITHOUT LEAVE

Pub. L. 91–668, title VIII, § 808, Jan. 11, 1971, 84 Stat. 2031, provided in part that a reward of not to exceed $25 in any one case shall be paid for the apprehension and delivery of deserters, prisoners, and members of the Army, Navy, Marine Corps, and Air Force absent without leave.

Similar provisions were contained in the following prior acts:

Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 481.
Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 243.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 992.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title I, § 101, 76 Stat. 318.
Aug. 17, 1961, Pub. L. 87–144, title I, § 101, 75 Stat. 365, 366.
July 7, 1960, Pub. L. 86–601, title I, § 101, 74 Stat. 338, 339.
Aug. 18, 1959, Pub. L. 86–166, title I, § 101, 73 Stat. 366, 367.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 713, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 313, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 338, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 443.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 990, 1015.

June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 388.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 185, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.
June 30, 1941, ch. 262, § 1, 55 Stat. 371.
June 13, 1940, ch. 343, § 1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598.
June 11, 1938, ch. 347, § 1, 52 Stat. 648.
July 1, 1937, ch. 423, § 1, 50 Stat. 448.
May 15, 1936, ch. 404, § 1, 49 Stat. 1284.
Apr. 9, 1935, ch. 54, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 619.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575.
July 14, 1932, ch. 482, title I, 47 Stat. 668.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281.
May 28, 1930, ch. 348, title I, 46 Stat. 436.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 29, 1928, ch. 232, title I, 45 Stat. 330.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 259.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

CROSS REFERENCES

Arrest and commitment, see section 3041 et seq. of Title 18, Crimes and Criminal Procedure.

Article to be explained, see section 937 of this title.

Expenses for apprehension and delivery of deserters, stragglers, and prisoners of the Navy, see section 7214 of this title.

Resistance, breach of arrest, and escape, punishment, see section 895 of this title.

Unlawful detention, punishment, see section 897 of this title.

§ 808. Art. 8. Apprehension of deserters.

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces. (Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
808	50: 562.	May 5, 1950, ch. 169, § 1 (Art. 8), 64 Stat. 111.

The word "may" is substituted for the words "It shall be lawful for * * * to". The words "a State, Territory, Commonwealth, or possession, or the District of Columbia" are substituted for the words "any State, District, Territory, or possession of the United States". The words "of the United States", before the words "and deliver", are omitted as surplusage. The words "those forces" are substituted for the words "the armed forces of the United States", after the words "custody of".

CROSS REFERENCES

Arrest and commitment, see section 3041 et seq. of Title 18, Crimes and Criminal Procedure.

Article to be explained, see section 937 of this title.

Resistance, breach of arrest, and escape, punishment, see section 895 of this title.

Unlawful detention, punishment, see section 897 of this title.

§ 809. Art. 9. Imposition of restraint.

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified. (Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
809 (a)	50: 563 (a).	May 5, 1950, ch. 169, § 1 (Art. 9), 64 Stat. 111.
809 (b)	50: 563 (b).	
809 (c)	50: 563 (c).	
809 (d)	50: 563 (d).	
809 (e)	50: 563 (e).	

In subsection (b), the word "commissioned" is inserted before the word "officer" for clarity. The words "member" and "members", respectively, are substituted for the words "person" and "persons".

In subsection (c), the words "A commissioned" are substituted for the word "An" for clarity. The word "commissioned" is inserted after the word "another" for clarity.

In subsection (d), the word "may" is substituted for the word "shall".

In subsection (e), the word "limits" is substituted for the words "shall be construed to limit".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Forwarding of charges, time of, see section 833 of this title.

§ 810. Art. 10. Restraint of persons charged with offenses.

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. (Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
810	50: 564.	May 5, 1950, ch. 169, § 1 (Art. 10), 64 Stat. 111.

The word "he" is substituted for the words "such person".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enlisted members required to make up time lost, see section 972 of this title.

Summary courts-martial, jurisdiction of, see section 820 of this title.

§ 811. Art. 11. Reports and receiving of prisoners.

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment. (Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
811 (a)	50: 565 (a).	May 5, 1950, ch. 169, § 1 (Art. 11), 64 Stat. 112.
811 (b)	50: 565 (b).	

In subsection (a), the word "may" is substituted for the word "shall". The words "a commissioned" are substituted for the word "an" for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 812. Art. 12. Confinement with enemy prisoners prohibited.

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces. (Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
812	50: 566.	May 5, 1950, ch. 169, § 1 (Art. 12), 64 Stat. 112.

The words "of the United States" are omitted as surplusage. The word "may" is substituted for the word "shall".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 813. Art. 13. Punishment prohibited before trial.

Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline. (Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
813	50: 567.	May 5, 1950, ch. 169, § 1 (Art. 13), 64 Stat. 112.

The words "the provisions of" are omitted as surplusage. The word "results" is changed to the singular. The word "may" is substituted for the word "shall".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 814. Art. 14. Delivery of offenders to civil authorities.

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence. (Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
814 (a)	50: 568 (a).	May 5, 1950, ch. 169, § 1 (Art. 14), 64 Stat. 112.
814 (b)	50: 568 (b).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (b), the word "interrupts" is substituted for the words "shall be held to interrupt". The word "his" is substituted for the words "the said court-martial".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Effective date of federal sentence, see section 3568 of Title 18, Crimes and Criminal Procedure.

Subchapter III.—Non-Judicial Punishment

Sec. Art.
815. 15. Commanding officer's non-judicial punishment.

§ 815. Art. 15. Commanding officer's non-judicial punishment.

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial

in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-maritial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under subsection (b) (2) (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b) (2) (A)—(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture of detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate

to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing. (Aug. 10, 1956, ch. 1041, 70A Stat. 41; Sept. 7, 1962, Pub. L. 87–648, § 1, 76 Stat. 447; Dec. 8, 1967, Pub. L. 90–179, § 1(4), 81 Stat. 545; Oct. 22, 1968, Pub. L. 90–623, § 2(4), 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
815 (a)	50: 571 (a).	May 5, 1950, ch. 169, § 1 (Art. 15), 64 Stat. 112.
815 (b)	50: 571 (b).	
815 (c)	50: 571 (c).	
815 (d)	50: 571 (d).	
815 (e)	50: 571 (e).	

In subsection (a), the words "not more than" are substituted for the words "a period not to exceed", "not to exceed", and "a period not exceeding".

In subsection (a) (1), the words "and warrant officers" are omitted, since the word "officer", as defined in section 101 (14) of this title, includes warrant officers.

In clause (1) (C), the words "one month's pay" are substituted for the words "his pay per month for a period not exceeding one month".

In subsection (b), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (c), the word "subsections" is substituted for the word "subdivisions". The words "enlisted members" are substituted for the words "enlisted persons".

In subsections (d) and (e), the words "authority of" are omitted as surplusage.

In subsection (d), the word "considers" is substituted for the word "deems". The word "may" is substituted for the words "shall have power to * * * to".

In subsection (e), the words "is not" are substituted for the words "shall not be".

AMENDMENTS

1968—Subsec. (e). Pub. L. 90–623 substituted "or a law specialist or lawyer of the Coast Guard or Department of Transportation" for "or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department".

1967—Subsec. (e). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87–648 redesignated former subsec. (b) as (a), added references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary's regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87–648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month's pay may be ordered forefeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month's pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month's pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days' pay, and detention of not more than 14 days' pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i)—(vii) of subpar. (2)(H) upon personnel of his command other than officers, changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included, to authorize extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year, prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount imposable for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively, and in those cases where forfeiture of pay is combined with detention of pay, defining "correctional custody", and eliminated

provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87–648 substituted "under subsection (b)(2)(A)—(G) as the Secretary concerned may specifically prescribe by regulation" for "to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b)," and deleted "for minor offenses" following "an officer in charge may."

Subsec. (d). Pub. L. 87–648 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 87–648 redesignated former subsec. (d) as (e), added provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted "The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment" for "The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected." Former subsec. (e) redesignated (f).

Subsec. (f) Pub. L. 87–648 redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 87–648 added subsec. (g).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–648 provided that: "This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [Sept. 7, 1962]."

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enlisted members required to make up lost time, see section 972 of this title.

Statute of limitations, see section 843 of this title.

Summary court-martial, election to refuse commanding officer's punishment, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 843 of this title.

Subchapter IV.—Court-Martial Jurisdiction

Sec. Art.
816. 16. Courts-martial classified.
817. 17. Jurisdiction of courts-martial in general.
818. 18. Jurisdiction of general courts-martial.
819. 19. Jurisdiction of special courts-martial.
820. 20. Jurisdiction of summary courts-martial.
821. 21. Jurisdiction of courts-martial not exclusive.

§ 816. Art. 16. Courts-martial classified.

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial, consisting of—

(A) not less than three members; or

(B) a military judge and not less than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) summary courts-martial, consisting of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Oct. 24, 1968, Pub. L. 90–632, § 2(3), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
816	50: 576.	May 5, 1950, ch. 169, § 1 (Art. 16), 64 Stat. 113.

The word "The" is substituted for the words "There shall be". The word "are" is substituted for the word "namely". The words "not less than five members" are substituted for the words "any number of members not less than five". The words "not less than three members" are substituted for the words "any number of members not less than three". The word "commissioned" is inserted before the word "officer" in clause (3) for clarity.

AMENDMENTS

1968—Pub. L. 90–632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 829 of this title.

§ 817. Art. 17. Jurisdiction of courts-martial in general.

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
817 (a)	50: 577 (a).	May 5, 1950, ch. 169, § 1 (Art. 17), 64 Stat. 114.
817 (b)	50: 577 (b).	

In subsection (a), the word "has" is substituted for the words "shall have".

In subsection (b), the word "after" is substituted for the words "subsequent to". The words "the provisions of" are omitted as surplusage. The words "department that includes the" are inserted before the words "armed force", since the review is carried out by the department and not by the armed force.

CROSS REFERENCES

Jurisdiction of—

General courts-martial, see section 818 of this title.

Special courts-martial, see section 819 of this title.

Summary courts-martial, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 819, 820 of this title.

§ 818. Art. 18. Jurisdiction of general courts-martial.

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case. (Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90–632, § 2(4), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
818	50: 578.	May 5, 1950, ch. 169, § 1 (Art. 18), 64 Stat. 114.

The word "shall" is omitted as surplusage wherever it occurs.

AMENDMENTS

1968—Pub. L. 90–632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial.

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad-conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed. (Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90–632, § 2(5), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
819	50: 579.	May 5, 1950, ch 169, § 1 (Art 19), 64 Stat. 114.

The word "shall" in the first sentence is omitted as surplusage. The words "for more than" are substituted for the words "in excess of". The words "more than" are substituted for the words "a period exceeding". The word "may" is substituted for the word "shall" in the last sentence.

AMENDMENTS

1968—Pub. L. 90–632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 820. Art. 20. Jurisdiction of summary courts-martial.

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary court-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay. (Aug. 10, 1956, ch. 1041, 70A Stat 43; Oct. 24, 1968, Pub. L. 90–632, § 2(6), 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
820	50: 580.	May 5, 1950, ch. 169, § 1 (Art. 20), 64 Stat. 114.

The word "shall" in the first sentence is omitted as surplusage. The word "may" is substituted for the word "shall" in the second sentence. The words "the provisions of" are omitted as surplusage. The word "If" is substituted for the word "Where". The words "for more than" are substituted for the words "in excess of". The words "more than" are substituted for the words "pay in excess of".

AMENDMENTS

1968—Pub. L. 90-632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Confinement not ordinarily ordered for person charged with offense normally tried by summary court-martial, see section 810 of this title.

Inquests; disposition of effects of deceased persons, see sections 4711, 4712, 9711, 9712 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive.

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. (Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
821	50: 581.	May 5, 1950, ch. 169, § 1 (Art. 21), 64 Stat. 115.

The words "do not deprive" are substituted for the words "shall not be construed as depriving". The words "with respect to" are substituted for the words "in respect of".

CROSS REFERENCES

Judge Advocate Generals of Army and Air Force to receive, revise, and have recorded proceedings of military commissions, see sections 3037, 8072 of this title.

Subchapter V.—Composition of Courts-Martial

Sec. Art.
822. 22. Who may convene general courts-martial.
823. 23. Who may convene special courts-martial.
824. 24. Who may convene summary courts-martial.
825. 25. Who may serve on courts-martial.
826. 26. Military judge of a general or special court-martial.
827. 27. Detail of trial counsel and defense counsel.
828. 28. Detail or employment of reporters and interpreters.
829. 29. Absent and additional members.

AMENDMENTS

1968—Pub. L. 90-632, § 2(8), Oct. 24, 1968, 82 Stat. 1336, substituted "Military judge of a general or special court-martial" for "Law officer of a general court-martial" in item 826 (article 26).

§ 822. Art. 22. Who may convene general courts-martial.

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary concerned;

(3) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(4) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(5) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(6) any other commanding officer designated by the Secretary concerned; or

(7) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
822 (a)	50: 586 (a).	May 5, 1950, ch. 169, § 1 (Art. 22), 64 Stat. 115.
822 (b)	50: 586 (b).	

Subsection (a) (2) is substituted for the words "the Secretary of a Department".

In subsection (a) (4), the words "continental limits of the" are omitted, since section 101 (1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a) (6), the words "any other commanding officer" are substituted for the words "such other commanding officers as may be".

In subsection (b), the word "If" is substituted for the word "When". The words "if considered" are substituted for the words "when deemed".

CROSS REFERENCES

Complaints of wrongs, see section 938 of this title.

Courts of inquiry, authority to convene, see section 935 (a) of this title.

Initial action on record, see section 860 of this title.

§ 823. Art. 23. Who may convene special courts-martial.

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the

commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
823 (a)	50: 587 (a).	May 5, 1950, ch. 169, § 1 (Art. 23), 64 Stat. 115.
823 (b)	50: 587 (b).	

In subsection (a) (7), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the word "If" is substituted for the word "When". The words "if considered" are substituted for the words "when deemed".

CROSS REFERENCES

Initial action on record, see section 860 of this title.

§ 824. Art. 24. Who may convene summary courts-martial.

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
824 (a)	50: 588 (a).	May 5, 1950, ch. 169, § 1 (Art. 24), 64 Stat. 116.
824 (b)	50: 588 (b).	

In subsection (a) (4), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the words "only one commissioned" are substituted for the words "but one" for clarity. The word "considered" is substituted for the word "deemed".

CROSS REFERENCES

Initial action on record, see section 860 of this title.

Inquests, disposition of effects of deceased persons, see sections 4711, 4712, 9711, 9712 of this title.

§ 825. Art. 25. Who may serve on courts-martial.

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, the word "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d) (1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. (Aug. 10, 1956, ch. 1041, 70A Stat. 45; Oct. 24, 1968, Pub. L. 90-632, § 2(7), 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
825 (a)	50: 589 (a).	May 5, 1950, ch. 169, § 1 (Art. 25), 64 Stat. 116.
825 (b)	50: 589 (b).	
825 (c)	50: 589 (c).	
825 (d)	50: 589 (d).	

In subsection (a), the word "commissioned" is inserted before the word "officer" for clarity. The word "is" is substituted for the words "shall be".

In subsections (a), (b), and (c) (1), the words "with the armed forces" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be". The words "a commissioned" are substituted for the word "an" for clarity.

In subsection (c), the words "member" and "members", respectively are substituted for the words "person" and "persons". The words "of an armed force" are inserted for clarity.

In subsection (c) (1), the word "is" is substituted for the words "shall be". The word "before" is substituted for the words "prior to". The words "the accused may not" are substituted for the words "no enlisted person shall", for clarity. The word "If" is substituted for the word "Where".

In subsection (c) (2), the word "means" is substituted for the words "shall mean". The words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "may" is substituted for the word "shall". The word "than", before the words "a body", is omitted as surplusage.

In subsection (d) (1), the word "may" is substituted for the word "shall". The word "member" is substituted for the word "person".

In subsection (d) (2), the word "is" is substituted for the words "shall be". The word "detail" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense. The words "member of an armed force" and "members of the armed forces", respectively, are substituted for the words "person" and "persons".

AMENDMENTS

1968—Subsec. (c) (1). Pub. L. 90–632 added requirement that an accused's request for the inclusion of enlisted members on his court-martial be made before the conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted "assembled" for "convened" to describe the calling together of the court for the trial in the provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial.

(a) The authority convening a general court-martial shall, and, subject to regulations of the Secretary concerned, the authority convening a special court-martial may, detail a military judge thereto. A military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail by the convening authority, and, unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court. (Aug. 10, 1956, ch. 1041, 70A Stat 46; Oct. 24, 1968, Pub. L. 90–632, § 2(9), 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
826 (a)	50: 590 (a).	May 5, 1950, ch. 169, § 1 (Art. 26), 64 Stat. 117.
826 (b)	50: 590 (b).	

In subsection (a), the words "a commissioned" are substituted for the word "an" for clarity. The words "of the United States" are omitted as surplusage. The word "is" is substituted for the words "shall be". The word "if" is substituted for the word "when". The word "detail" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word "may" is substituted for the word "shall".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, in the section catchline, substituted "military judge" for "law officer" and inserted reference to special court-martial, and, in subsec. (a), substituted reference to military judge for references to law officer and such law officer's requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, added provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b)—(d). Pub. L. 90–632 added subsecs. (b)—(d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90–632 redesignated former subsec. (b) as (e) and substituted "military judge" for "law officer" and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Section 3(a) of Pub. L. 90–632 provided that: "Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge."

CROSS REFERENCES

Authentication of record, see section 854 of this title.

Definition of military judge, see section 801 (10) of this title.

Oath to perform duties faithfully, see section 842 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

Rulings on interlocutory questions, see section 851 (b) of this title.

§ 827. Art. 27. Detail of trial counsel and defense counsel.

(a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard, who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Dec. 8, 1967, Pub. L. 90–179, § 1(5), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90–632, § 2(10), 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
827 (a)	50: 591 (a).	May 5, 1950, ch. 169, § 1 (Art. 27), 64 Stat. 117.
827 (b)	50: 591 (b).	
827 (c)	50: 591 (c).	

The words, "detail" and "detailed" are substituted for the words "appoint" and "appointed" throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word "and" is substituted for the words "together with". The word "considers" is substituted for the word "deems". The words "necessary or" are omitted as surplusage, since what is necessary is also appropriate. The word "may" is substituted for the word "shall". The word "later" is substituted for the word "subsequently".

In subsections (b) and (c), the word "must" is substituted for the word "shall", since the clauses prescribe conditions and not commands.

In subsection (b), the word "for" is substituted for the words "in the case of". The words "person * * * a person who is" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(10)(A), substituted "military judge" for "law officer".

Subsec. (c). Pub. L. 90–632, § 2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Appointment of appellate counsel, see section 870 of this title.

Article to be explained, see section 937 of this title.

Courts of inquiry, appointment of counsel for court, see section 935 (b) of this title.

Duties of trial and defense counsel, see section 838 of this title.

Oath of trial and defense counsel to perform duties faithfully, see section 842 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 819, 838, 937 of this title.

§ 828. Art. 28. Detail or employment of reporters and interpreters.

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the

court or commission. (Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
828	50: 592.	May 5, 1950, ch. 169, § 1 (Art. 28), 64 Stat. 117.

The words "Secretary concerned" are substituted for the words "Secretary of the Department". The words, "detail or employ" are substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense.

CROSS REFERENCES

Judge Advocate Generals of Army and Air Force to receive, revise and have recorded proceedings of courts of inquiry and military commissions, see sections 3037, 8072 of this title.

Oath of reporters and interpreters to perform duties faithfully, see section 842 of this title.

§ 829. Art. 29. Absent and additional members.

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816 (1)(B) or (2)(C) of this title (article 16 (1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides. (Aug. 10, 1956, ch. 1041, 70A Stat. 47; Oct. 24, 1968, Pub. L. 90–632, § 2(11), 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
829 (a)	50: 593 (a).	May 5, 1950, ch. 169, § 1 (Art. 29), 64 Stat. 117.
829 (b)	50: 593 (b).	
829 (c)	50: 593 (c).	

In subsections (a), (b), and (c), the word "may" is substituted for the word "shall".

In subsections (b) and (c), the word "details" is substituted for the word "appoints", since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(11)(A), substituted "court has been assembled for the trial of the accused" for "accused has been arraigned".

Subsec. (b). Pub. L. 90–632, § 2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and added provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90–632, § 2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d). Pub. L. 90–632, § 2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

Subchapter VI.—Pre-Trial Procedure

Sec. Art.
830. 30. Charges and specifications.
831. 31. Compulsory self-incrimination prohibited.
832. 32. Investigation.
833. 33. Forwarding of charges.
834. 34. Advice of staff judge advocate and reference for trial.
835. 35. Service of charges.

§ 830. Art. 30. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable. (Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
830 (a)	50: 601 (a).	May 5, 1950, ch. 169, § 1 (Art. 30), 64 Stat. 118.
830 (b)	50: 601 (b).	

In subsection (a), the word "they" is substituted for the words "the same". The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Authority to administer oaths, see section 936 of this title.

Corrections and changes to conform to investigation report, see section 834 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 849 of this title.

§ 831. Art. 31. Compulsory self-incrimination prohibited.

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial. (Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
831 (a)	50: 602 (a).	May 5, 1950, ch. 169, § 1 (Art 31), 64 Stat. 118.
831 (b)	50: 602 (b).	
831 (c)	50: 602 (c).	
831 (d)	50: 602 (d).	

The word "may" is substituted for the word "shall" throughout the revised section.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 832. Art. 32. Investigation.

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error. (Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
832 (a)	50: 603 (a).	May 5, 1950, ch. 169, § 1 (Art. 32), 64 Stat. 118.
832 (b)	50: 603 (b).	
832 (c)	50: 603 (c).	
832 (d)	50: 603 (d).	

In subsection (a), the word "may" is substituted for the word "shall". The words "consideration of the" and "a recommendation as to" are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word "detailed" is substituted for the word "appointed", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word "before" is substituted for the words "prior to the time". The words "of this section" are omitted as surplusage.

In subsection (d), the word "are" is substituted for the words "shall be." The word "does" is substituted for the words "in any case shall".

CROSS REFERENCES

Oaths, administration of; notary, general powers of, see section 936 of this title.

§ 833. Art. 33. Forwarding of charges.

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay. (Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
833	50: 604	May 5, 1950, ch. 169, § 1 (Art. 33), 64 Stat. 119.

§ 834. Art. 34. Advice of staff judge advocate and reference for trial.

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this chapter and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made. (Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
834 (a)	50: 605 (a).	May 5, 1950, ch. 169, § 1 (Art. 34), 64 Stat. 119.
834 (b)	50: 605 (b).	

In subsection (a), the word "may" is substituted for the word "shall".

§ 835. Art. 35. Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be serve upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him. (Aug. 10, 1956, ch. 1041, 70A Stat. 49; Oct. 24, 1968, Pub. L. 90–632, § 2(12), 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
835	50: 606.	May 5, 1950, ch. 169, § 1 (Art. 35), 64 Stat. 119.

The word "may" is substituted for the word "shall". The word "after" is substituted for the words "subsequent to".

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 839 of this title.

Subchapter VII.—Trial Procedure

Sec. Art.
836. 36. President may prescribe rules.
837. 37. Unlawfully influencing action of court.
838. 38. Duties of trial counsel and defense counsel.
839. 39. Sessions.
840. 40. Continuances.
841. 41. Challenges.
842. 42. Oaths.
843. 43. Statute of limitations.
844. 44. Former jeopardy.
845. 45. Pleas of the accused.
846. 46. Opportunity to obtain witnesses and other evidence.
847. 47. Refusal to appear or testify.
848. 48. Contempts.
849. 49. Depositions.
850. 50. Admissibility of records of courts of inquiry.
851. 51. Voting and rulings.
852. 52. Number of votes required.
853. 53. Court to announce action.
854. 54. Record of trial.

§ 836. Art. 36. President may prescribe rules.

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable and shall be reported to Congress. (Aug. 10, 1956, ch. 1041, 70A Stat. 50.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
836 (a)	50: 611 (a).	May 5, 1950, ch. 169, § 1 (Art. 36), 64 Stat. 120.
836 (b)	50: 611 (b).	

In subsection (a), the word "considers" is substituted for the word "deems". The word "may" is substituted for the word "shall".

In subsection (b), the word "under" is substituted for the words "in pursuance of".

CROSS REFERENCES

Competency of accused as witness, see section 3481 of Title 18, Crimes and Criminal Procedure.

Federal Rules of Criminal Procedure, see Title 18, Appendix.

Judge Advocate General of Army and Air Force to receive, revise, and have recorded proceedings of courts of inquiry and military commissions, see sections 3037, 8072 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 839 of this title.

§ 837. Art. 37. Unlawfully influencing action of court.

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply

with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial. (Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, Pub. L. 90–632, § 2(13), 82 Stat 1338.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
837	50: 612.	May 5, 1950, ch. 169, § 1 (Art. 37), 64 Stat. 120.

The word "may" is substituted for the word "shall".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(13)(A)—(C), designated existing provisions as subsec. (a) and, substituted therein "military judge" for "law officer" and added provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from the prohibitions of subsec. (a).

Subsec. (b). Pub. L. 90–632, § 2(13)(D), added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel.

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 827 of this title (article 27). Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused. (Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, Pub. L. 90–632, § 2(14), 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
838 (a)	50: 613 (a).	May 5, 1950, ch. 169, § 1 (Art. 38), 64 Stat. 120.
838 (b)	50: 613 (b).	
838 (c)	50: 613 (c).	
838 (d)	50: 613 (d).	
838 (e)	50: 613 (e).	

In subsection (b), the word "has" is substituted for the words "shall have". The word "under" is substituted for the words "pursuant to". The word "duly" is omitted as surplusage. The words "detailed" and "who were detailed" are substituted for the word "appointed", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word "considers" is substituted for the words "may deem".

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–632 substituted "military judge or by the president of a court-martial without a military judge" for "president of the court."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Courts of inquiry, representation by counsel, see section 935 (c) of this title.

Vacation of suspension of sentence, representation of probationer at hearing, see section 872 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 839. Art. 39. Sessions.

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of deter-

mination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge. (Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(15), 82 Stat 1338.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
839	50: 614.	May 5, 1950, ch. 169, § 1 (Art. 39), 64 Stat. 121.

The word "When" is substituted for the word "Whenever". The words "deliberates or votes" are substituted for the words "is to deliberate or vote". The word "may" is substituted for the word "shall". The word "shall" is inserted before the words "be in the presence" for clarity.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-632 added subsec. (a), and designated existing provisions as subsec. (b).

Subsec. (b). Pub. L. 90-632 designated existing provisions as subsec. (b) and substituted therein "military judge" for "law officer" and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Consultations by military judge with members of court, see section 826 of this title.

Record of trial, see section 854 of this title.

Voting and rulings, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 825, 835 of this title.

§ 840. Art. 40. Continuances.

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just. (Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(16), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
840	50: 615.	May 5, 1950, ch. 169, § 1 (Art. 40), 64 Stat. 121.

AMENDMENTS

1968—Pub. L. 90-632 inserted reference to military judge.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 841. Art. 41. Challenges.

(a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause (Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(17), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
841 (a)	50: 616 (a).	May 5, 1950, ch. 169, § 1 (Art. 41), 64 Stat. 121.
841 (b)	50: 616 (b).	

In subsection (a), the word "may" is substituted for the word "shall" before the words "not receive".

In subsection (b), the word "the" is inserted before the word "trial". The word "is" is substituted for the words "shall be". The word "may" is substituted for the word "shall".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-632, § 2(17) (A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90-632, § 2(17)(C), substituted "military judge" for "law officer".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 (d) of this title.

Voting and rulings, see section 851 of this title.

§ 842. Art. 42. Oaths.

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or

for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate, law specialist, or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, law specialist, or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath. (Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(18), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
842 (a)	50: 617 (a).	May 5, 1950, ch. 169, § 1 (Art. 42), 64 Stat. 121.
842 (b)	50: 617 (b).	

In subsection (a), the word "all" and the word "the" before the words "members", "trial", "defense", and "reporter" are omitted as surplusage.

In subsections (a) and (b), the words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of Title 1.

In subsection (b), the words "Each witness" are substituted for the words "All witnesses".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-632 struck out requirement that the oath given to court-martial personnel be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 (e) of this title.

§ 843. Art. 43. Statute of limitations.

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919—932 of this title (articles 119—132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress. (Aug. 10, 1956, ch. 1041, 70A Stat. 51.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
843 (a)	50: 618 (a).	May 5, 1950, ch. 169, § 1 (Art. 43), 64 Stat. 121.
843 (b)	50: 618 (b).	
843 (c)	50: 618 (c).	
843 (d)	50: 618 (d).	
843 (e)	50: 618 (e).	
843 (f)	50: 618 (f).	

In subsection (b), the word "inclusive" is omitted as surplusage.

In subsections (b) and (c), the words "is not" are substituted for the words "shall not be".

In subsection (e), the words "For an" are substituted for the words "In the case of any". The word "is" is substituted for the words "shall be". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (f), the word "is" is substituted for the words "shall be".

CROSS REFERENCES

Absence without leave, see section 886 of this title.

Aiding enemy, see section 904 of this title.

Desertion, see section 885 of this title.

Frauds against United States, see section 932 of this title.

Jurisdiction to try certain personnel, limitations, see section 803 of this title.

Murder, see section 918 of this title.

Mutiny, see section 894 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 803 of this title.

§ 844. Art. 44. Former jeopardy.

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article. (Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
844 (a)	50: 619 (a).	May 5, 1950, ch. 169, § 1 (Art. 44), 64 Stat. 122.
844 (b)	50: 619 (b).	
844 (c)	50: 619 (c).	

In subsection (a), the word "may" is substituted for the word "shall".

In subsection (b), the word "is" is substituted for the words "shall be held to be".

In subsection (c), the word "after" is substituted for the words "subsequent to". The word "before" is substituted for the words "prior to". The word "is" is substituted for the words "shall be".

CROSS REFERENCES

Double jeopardy, prohibition against, see Const. Amend. 5.

§ 845. Art. 45. Pleas of the accused.

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty. (Aug. 10, 1956, ch. 1041, 70A Stat. 52; Oct. 24, 1968, Pub. L. 90–632, § 2(19), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
845 (a)	50: 620 (a).	May 5, 1950, ch. 169, § 1 (Art. 45), 64 Stat. 122.
845 (b)	50: 620 (b).	

In subsection (b), the word "may" is substituted for the word "shall".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(19)(A), substituted "after arraignment" for "arraigned before a court-martial".

Subsec. (b). Pub. L. 90–632, § 2(19)(B), added provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 852 of this title.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence.

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions. (Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
846	50: 621.	May 5, 1950, ch. 169, § 1 (Art. 46), 64 Stat. 122.

The word "Commonwealths" is inserted to reflect the present status of Puerto Rico.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

§ 847. Art. 47. Refusal to appear or testify.

(a) Any person not subject to this chapter who—

(1) has been duly subpenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the Territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be

punished by a fine of not more than $500, or imprisonment for not more than six months, or both.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses. (Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
847 (a)	50: 622 (a).	May 5, 1950, ch. 169, § 1 (Art. 47), 64 Stat. 123.
847 (b)	50: 622 (b).	
847 (c)	50: 622 (c).	
847 (d)	50: 622 (d).	

In subsection (a), the word "Any" is substituted for the word "Every". The word "is" is substituted for the words "shall be deemed".

In subsection (b), the words "named in subsection (a)" are substituted for the words "denounced by this article". The words "Territories, Commonwealths, or" are substituted for the word "Territorial". The words "not more than" are substituted for the words "a period not exceeding".

In subsection (c), the words "It shall be the duty of * * * to" are omitted as surplusage. The words "United States Attorney" are substituted for the words "United States district attorney", to conform to the terminology of section 501 of title 28. The word "shall" is inserted after the word "jurisdiction".

CROSS REFERENCES

Per diem and mileage of witnesses generally, see section 1821 of Title 28, Judiciary and Judicial Procedure.

§ 848. Art. 48. Contempts.

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $100, or both. (Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
848	50: 623.	May 5, 1950, ch. 169, § 1 (Art. 48), 64 Stat. 123.

The word "may" is substituted for the word "shall".

§ 849. Art. 49. Depositions.

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial. (Aug. 10, 1956, ch. 1041, 70A Stat. 53; Oct. 24, 1968, Pub. L. 90–632, § 2(20), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
849 (a)	50: 624 (a).	May 5, 1950, ch. 169, § 1 (Art. 49), 64 Stat. 123.
849 (b)	50: 624 (b).	
849 (c)	50: 624 (c).	
849 (d)	50: 624 (d).	
849 (e)	50: 624 (e).	
849 (f)	50: 624 (f).	

In subsection (a), the word "commissioned" is inserted for clarity.

In subsection (d), the word "Commonwealth" is inserted to reflect the present status of Puerto Rico. The words "of Columbia" are inserted after the word "District" for clarity. The words "the distance of" are omitted as surplusage.

In subsections (e) and (f), the words "the requirements of" and the words "of this article" are omitted as surplusage. The word "presented" is substituted for the word "adduced" in subsection (e).

In subsection (f), the word "directs" is substituted for the words "shall have directed". The words "by law" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Authority competent to convene court-martial, see sections 822—824 of this title.

Officers authorized to administer oaths, see section 936 of this title.

§ 850. Art. 50. Admissibility of records of courts of inquiry.

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board. (Aug. 10, 1956, ch. 1041, 70A Stat. 54.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
850 (a)	50: 625 (a).	May 5, 1950, ch. 169, § 1 (Art. 50), 64 Stat. 124.
850 (b)	50: 625 (b).	
850 (c)	50: 625 (c).	

In subsections (a) and (b), the word "commissioned" is inserted for clarity.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

Judge Advocate Generals of Army and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 8072 of this title.

§ 851. Art. 51. Voting and rulings.

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein. (Aug. 10, 1956, ch. 1041, 70A Stat. 54; Oct. 24, 1968, Pub. L. 90–632, § 2(21), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
851 (a)	50: 626 (a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851 (b)	50: 626 (b).	
851 (c)	50: 626 (c).	

In subsection (a), the words "in each case" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be" in the second sentence. The word "constitutes" is substituted for the words "shall constitute". The word "However," is substituted for the word "but". The word "his" is substituted for the words "any such". The words "the ruling is" are substituted for the words "such ruling be". The words "voice vote" are substituted for the words "vote * * * viva voce".

In subsection (c), the word "must" is substituted for the word "shall" in clause (2), since a condition is prescribed, not a command. The words "United States" are substituted for the word "Government".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90–632, § 2(21)(B), substituted "military judge" for "law officer" and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90–632, § 2(21)(C), substituted "military judge" for "law officer" and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90–632, § 2(21)(D), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Military judge prohibited from voting, see section 826 (b) of this title.

§ 852. Art. 52. Number of votes required.

(a) (1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) (1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. (Aug. 10, 1956, ch. 1041, 70A Stat. 55; Oct. 24, 1968, Pub. L. 90–632, § 2(22), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
852 (a)	50: 627 (a).	May 5, 1950, ch. 169, § 1 (Art. 52), 64 Stat. 125.
852 (b)	50: 627 (b).	
852 (c)	50: 627 (c).	

In subsections (a) and (b), the word "may" is substituted for the word "shall".

In subsection (b) (2), the words "for more than" are substituted for the words "in excess of".

In subsection (c), the word "disqualifies" is substituted for the words "shall disqualify". The word "is" is substituted for the words "shall be" in the last two sentences.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90–632, § 2(22)(A), added reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90–632, § 2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Objections to rulings, voice vote on, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 851 of this title.

§ 853. Art. 53. Court to announce action.

A court-martial shall announce its findings and sentence to the parties as soon as determined. (Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
853	50: 628.	May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125.

The word "A" is substituted for the word "Every".

§ 854. Art. 54. Record of trial.

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the President.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. (Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, Pub. L. 90–632, § 2(23), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
854 (a)	50: 629 (a).	May 5, 1950, ch. 169, § 1 (Art. 54), 64 Stat. 125.
854 (b)	50: 629 (b).	
854 (c)	50: 629 (c).	

In subsection (a), the word "If" is substituted for the words "In case". The words "any of those" are substituted for the word "such" in the last sentence.

In subsection (b), the words "and the" are substituted for the word "which" before the word "record". The words "the matter and shall be authenticated in the manner required by such regulations as" are substituted for the words "such matter and be authenticated in such manner as may be required by regulations which".

In subsection (c), the words "it is" are inserted before the word "authenticated".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for sumarized records of trial in specified cases.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 (h) of this title.

Subchapter VIII.—Sentences

Sec. Art.
855. 55. Cruel and unusual punishments prohibited.
856. 56. Maximum limits.
857. 57. Effective date of sentences.
858. 58. Execution of confinement.
858a. 58a. Sentences: reduction in enlisted grade upon approval.

AMENDMENTS

1960—Pub. L. 86–633, § 1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§ 855. Art. 55. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited. (Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
855	50: 636.	May 5, 1950, ch. 169, § 1 (Art. 55), 64 Stat. 126.

The word "may" is substituted for the word "shall".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Constitutional limitation, see Const. Amend. 8.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 856. Art. 56. Maximum limits.

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense. (Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
856	50: 637.	May 5, 1950, ch. 169, § 1 (Art. 56), 64 Stat. 126.

The word "may" is substituted for the word "shall".

§ 857. Art. 57. Effective date of sentences.

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned. (Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, Pub. L. 90–632, § 2(24), 82 Stat. 1341.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
857 (a) 857 (b) 857 (c)	50: 638 (a). 50: 638 (b). 50: 638 (c).	May 5, 1950, ch. 169, § 1 (Art. 57), 64 Stat. 126.

In subsection (a), the word "may" is substituted for the word "shall".

In subsection (b), the word "begins" is substituted for the words "shall begin".

In subsection (c), the word "are" is substituted for the words "shall become".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90–632 added reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90–632 added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Delivery of offenders to civil authorities, see section 814 of this title.

Enlisted members' deposits not subject to forfeiture by sentence of court-martial, see section 1035 (d) of this title.

Enlisted members required to make up lost time, see section 972 of this title.

Punishment prohibited before trial, see section 813 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 813 of this title.

§ 858. Art. 58. Execution of confinement.

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated.

(b) The omission of the words "hard labor" from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment. (Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
858 (a)	50: 639 (a).	May 5, 1950, ch. 169, § 1 (Art. 58), 64 Stat. 126.
858 (b)	50: 639 (b).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Department concerned", since the "Department" as an entity, cannot issue instructions. The word "are" is substituted for the words "shall be". The words "of Columbia" are inserted after "District" for clarity.

In subsection (b), the word "from" is substituted for the word "in". The words "does not deprive" are substituted for the words "shall not be construed as depriving".

DONATION UPON RELEASE FROM CONFINEMENT OR DISCHARGE FOR FRAUDULENT ENLISTMENT

Pub. L. 91-668, title VIII, § 808, Jan. 11, 1971, 84 Stat. 2031, provided in part that donations of not to exceed $25 shall be paid to each prisoner upon each release from confinement in military or contract prison (except disciplinary barracks) and to each person discharged for fraudulent enlistment.

Similar provisions were contained in the following prior acts:

Dec. 29, 1969, Pub. L. 91-171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90-580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88-446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88-149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87-144, title VI, § 607, 75 Stat. 376.
July 7, 1960, Pub. L. 86-601, title V, § 507, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86-166, title V, § 607, 73 Stat. 379.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title V, § 501, 72 Stat. 713, 722.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title V, § 501, 71 Stat. 313, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 313.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 443.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 1015.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 389.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 187, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.
June 30, 1941, ch. 262, § 1, 55 Stat. 371.
June 13, 1940, ch. 343, § 1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598.
June 11, 1938, ch. 34, § 1, 52 Stat. 648.
July 1, 1937, ch. 423, § 1, 50 Stat. 448.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1284.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 619.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575.
July 14, 1932, ch. 482, title I, 47 Stat. 668.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 436.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 330.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 259.

CROSS REFERENCES

Enlisted members required to make up lost time, see section 972 of this title.

Penitentiary imprisonment, consent, see section 4083 of Title 18, Crimes and Criminal Procedure.

Prisons and prisoners, see section 4001 et seq. of Title 18.

United States Disciplinary Barracks, see section 3661 et seq. of this title.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval.

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes—

(1) a dishonorable or bad-conduct discharge;
(2) confinement; or
(3) hard labor without confinement;

reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a) (1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced. (Added Pub. L. 86-633, § 1(1), July 12, 1960, 74 Stat. 468.)

Subchapter IX.—Review of Courts-Martial

Sec. Art.
859. 59. Error of law; lesser included offense.
860. 60. Initial action on the record.
361. 61. Same—General court-martial records.
862. 62. Reconsideration and revision.
863. 63. Rehearings.
864. 64. Approval by the convening authority.
865. 65. Disposition of records after review by the convening authority.
866. 66. Review by Court of Military Review.

Sec. Art.
867. 67. Review by the Court of Military Appeals.
868. 68. Branch offices.
869. 69. Review in the office of the Judge Advocate General.
870. 70. Appellate counsel.
871. 71. Execution of sentence; suspension of sentence.
872. 72. Vacation of suspension.
873. 73. Petition for a new trial.
874. 74. Remission and suspension.
875. 75. Restoration.
876. 76. Finality of proceedings, findings, and sentences.

AMENDMENTS

1968—Pub. L. 90-632, § 2(25), Oct. 24, 1968, 82 Stat. 1341, substituted "Court of Military Review" for "board of review" in item 866 (article 66).

§ 859. Art. 59. Error of law; lesser included offense.

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense. (Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
859 (a)	50: 646 (a).	May 5, 1950, ch. 169, § 1 (Art. 59), 64 Stat. 127.
859 (b)	50: 646 (b).	

The word "may" is substituted for the word "shall".

§ 860. Art. 60. Initial action on the record.

After a trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction. (Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
860	50: 647.	May 5, 1950, ch. 169, § 1 (Art. 60), 64 Stat. 127.

The word "a" is substituted for the word "every". The word "by" before the words "any officer" is omitted as surplusage. The word "person" is substituted for the word "officer" before the words "who convened", since, under sections 824 and 823 of this title (articles 23 and 24), noncommissioned officers who are "officers in charge" may convene special and summary courts-martial.

CROSS REFERENCES

Authority to convene general, special or summary courts-martial, see sections 822—824 of this title.

Record of trial, see section 854 of this title.

§ 861. Art. 61. Same—General court-martial records.

The convening authority shall refer the record of each general court-martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to the Judge Advocate General of the armed force of which the accused is a member. (Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
861	50: 648.	May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127.

The word "each" is substituted for the word "every".

§ 862. Art. 62. Reconsideration and revision.

(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned—

(1) for reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(2) for reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(3) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
862 (a)	50: 649 (a).	May 5, 1950, ch. 169, § 1 (Art. 62), 64 Stat. 127.
862 (b)	50: 649 (b).	

§ 863. Art. 63. Rehearings.

(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. (Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
863 (a) 863 (b)	50: 650 (a). 50: 650 (b).	May 5, 1950, ch. 169, § 1 (Art. 63), 64 Stat. 127.

In subsection (a), the words "In such a" are substituted for the words "in which".

In subsection (b), the word "Each" is substituted for the word "Every". The word "may" is substituted for the word "shall" in the second sentence.

§ 864. Art. 64. Approval by the convening authority.

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence. (Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
864	50: 651.	May 5, 1950, ch. 169, § 1 (Art. 64), 64 Stat. 128.

The word "may" is substituted for the word "shall". The word "is" is substituted for the words "shall constitute".

CROSS REFERENCES

Disapproval by the convening authority, see section 863 of this title.

§ 865. Art. 65. Disposition of records after review by the convening authority.

(a) When the convening authority has taken final action in a general court-martial case, he shall send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the appropriate Judge Advocate General to be reviewed by a Court of Military Review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of the Treasury, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation. (Aug. 10, 1956, ch. 1041, 70A Stat. 59; Dec. 8, 1967, Pub. L. 90–179, § 1(6), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90–632, § 2(26), 82 Stat. 1341.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
865 (a) 865 (b) 865 (c)	50: 652 (a). 50: 652 (b). 50: 652 (c).	May 5, 1950, ch. 169, § 1 (Art. 65), 64 Stat. 128.

In subsection (b), the word "If" is substituted for the word "Where".

In subsections (a) and (b), the words "send" and "sent" are substituted for the words "forward" and "forwarded", respectively.

In subsection (c), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–632 substituted "Court of Military Review" for "board of review" wherever appearing.

1967—Subsec. (c). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of the General Counsel of the Department of the Treasury set out in this chapter were transferred to and vested in the General Counsel of the Department of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation and transferred the Coast Guard to the Department of Transportation. See section 1655(b)(3) of Title 49, Transportation.

§ 866. Art. 66. Review by Court of Military Review.

(a) Each Judge Advocate General shall establish a Court of Military Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Appellate military judges who are assigned to a Court of Military Review may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Military Review established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Military Review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more.

(c) In a case referred to it, the Court of Military Review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence,

judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Military Review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the Court of Military Review. If the Court of Military Review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Military Review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Military Review.

(g) No member of a Court of Military Review shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Military Review, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(h) No member of a Court of Military Review shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial. (Aug. 10, 1956, ch. 1041, 70A Stat. 59; Oct. 24, 1968, Pub. L. 90-632, § 2(27), 82 Stat. 1341.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
66 (a)	50: 653 (a).	May 5, 1950, ch. 169, § 1 (Art. 66), 64 Stat. 128.
866 (b)	50: 653 (b).	
866 (c)	50: 653 (c).	
866 (d)	50: 653 (d).	
866 (e)	50: 653 (e).	
866 (f)	50: 653 (f).	

In subsection (a), the word "Each" is substituted for the words "The * * * of each of the armed forces". The word "must" is substituted for the word "shall" after the word "whom", since a condition is prescribed, not a command. The words "of the United States" are omitted as surplusage.

In subsections (a) and (b), the word "commissioned" is inserted before the word "officer".

In subsection (c), the word "may" is substituted for the word "shall" and for the words "shall have authority to".

In subsection (e), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (f), the words "of the armed forces" and "proceedings in and before" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-632, § 2(27)(A), (B), substituted "Court of Military Review" for "board of review" in the section catchline and, in subsec. (a), substituted "Court of Military Review" for "board of review" as the name of the reviewing body established by each Judge Advocate General, and added provisions setting out the procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b)—(e). Pub. L. 90-632, § 2(27)(C), substituted "Court of Military Review" for "board of review" wherever appearing.

Subsec. (f). Pub. L. 90-632, § 2(27)(D), substituted "Courts of Military Review" for "boards of review" in two instances.

Subsecs. (g), (h). Pub. L. 90-632, § 2(27)(E), added subsecs. (g) and (h).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Section 3(b) of Pub. L. 90-632 provided that: "Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review."

CROSS REFERENCES

Review in the office of the Judge Advocate General, see section 869 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 869 of this title.

§ 867. Art. 67. Review by the Court of Military Appeals.

(a)(1) There is a United States Court of Military Appeals established under article I of the Constitution of the United States and located for administrative purposes only in the Department of Defense. The court consists of three judges appointed from civil life by the President, by and with the advice and consent of the Senate, for a term of fifteen years. The terms of office of all successors of the judges serving on the effective date of this Act shall expire fifteen years after the expiration of the terms for which their predecessors were appointed, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Not more than two of the judges of the court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or the highest court of a State. Each judge is entitled to the same salary and travel allowances as are, and from to time may be, provided for judges of the United States Court of Appeals, and is eligible for reappointment. The President shall designate from time to time one of the judges to act as chief judge. The chief judge of the court shall have precedence and preside at any session which he attends. The other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The court may prescribe its own

rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court.

(2) Judges of the United States Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, or for mental or physical disability, but for no other cause.

(3) If a judge of the United States Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals for the District of Columbia to fill the office for the period of disability.

(4) Any judge of the United States Court of Military Appeals who is receiving retired pay may become a senior judge, may occupy offices in a Federal building, may be provided with a staff assistant whose compensation shall not exceed the rate prescribed for GS–9 in the General Schedule under section 5332 of title 5, and, with his consent, may be called upon by the chief judge of said court to perform judicial duties with said court for any period or periods specified by such chief judge. A senior judge who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(b) The Court of Military Appeals shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Military Review, affects a general or flag officer or extends to death;

(2) all cases reviewed by a Court of Military Review which the Judge Advocate General orders sent to the Court of Military Appeals for review; and

(3) all cases reviewed by a Court of Military Review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review.

(c) The accused has 30 days from the time when he is notified of the decision of a board of review to petition the Court of Military Appeals for review. The court shall act upon such a petition within 30 days of the receipt thereof.

(d) In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which the Judge Advocate General orders sent to the Court of Military Appeals, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law.

(e) If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(f) After it has acted on a case, the Court of Military Appeals may direct the Judge Advocate General to return the record to the Court of Military Review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the Treasury, the number and status of pending cases and any recommendations relating to uniformity of policies as to sentences, amendments to this chapter, and any other matters considered appropriate. (Aug. 10, 1956, ch. 1041, 70A Stat. 60; Aug. 14, 1964, Pub. L. 88–426, title IV, § 403(j), 78 Stat. 434; June 15, 1968, Pub. L. 90–340, § 1, 82 Stat. 178; Oct. 24, 1968, Pub. L. 90–632, § 2(28), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
867 (a)	50: 654 (a).	May 5, 1950, ch. 169, § 1 (Art. 67), 64 Stat. 129; Mar. 2, 1955, ch. 9, § 1 (i), 69 Stat. 10.
867 (b)	50: 654 (b).	
867 (c)	50: 654 (c).	
867 (d)	50: 654 (d).	
867 (e)	50: 654 (e).	
867 (f)	50: 654 (f).	
867 (g)	50: 654 (g).	

In subsection (a) (1), the word "is" is substituted for the words "is hereby established". The words "all" and "which shall be" are omitted as surplusage. The word "consists" is substituted for the words "shall consist". The word "civil" is substituted for the word "civilian". The word "may" is substituted for the word "shall" before the words "be appointed". The word "is" is substituted for the word "shall" before the words "any person". The words "is entitled to" are substituted for the words "shall receive". The word "is" is substituted for the words "shall be" in the fourth sentence. The word "may" is substituted for the words "shall have power to * * * to". The word "does" is substituted for the word "shall" in the next to the last sentence. In the last sentence, the words "is entitled * * * to" are substituted for the word "shall". The word "outside" is substituted for the words "at a place other than his official station. The official station of such judges for such purpose shall be". The words "also" and "actually" are omitted as surplusage.

In subsection (a) (2), the words "February 28, 1951," are substituted for the words "the effective date of this subdivision". The word "shall" in the first sentence, and the word "shall" before the word "expire" in the second sentence, are omitted as surplusage. The word "before" is substituted for the words "prior to". The word "may" is substituted for the word "shall" before the words "be appointed".

In subsection (a) (3), the word "for" is substituted for the words "upon the ground of".

In subsection (b), the words "the following cases" are omitted as surplusage.

In subsections (b) and (d), the word "sent" is substituted for the word "forwarded".

In subsection (c), the word "when" is inserted after the word "time". The words "a grant of" are omitted as surplusage.

In subsection (d), the word "may" is substituted for the word "shall" in the first sentence.

In subsection (f), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (g), the words "of the armed forces" are omitted as surplusage. The words "policies as to sentences" are substituted for the words "sentence policies". The word "considered" is substituted for the word "deemed". The words "Secretaries of the military departments, and the Secretary of the Treasury" are substituted for the words "Secretaries of the Departments".

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a)(1), is June 15, 1968.

AMENDMENTS

1968—Subsec. (a)(1). Pub. L. 90–340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Article I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of $33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed $15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90–340 redesignated former subsec. (a)(3) as (a)(2) and as so redesignated changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former subsec. (a)(2) pertaining to the terms of office of judges were placed in subsec. (a)(1). Provisions of former subsec. (a)(2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were eliminated.

Subsec. (a)(3). Pub. L. 90–340 redesignated former subsec. (a)(4) as (a)(3) and as so redesignated changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Provisions of former subsec. (a)(3) were redesignated as subsec. (a)(2).

Subsec. (a)(4). Pub. L. 90–340 added subsec. (a)(4). Former subsec. (a)(4) redesignated as subsec. (a)(3).

Subsecs. (b), (f). Pub. L. 90–632 substituted "Court of Military Review" for "board of review" wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88–426 increased the salary of the judges from $25,500 to $33,000.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426, set out as a note under section 1113 of Title 5, Executive Departments and Government Officers and Employees.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Section 2 of Pub. L. 90–340 provided that: "The United States Court of Military Appeals established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act [June 15, 1968] shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act [June 15, 1968] shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act."

1969 INCREASE IN SALARY

Salary of judge increased from $33,000 to $42,500 per annum, commencing the first day of the pay period which begins after February 14, 1969, upon recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

UNITED STATES COURT OF MILITARY APPEALS; RULES OF PRACTICE AND PROCEDURE

See Appendix to this title.

CROSS REFERENCES

Execution of sentence, see section 871 of this title.

New trial, petition for, see section 873 of this title.

Review in office of Judge Advocate General, see section 869 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 869 of this title.

§ 868. Art. 68. Branch offices.

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Military Review with one or more panels. That Assistant Judge Advocate General and any Court of Military Review established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Military Review established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, Pub. L. 90–632, § 2(29), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
868	50: 655.	May 5, 1950, ch. 169, § 1 (Art. 68), 64 Stat. 130.

The word "considers" is substituted for the word "deems". The word "may" is substituted for the words "shall be empowered to". The word "respective" is inserted for clarity.

AMENDMENTS

1968—Pub. L. 90–632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted "Court of Military Review" for "board of review" as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Review by Court of Military Review, see section 866 of this title.

§ 869. Art. 69. Review in the office of the Judge Advocate General.

Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by section 866 of this title (article 66), shall be examined in the office of the Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if the Judge Advocate General so directs, the record shall be reviewed by a board of review in accordance with section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867 (b) (2) of this title (article 67(b) (2)). Notwithstanding section 876 of this title (article 76), the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused. (Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, Pub. L. 90–632, § 2(30), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
869	50: 656.	May 5, 1950, ch. 169, § 1 (Art. 69), 64 Stat. 130.

The word "may" is substituted for the word "will". The word "under" is substituted for the words "pursuant to the provisions of".

AMENDMENTS

1968—Pub. L. 90–632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Rerview, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on Oct. 24, 1968, see section 4(b) of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 870. Art. 70. Appellate counsel.

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827 (b) (1) of this title (article 27 (b) (1)).

(b) Appellate Government counsel shall represent the United States before the Court of Military Review or the Court of Military Appeals when directed to do so by the Judge Advocate General.

(c) Appellate defense counsel shall represent the accused before the Court of Military Review or the Court of Military Appeals—

(1) when he is requested to do so by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent a case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Appeals or the Court of Military Review by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs. (Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, Pub. L. 90–632, § 2(31), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
870 (a)	50: 657 (a).	May 5, 1950, ch. 169, § 1 (Art. 70), 64 Stat. 130.
870 (b)	50: 657 (b).	
870 (c)	50: 657 (c).	
870 (d)	50: 657 (d).	
870 (e)	50: 657 (e).	

In subsection (a), the word "detail" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense. The word "commissioned" is inserted for clarity. The word "are" is substituted for the words "shall be". The words "the provisions of" are omitted as surplusage.

In subsections (b) and (c), the word "shall" is substituted for the words "It shall be the duty of * * * to".

In subsection (c) (3), the word "sent" is substituted for the word "transmitted".

In subsection (d), the word "has" is substituted for the words "shall have".

In subsection (e), the word "directs" is substituted for the words "shall direct".

AMENDMENTS

1968—Subsecs. (b)—(d). Pub. L. 90–632 substituted "Court of Military Review" for "board of review" wherever appearing.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Trial counsel and defense counsel, duties, see section 838 of this title.

§ 871. Art. 71. Execution of sentence; suspension of sentence.

(a) No court-martial sentence extending to death or involving a general or flag officer may be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of a commissioned officer (other than a general or flag officer), cadet, or midshipman may be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be

required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.

(d) All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence. (Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, Pub. L. 90–632, § 2(32), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
871 (a)	50: 658 (a).	May 5, 1950, ch. 169, § 1 (Art. 71), 64 Stat. 131.
871 (b)	50: 658 (b).	
871 (c)	50: 658 (c).	
871 (d)	50: 658 (d).	

In subsection (a), the word "may" is substituted for the word "shall".

In subsection (b), the word "commissioned" is inserted for clarity. The word "may" is substituted for the word "shall" in the first sentence. The words "Secretary concerned" are substituted for the words "Secretary of the Department". The words "who is" are omitted as surplusage.

In subsection (c), the word "may" is substituted for the word "shall".

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–632, § 2(32)(A), substituted "Court of Military Review" for "board of review".

Subsec. (d). Pub. L. 90–632, § 2(32)(B), inserted reference to deferred court-martial sentences.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendments by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Pay and allowances of enlisted members of Army and Air Force not to accrue during suspended sentence of dishonorable discharge, see section 804 of Title 37, Pay and Allowances of the Uniformed Services.

Vacation of suspension, see section 872 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 872 of this title.

§ 872. Art. 72. Vacation of suspension.

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71 (c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence. (Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
872 (a)	50: 659 (a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872 (b)	50: 659 (b).	
872 (c)	50: 659 (c).	

In subsection (a), the word "Before" is substituted for the words "Prior to".

In subsection (b), the words "be effective * * * to" are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word "is" is substituted for the words "shall * * * be" in the last sentence. The word "sent" is substituted for the word "forwarded". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

§ 873. Art. 73. Petition for a new trial.

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition. (Aug. 10, 1956, ch. 1041, 70A Stat. 63; Oct. 24, 1968, Pub. L. 90–632, § 2(33), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
873	50: 660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words "the ground" are substituted for the word "grounds". The words "as the case may be" are substituted for the word "respectively", since the prescribed action is alternative, not distributive.

AMENDMENTS

1968—Pub. L. 90–632 extended the time during which the accused may petition the Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which had limited the right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

Review by—

Court of Military Review, see section 866 of this title.

Court of Military Appeals, see section 867 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 874. Art. 74. Remission and suspension.

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. (Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
874 (a)	50: 661 (a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874 (b)	50: 661 (b).	

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 875. Art. 75. Restoration.

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances. (Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
875 (a)	50: 662 (a).	May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132.
875 (b)	50: 662 (b).	
875 (c)	50: 662 (c).	

In subsections (b) and (c), the word "If" is substituted for the word "Where". The word "imposed" is substituted for the word "sustained". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "issue" is substituted for the word "issuance". The word "commissioned" is inserted for clarity. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position". The word "receive" is omitted as surplusage.

§ 876. Art. 76. Finality of proceedings, findings, and sentences.

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
876	50: 663.	May 5, 1950, ch. 169, § 1 (Art. 76), 64 Stat. 132.

The word "under" is substituted for the words "pursuant to". The word "are" is substituted for the words "shall be". The words "Secretary concerned" are substituted for the words "Secretary of a Department".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 869 of this title.

Subchapter X.—Punitive Articles

Sec. Art.
877. 77. Principals.
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925. 125. Sodomy.
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928. 128. Assault.
929. 129. Burglary.
930. 130. Housebreaking.
931. 131. Perjury.
932. 132. Frauds against the United States.
933. 133. Conduct unbecoming an officer and a gentleman.
934. 134. General article.

AMENDMENTS

1961—Pub. L. 87-385, § 1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

CROSS REFERENCE

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 937 of this title.

§ 877. Art. 77. Principals.

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal. (Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
877	50: 671.	May 5, 1950, ch. 169, § 1 (Art. 77), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Definition of principal, federal offense, see section 2 of Title 18, Crimes and Criminal Procedure.

§ 878. Art. 78. Accessory after the fact.

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
878	50: 672.	May 5, 1950, ch. 169, § 1 (Art. 78), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Definition of accessory after the fact, federal offense, see section 3 of Title 18, Crimes and Criminal Procedure.

§ 879. Art. 79. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. (Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
879	50: 673.	May 5, 1950, ch. 169, § 1 (Art. 79), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 880. Art. 80. Attempts.

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. (Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
880 (a)	50: 674 (a).	May 5, 1950, ch. 169, § 1 (Art. 80), 64 Stat. 134.
880 (b)	50: 674 (b).	
880 (c)	50: 674 (c).	

In subsection (a), the words "even though" are substituted for the word "but" for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Desertion, attempt, see section 885 of this title.

§ 881. Art. 81. Conspiracy.

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
881	50: 675.	May 5, 1950, ch. 169, § 1 (Art. 81), 64 Stat. 134.

The words "or persons" are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses, see sections 371, 372 of Title 18, Crimes and Criminal Procedure.

§ 882. Art. 82. Solicitation.

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
882 (a)	50: 676 (a).	May 5, 1950, ch. 169, § 1 (Art. 82), 64 Stat. 134.
882 (b)	50: 676 (b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enticing desertion, federal offense, see section 1381 of Title 18, Crimes and Criminal Procedure.

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation.

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct. (Aug 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
883	50: 677.	May 5, 1950, ch. 169, § 1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words "means of" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation.

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
884	50: 678.	May 5, 1950, ch. 169, § 1 (Art. 84), 64 Stat. 135.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 885. Art. 85. Desertion.

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
885 (a)	50: 679 (a).	May 5, 1950, ch. 169, § 1 (Art. 85), 64 Stat. 135.
885 (b)	50: 679 (b).	
885 (c)	50: 679 (c).	

In subsection (a), the word "unit" is substituted for the words "place of service" to conform to clause (2) of this section and section 886 (3) of this title. The word "proper" is omitted as surplusage.

In subsection (b), the word "commissioned" is inserted for clarity. The word "before" is substituted for the words "prior to". The words "its acceptance" are substituted for the words "the acceptance of the same". The words "after tender of" are substituted for the words

"having tendered" for clarity. The word "due" is omitted as surplusage.

In subsection (c), the words "attempt to desert" are substituted for the words "attempted desertion".

CROSS REFERENCES

Apprehension of deserters, see section 808 of this title.

Article to be explained, see section 937 of this title.

Enlisted members of Army and Air Force—

Required to make up lost time, see section 972 of this title.

Enticing desertion and harboring deserters, federal offense, see section 1381 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Nationality, loss of by deserting, see section 1481 of Title 8, Aliens and Nationality.

Naturalization, deserter ineligible for, see section 1425 of Title 8.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Public office, deserter ineligible to hold, see section 1425 of Title 8.

Solicitation of offense, see section 882 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 882 of this title.

§ 886. Art. 86. Absence without leave.

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
886	50: 680.	May 5, 1950, ch. 169, § 1 (Art. 86), 64 Stat. 135.

The words "proper" and "other" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enlisted members required to make up time lost, see section 972 of this title.

Policy as to leave and liberty, Navy and Marine Corps, see section 5949 of this title.

Statute of limitations, see section 843 of this title.

§ 887. Art. 87. Missing movement.

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
887	50: 681.	May 5, 1950, ch. 169, § 1 (Art. 87), 64 Stat. 135.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 888. Art. 88. Contempt toward officials.

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large).
888	50: 682.	May 5, 1950, ch. 169, § 1 (Art. 88), 64 Stat. 135.

The word "commissioned" is inserted for clarity. The words "the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession" are substituted for the words "Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer.

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
889	50: 683.	May 5, 1950, ch. 169, § 1 (Art. 89), 64 Stat. 135.

The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer.

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
890	50: 684.	May 5, 1950, ch. 169, § 1 (Art. 90), 64 Stat. 135.

The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Assault—
Generally, see section 928 of this title.
Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.
Plea of guilty, prohibition against reception, see section 845 (b) of this title.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
891	50: 685.	May 5, 1950, ch. 169, § 1 (Art. 91), 64 Stat. 136.

The word "member" is substituted for the word "person".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 892. Art. 92. Failure to obey order or regulation.

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
892	50: 686.	May 5, 1950, ch. 169, § 1 (Art. 92), 64 Stat. 136.

The word "order" is substituted for the word "same".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 893. Art. 93. Cruelty and maltreatment.

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
693	50: 687.	May 5, 1950, ch. 169, § 1 (Art. 93), 64 Stat. 136.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Prisoner, misconduct as, see section 905 of this title.

§ 894. Art. 94. Mutiny or sedition.

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
894 (a)	50: 688 (a).	May 5, 1950, ch. 169, § 1 (Art. 94), 64 Stat. 136.
894 (b)	50: 688 (b).	

In subsection (a) (1) and (2), the words "or persons" are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a) (3), the word "a" is substituted for the words "an offense of". The words "commissioned officer" are inserted after the word "superior", for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Federal offenses—
Advocating overthrow of Government, see section 2385 of Title 18, Crimes and Criminal Procedure.
Mutiny affecting armed forces generally and during war, see sections 2387 and 2388 of Title 18.
Mutiny of seamen, see sections 2192, 2193 of Title 18.
Seditious conspiracy, see section 2384 of Title 18.
Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.
Plea of guilty, prohibition against reception, see section 845 (b) of this title.
Solicitation of offense, see section 882 of this title.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 882 of this title.

§ 895. Art. 95. Resistance, breach of arrest, and escape.

Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
895	50: 689.	May 5, 1950, ch. 169, § 1 (Art. 95), 64 Stat. 136.

CROSS REFERENCES

Apprehension, see sections 807 and 808 of this title.
Article to be explained, see section 937 of this title.
Escape and rescue, federal offenses, see section 751 et seq. of Title 18, Crimes and Criminal Procedure.
Restraint—
Imposition, see section 809 of this title.
Persons charged with offenses, see section 810 of this title.

§ 896. Art. 96. Releasing prisoner without proper authority.

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law. (Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
896	50: 690.	May 5, 1950, ch. 169, § 1 (Art. 96), 64 Stat. 136.

The words "whether or not the prisoner was committed in strict compliance with law" are substituted for the word "duly", to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 897. Art. 97. Unlawful detention.

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
897	50: 691.	May 5, 1950, ch. 169, § 1 (Art. 97), 64 Stat. 137.

CROSS REFERENCES

Apprehension, see sections 807 and 808 of this title.
Article to be explained, see section 937 of this title.
Restraint—
Imposition, see section 809 of this title.
Persons charged with offenses, see section 810 of this title.

§ 898. Art. 98. Noncompliance with procedural rules.

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
898	50: 692.	May 5, 1950, ch. 169, § 1 (Art. 98), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 899. Art. 99. Misbehavior before the enemy.

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
899	50: 693.	May 5, 1950, ch. 169, § 1 (Art. 99), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.
Plea of guilty, prohibition against reception, see section 845 (b) of this title.
Solicitation of offense, see sections 882 of this title.

§ 900. Art. 100. Subordinate compelling surrender.

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
900	50: 694.	May 5, 1950, ch. 169, § 1 (Art. 100), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 901. Art. 101. Improper use of countersign.

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
901	50: 695.	May 5, 1950, ch. 169, § 1 (Art. 101), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 902. Art. 102. Forcing a safeguard.

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
902	50: 696.	May 5, 1950, ch. 169, § 1 (Art. 102), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 903. Art. 103. Captured or abandoned property.

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting pillaging;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
903 (a) 903 (b)	50: 697 (a). 50: 697 (b).	May 5, 1950, ch. 169, § 1 (Art. 103), 64 Stat. 138.

In subsection (b) (1), the words "of this section" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Statute of limitations, see section 843 of this title.

§ 904. Art. 104. Aiding the enemy.

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
904	50: 698.	May 5, 1950, ch. 169, § 1 (Art. 104), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Federal offenses—

Enlistment to serve against United States, see section 2390 of Title 18, Crimes and Criminal Procedure.

Recruiting for service against United States, see section 2389 of Title 18.

Trading with the Enemy Act, see section 16 of Appendix to Title 50, War and National Defense.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8312.

§ 905. Art. 105. Misconduct as prisoner.

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
905	50: 699.	May 5, 1950, ch. 169, § 1 (Art. 105), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Cruelty and maltreatment, see section 893 of this title.

§ 906. Art. 106. Spies.

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard,

any maufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
906	50: 700.	May 5, 1950, ch. 169, § 1 (Art. 106), 64 Stat. 138.

The words "of the United States" are omitted as surplusage.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F. R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

CROSS REFERENCES

Aliens likely to engage in espionage, exclusion, apprehension and deportation, see sections 1182 (a) (29), (d) (3), 1225 (c), 1251 (a) (7) and 1327 of Title 8, Aliens and Nationality.

Article to be explained, see section 937 of this title.

Emergency detention of persons likely to engage in espionage, see sections 813—826 of Title 50, War and National Defense.

Communist-action organization, members of, see section 843 of Title 50.

Espionage and censorship, see section 792 et seq. of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8312.

§ 907. Art. 107. False official statements.

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
907	50: 701.	May 5, 1950, ch. 169, § 1 (Art. 107), 64 Stat. 138.

The word "it" is substituted for the words "the same".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Fraud and false statements, federal offenses, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 908. Art. 108 Military property of United States—Loss, damage, destruction, or wrongful disposition.

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
908	50: 702.	May 5, 1950, ch. 169, § 1 (Art. 108), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses—

Government property, malicious mischief, see section 1361 of Title 18, Crimes and Criminal Procedure.

Public money, property or records, embezzlement and theft, see section 641 of Title 18.

Purchase of veterans' or armed forces' facilities property, fraud and false statements, see section 1024 of Title 18.

Individual equipment, unauthorized disposition, see sections 4836, 9836 of this title.

Statute of limitations, see section 843 of this title.

§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction.

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
909	50: 703.	May 5, 1950, ch. 169, § 1 (Art. 109), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Statute of limitations, see section 843 of this title.

§ 910. Art. 110. Improper hazarding of vessel.

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer

death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
910 (a) 910 (b)	50: 704 (a). 50: 704 (b).	May 5, 1950, ch. 169, § 1 (Art. 110), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 911. Art. 111. Drunken or reckless driving.

Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
911	50: 705.	May 5, 1950, ch. 169, § 1 (Art. 111), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 912. Art. 112. Drunk on duty.

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
912	50: 706.	May 5, 1950, ch. 169, § 1 (Art. 112), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Drunkenness or neglect of duty by seamen on commercial vessel, federal offense, see section 2196 of Title 18, Crimes and Criminal Procedure.

§ 913. Art. 113. Misbehavior of sentinel.

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
913	50: 707.	May 5, 1950, ch. 169, § 1 (Art. 113), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

§ 914. Art. 114. Dueling.

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
914	50: 708.	May 5, 1950, ch. 169, § 1 (Art. 114), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 915. Art. 115. Malingering.

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

(1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
915	50: 709.	May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 916. Art. 116. Riot or breach of peace.

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
916	50: 710.	May 5, 1950, ch. 169, § 1 (Art. 116), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Crew rioting on board vessel of United States, federal offense, see section 2192 of Title 18, Crimes and Criminal Procedure.

§ 917. Art. 117. Provoking speeches or gestures.

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
917	50: 711.	May 5, 1950, ch. 169, § 1 (Art. 117), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 918. Art. 118. Murder.

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
918	50: 712.	May 5, 1950, ch. 169, § 1 (Art. 118), 64 Stat. 140.

The words "of this section" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 1111 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offense described under this section, see section 8312 of Title 5, Government Organization and Employees.

Killing while engaged in other crime as manslaughter, see section 919 of this title.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 919, 929 of this title.

§ 919. Art. 119. Manslaughter.

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
919 (a) 919 (b)	50: 713 (a). 50: 713 (b).	May 5, 1950, ch. 169, § 1 (Art. 119), 64 Stat. 140.

The word "named" is substituted for the word "specified".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 1112 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 920. Art. 120. Rape and carnal knowledge.

(a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses. (Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
920 (a) 920 (b) 920 (c)	50: 714 (a). 50: 714 (b). 50: 714 (c).	May 5, 1950, ch. 169, § 1 (Art. 120), 64 Stat. 140.

In subsection (c), the words "either of" are inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see sections 2031, 2032 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation.

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
921 (a)	50: 715 (a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921 (b)	50: 715 (b).	

In subsection (a), the words "whatever" and "true" are omitted as surplusage. The word "it" is substituted for the words "the same" in clauses (1) and (2).

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Embezzlement and theft, federal offenses, see section 641 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 922. Art. 122. Robbery.

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
922	50: 716.	May 5, 1950, ch. 169, § 1 (Art. 122), 64 Stat. 140.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Robbery and burglary, federal offenses, see section 2111 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 923. Art. 123. Forgery.

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
923	50: 717.	May 5, 1950, ch. 169, § 1 (Art. 123), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offenses, see section 471 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds.

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order. (Added Pub. L. 87-385, § 1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Section 2 of Pub. L. 87-385 provided that: "This Act [adding this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October, 1961]."

§ 924. Art. 124. Maiming.

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U S. Code)	Source (Statutes at Large)
924	50: 718.	May 5, 1950, ch. 169, § 1 (Art. 124), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 114 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 925. Art. 125. Sodomy.

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
925 (a)	50: 719 (a).	May 5, 1950, ch. 169, § 1 (Art. 125), 64 Stat. 141.
925 (b)	50: 719 (b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 926. Art. 126. Arson.

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
926 (a)	50: 720 (a).	May 5, 1950, ch. 169, § 1 (Art. 126), 64 Stat. 141.
926 (b)	50: 720 (b).	

In subsection (b), the words "of this section" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 81 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 927. Art. 127. Extortion.

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
927	50: 721.	May 5, 1950, ch. 169, § 1 (Art. 127), 64 Stat. 141.

The words "of any description" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this article.

Federal offenses—

Extortion and threats, see section 871 et seq. of Title 18, Crimes and Criminal Procedure.

Interference with commerce by threats or violence see section 1951 of Title 18.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 928. Art. 128. Assault.

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
928 (a)	50: 722 (a).	May 5, 1950, ch. 169, § 1 (Art. 128), 64 Stat. 141.
928 (b)	50: 722 (b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

Superior commissioned officer, assaulting, see section 890 of this title.

Warrant officer, noncommissioned officer, or petty officer, assaulting, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 843, 929 of this title.

§ 929. Art. 129. Burglary.

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918—928 of this title (articles 118—128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
929	50: 723.	May 5, 1950, ch. 169, § 1 (Art. 129), 64 Stat. 142.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Robbery and burglary, federal offenses, see section 2111 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 843 of this title.

§ 930. Art. 130. Housebreaking.

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
930	50: 724.	May 5, 1950, ch. 169, § 1 (Art. 130), 64 Stat. 142.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 843 of this title.

§ 931. Art. 131. Perjury.

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
931	50: 725.	May 5, 1950, ch. 169, § 1 (Art. 131), 64 Stat. 142.

The words "in a" are inserted before the words "course of justice".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offense, see section 1621 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 843 of this title.

§ 932. Art. 132. Frauds against the United States.

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
932	50: 726.	May 5, 1950, ch. 169, § 1 (Art. 132), 64 Stat. 142.

The word "it" is substituted for the words "the same" throughout the revised section.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses—

Claims and services in matters affecting Government, see section 285 et seq. of Title 18, Crimes and Criminal Procedure.

Fraud and false statements, see section 1001 et seq. of Title 18.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 843 of this title.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman.

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
933	50: 727.	May 5, 1950, ch. 169, § 1 (Art. 133), 64 Stat. 142.

The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

§ 934. Art. 134. General article.

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. (Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
934	50: 728.	May 5, 1950, ch. 169, § 1 (Art. 134), 64 Stat. 142.

The words "shall be" are inserted before the word "punished".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Subchapter XI.—Miscellaneous Provisions

Sec. Art.
935. 135. Courts of inquiry.
936. 136. Authority to administer oaths and to act as notary.
937. 137. Articles to be explained.
938. 138. Complaints of wrongs.
939. 139. Redress of injuries to property.
940. 140. Delegation by the President.

§ 935. Art. 135. Courts of inquiry.

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. (Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
935 (a)	50: 731 (a).	May 5, 1950, ch. 169, § 1 (Art. 135), 64 Stat. 143.
935 (b)	50: 731 (b).	
935 (c)	50: 731 (c).	
935 (d)	50: 731 (d).	
935 (e)	50: 731 (e).	
935 (f)	50: 731 (f).	
935 (g)	50: 731 (g).	
935 (h)	50: 731 (h).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the word "commissioned" is inserted for clarity. The word "consists" is substituted for the words "shall consist".

In subsection (c), the word "has" is substituted for the words "shall have".

In subsection (e), the words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1.

In subsection (g), the word "may" is substituted for the word "shall".

In subsection (h), the word "If" is substituted for the words "In case".

CROSS REFERENCES

Challenges, general or special court-martial, see section 841 of this title.

Counsel, right to before general or special court-martial, see section 838 of this title.

Evidence, courts-martial—

Depositions, see section 849 of this title.

Opportunity to obtain witnesses and other evidence, see section 846 of this title.

Refusal of witnesses to appear or testify, see section 847 of this title.

Judge Advocate Generals of the Army and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 8072 of this title.

Military judge of general court-martial, see section 826 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

Oaths, general and special courts-martial, see section 842 of this title.

Persons authorized to convene general courts-martial, see section 822 of this title.

Records of courts of inquiry, admissibility, see section 850 of this title.

§ 936. Art. 136. Authority to administer oaths and to act as notary.

(a) The following persons on active duty may administer oaths for the purposes of military administration, including military justice, and have the

general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States:

(1) All judge advocates of the Army, Navy, Air Force, and Marine Corps.

(2) All law specialists.

(3) All summary courts-martial.

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(5) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(7) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority. (Aug. 10, 1956, ch. 1041, 70A Stat. 77; July 5, 1960, Pub. L. 86–589, 74 Stat. 329; Dec. 8, 1967, Pub. L. 90–179, § 1(7), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90–632, § 2(34), 82 Stat. 1343.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
936 (a)	50: 732 (a).	May 5, 1950, ch. 169, § 1 (Art. 136), 64 Stat. 143.
936 (b)	50: 732 (b).	
936 (c)	50: 732 (c).	
936 (d)	50: 732 (d).	

In subsection (a), the word "may" is substituted for the words "shall have authority to". The word "shall" before the words "have the general powers" is omitted as surplusage. The words "the continental limits" are omitted, since section 101 (1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words "in the armed forces" are omitted as surplusage.

In subsection (b), the word "may" is substituted for the words "shall have authority to".

In subsection (c), the words "of any character" are omitted as surplusage. The word "may" is substituted for the word "shall".

In subsection (d), the word "is" is substituted for the words "shall be".

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–632 substituted "military judge" for "law officer" in par. (1).

1967—Subsec. (a)(1). Pub. L. 90–179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86–589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 937. Art. 137. Articles to be explained.

Sections 802, 803, 807—815, 825, 827, 831, 837, 838, 855, 877—934, and 937—939 (articles 2, 3, 7—15, 25, 27, 31, 37, 38, 55, 77—134, and 137—139) of this chapter shall be carefully explained to each enlisted member at the time of his entrance on active duty, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time when he reenlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty, upon his request, for his personal examination. (Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
937	50: 733.	May 5, 1950, ch. 169, § 1 (Art. 137), 64 Stat. 144.

The word "each" is substituted for the word "every". The word "member" is substituted for the word "person". The words "in [any of] the armed forces of the United States" are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the text, is classified to this chapter.

§ 938. Art. 138. Complaints of wrongs.

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon. (Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
938	50: 734.	May 5, 1950, ch. 169, § 1 (Art. 138), 64 Stat. 144.

The words "commanding officer" are substituted for the word "commander". The word "who" is inserted after the word "and". The word "commissioned" is inserted after the word "superior" for clarity. The words "The officer exercising general court-martial jurisdiction" are substituted for the words "That officer" for clarity. The word "send" is substituted for the word "transmit". The word "Secretary" is substituted for the word "Department" for accuracy, since the "Department", as an entity, could not act upon the complaint.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 939. Art. 139. Redress of injuries to property.

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board. (Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
939 (a)	50: 735 (a).	May 5, 1950, ch. 169, § 1 (Art. 139), 64 Stat. 144.
939 (b)	50: 735 (b).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "under" is substituted for the words "subject to". The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 7. The words "it has" are substituted for the words "shall have" in the second sentence. The word "is" is substituted for the words "shall be" before the words "subject" and "conclusive". The word "commissioned" is inserted for clarity.

In subsection (b), the word "If" is substituted for the word "Where". The word "considered" is substituted for the word "deemed".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 940. Art. 140. Delegation by the President.

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority. (Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
940	50: 736.	May 5, 1950, ch. 169, § 1 (Art. 140), 64 Stat. 145.

The word "may" is substituted for the words "is authorized to * * * to".

Chapter 48.—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.

§ 951. Establishment; organization; administration.

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities are as necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall—

(1) Designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired as such facilities. (Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287.)

§ 952. Parole.

The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary. (Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287.)

§ 953. Remission or suspension of sentence; restoration to duty; reenlistment.

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish—

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged; and

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287.)

§ 954. Voluntary extension; probation.

The Secretary concerned may provide for persons who were subject to this authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty. (Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 286.)

Chapter 49.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman.
972. Enlisted members: required to make up time lost.
973. Duties: Regular officers; performance of civil functions restricted.
974. Civilian employment: enlisted members.

AMENDMENTS

1968—Pub. L. 90–235, §§ 4(a)(5)(B), 6(a)(6)(B), Jan. 2, 1968, 81 Stat. 759, 762, added items 973 and 974.

1958—Pub. L. 85–861, § 1 (20), Sept. 2, 1958, 72 Stat. 1442, added items 971 and 972.

§ 971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman.

(a) The period of service under an enlistment or period of obligated service while also serving as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Naval Reserve, under an appointment accepted after June 25, 1956, may not be counted in computing, for any purpose, the length of service of an officer of an armed force.

(b) In computing length of service for any purpose—

(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, if he was appointed as a midshipman or cadet after March 4, 1913; and

(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, if he was appointed as a midshipman or cadet after August 24, 1912.

(Added Pub. L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1442 and amended Pub. L. 90–235, § 6(a)(1), Jan. 2, 1968, 81 Stat. 761.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
971	50: 1414.	June 25, 1956, ch. 439, § 4, 70 Stat. 333.

AMENDMENTS

1968—Pub. L. 90–235 designated existing provisions as subsec. (a) and added subsec. (b).

§ 972. Enlisted members: required to make up time lost.

An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

(4) is confined for more than one day under a sentence that has become final; or

(5) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted. (Added Pub. L. 85–861, § 1 (20), Sept. 2, 1958, 72 Stat. 1443.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
972	10 App.: 629a. 34 App.: 183b.	July 24, 1956, ch. 692, § 1, 70 Stat. 631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 3985, 8925 of this title.

§ 973. Duties: regular officers; performance of civil functions restricted.

(a) No officer on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b) Except as otherwise provided by law, no officer on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard may hold a civil office by elec-

tion or appointment, whether under the United States, a Territory or possession, or a State. The acceptance of such a civil office or the exercise of its functions by such an officer terminates his military appointment. (Added Pub. L. 90-235, § 4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3017, 5036, 8017 of this title.

§ 974. Civilian employment: enlisted members.

Except as provided in section 6223 of this title no enlisted member of an armed force on active duty may be ordered or permitted to leave his post to engage in a civilian pursuit or business, or a performance in civil life, for emolument, hire, or otherwise, if the pursuit, business, or performance interferes with the customary or regular employment of local civilians in their art, trade, or profession. (Added Pub. L. 90-235, § 6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762.)

Chapter 51.—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION[1]

Sec.
1001. Secretary to prescribe.
1002. Standards and qualifications: result of failure to comply with.
1003. Officers: age limitations.
1004. Physical examination.
1005. Commissioned officers: retention until completion of required service.
1006. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.
1007. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

AMENDMENTS

1960—Pub. L. 86-559, § 1(3)(C), June 30, 1960, 74 Stat. 265, inserted words "or serving as United States property and fiscal officers" in item 1007.

1958—Pub. L. 85-861, § 1(23), Sept. 2, 1958, 72 Stat. 1445, added items 1002, 1005, 1006 and 1007.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 133 of this title.

§ 1001. Secretary to prescribe.

(a) The Secretary concerned shall, by regulation, prescribe—

(1) standards and qualifications for the retention and promotion of members of the reserve components under his jurisdiction; and

(2) equitable procedures for the periodic determination of the compliance of each such Reserve with those standards and qualifications.

(b) If a Reserve fails to comply with the standards and qualifications prescribed under subsection (a), he shall—

(1) if qualified, be transferred to an inactive reserve status;

(2) if qualified, be retired without pay; or

(3) have his appointment or enlistment terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79.)

[1] So in original. Chapter heading does not conform to scheme of chapters preceding sections 101 and 501 of this title.

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1001 (a)	10: 1036c (1st sentence); 34: 440k (1st sentence).	June 29, 1948, ch. 708, § 304 (less last sentence), 62 Stat. 1088.
1001 (b)	10: 1036c (2d sentence); 34: 440k (2d sentence).	

In subsection (a), the words "As soon as may be practicable after the effective date of sections 1036—1036i [440h—440q] of this title" are omitted as executed. The words "not inconsistent with said sections or any other Act" and "appropriate" are omitted as surplusage.

CROSS REFERENCES

Qualifications—

Enlisted members, see section 510 of this title.

Officers, see section 591 of this title.

Suspension during war or emergency as to warrant officers, see section 599 of this title.

Time not creditable toward years of service, see section 1334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1334 of this title.

§ 1002. Standards and qualifications: result of failure to comply with.

(a) To be retained in an active status, a reserve commissioned officer must, in any applicable yearly period, attain the number of points under section 1332 (a) (2) of this title prescribed by the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, and must conform to such other standards and qualifications as the Secretary concerned may prescribe. The Secretary may not prescribe a minimum of more than 50 points under this subsection.

(b) Subject to section 1005 of this title, a reserve commissioned officer who fails to attain the number of points, or to conform to the standards and qualifications, prescribed in subsection (a) shall—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor;

(2) if he is not qualified or does not apply for transfer to the Retired Reserve, be transferred to an inactive status, if he is qualified therefor; or

(3) if he is not transferred to the Retired Reserve or an inactive status, be discharged from his reserve appointment.

(c) This section does not apply to commissioned warrant officers or to adjutants general or assistant adjutants general of States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia. (Added Pub. L. 85-861, § 1 (22) (A), Sept. 2, 1958, 72 Stat. 1443.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1002 (a)	50: 1192 (b) (1st sentence, less 11th through 29th words). 50: 1181 (4).	Sept. 3, 1954, ch. 1257, §§ 102 (1) (as applicable to § 202 (b)), 102 (4), 202 (b), 68 Stat. 1149, 1150.
1002 (b)	50: 1192 (b) (less 1st sentence).	
1002 (c)	50: 1181 (1) (as applicable to 50: 1192 (b)). 50: 1192 (b) (11th through 29th words of 1st sentence).	

In subsection (a), the word "minimum" is omitted as surplusage. The last sentence is substituted for the words "(not to exceed fifty)".

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Grade of reserve commissioned officer on retirement or transfer to Retired Reserve, see section 1374 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 1374, 8360 of this title.

§ 1003. Officers: age limitations.

A reserve officer who has passed the maximum age prescribed for his grade and classification may, as prescribed by the Secretary concerned—

(1) be separated from the armed force concerned;

(2) be retained in, or transferred to, an active or inactive status; or

(3) upon his request, be retained in, or transferred to, a retired status.

However, no officer of the Army National Guard of the United States or the Air National Guard of the United States may be retained or transferred under this section without the consent of the governor or other appropriate authority of the jurisdiction concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 79.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1003	50: 955.	July 9, 1952, ch. 608, § 231, 66 Stat. 489.

The words "who has passed" are substituted for the words "whose age exceeds". The words "from the armed force concerned" are inserted for clarity.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Reserve components, limitations on separation inapplicable hereunder, see section 1163 of this title.

Suspension during war or emergency as to warrant officers, see section 599 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 1163 of this title.

§ 1004. Physical examination.

(a) Each member of the Ready Reserve who is not on active duty shall—

(1) be examined as to his physical fitness every four years, or more often as the Secretary concerned considers necessary; and

(2) execute and submit annually a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually a certificate of physical condition.

(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(c) Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 79; July 7, 1960, Pub. L. 86-603, § 1 (1), 74 Stat. 357.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1004 (a)	50: 949.	July 9, 1952, ch. 608, §§ 225, 226, 66 Stat. 488.
1004 (b)	50: 950 (last sentence).	
1004 (c)	50: 950 (less last sentence).	

In subsection (a), the words "Each * * * who is not on active duty" are substituted for the words "when not on active duty all". The words "examined as to his physical fitness" are substituted for the words "given physical examinations". The words "be required to" are omitted as surplusage. The words "execute and" are inserted for clarity.

In subsection (c), the words "under his jurisdiction" are inserted for clarity.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-603 limited the requirement for a physical examination every four years, and for the annual execution of a certificate of physical condition, to the Ready Reserve, and also required each Reserve in an active status, or on an inactive status list, who is not on active duty to execute and submit annually a certificate of physical condition.

CROSS REFERENCES

Discharge of reserves, see section 1162 of this title.

Regulations to carry out this section, see section 280 of this title.

Suspension during war or emergency as to warrant officers, see section 599 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 1005. Commissioned officers: retention until completion of required service.

A reserve commissioned officer, other than a commissioned warrant officer, who has not completed the period of service required of him by section 651 of this title or any other provision of law, may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade. (Added Pub. L. 85-861, § 1 (22) (B), Sept. 2, 1958, 72 Stat. 1444.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1005	50: 1181 (1) (as applicable to 50: 1194). 50: 1194.	Sept. 3, 1954, ch. 1257, §§ 102 (1) (as applicable to § 204), 204, 68 Stat. 1149, 1151.

The word "subsequently" is omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1002, 3819, 3820, 3846, 6389, 6410, 8819, 8846 of this title; title 32 section 323.

§ 1006. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 1332 of this title, he may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 1332 of this title; or

(2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(b) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 19, but less than 20, years of service computed under section 1332 of this title, he may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 1332 of this title; or

(2) the second anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(c) An officer of the Army or the Air Force who is retained in an active status under subsection (a) or (b) is an additional number to those otherwise authorized.

(d) Subsections (a) and (b) do not apply to—

(1) officers who are discharged or transferred from an active status for physical disability, for cause, or because they have reached the age at which transfer from an active status or discharge is required by law; or

(2) commissioned warrant officers.

(e) A reserve commissioned officer on active duty (other than for training) who, on the date on which he would otherwise be removed from an active status under section 3846, 3848, 3851, 3852, 6389, 6397, 6403, 6410, 8846, 8848, 8851, or 8852 of this title or section 787 of title 14, and who is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, may, in the discretion of the Secretary concerned, be retained on active duty for a period of not more than two years, if at the end of that period he will be qualified for retirement under one of those sections and will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title. An officer who is retained on active duty under this section may not be removed from an active status while he is on that duty. For officers covered by section 3846, 3848, 3851, or 3852 of this title, the ages at which transfer from an active status or discharge is required are those set forth in section 3843, 3844, or 3845 of this title, or section 21(e) of the Act enacting this section, as the case may be. (Added Pub. L. 85-861, § 1(22)(B) Sept. 2, 1958, 72 Stat. 1444, and amended Pub. L. 86-559, § 1(3)(A), June 30, 1960, 74 Stat. 264; Pub. L. 87-651, title I, § 105, Sept. 7, 1962, 76 Stat. 508; Pub. L. 90-130, § 1(4), Nov. 8, 1967, 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1006 (a)	50: 1195 (a) (less last 30 words).	Sept. 3, 1954, ch. 1257, §§ 102 (1) (as applicable to § 205), 205, 307 (c), 503 (c), 68 Stat. 1149, 1151, 1155, 1173; June 30, 1955, ch. 247, § 1 (b), 69 Stat. 218.
1006 (b)	50: 1195 (b) (less last 30 words).	
1006 (c)	50: 1227 (c).	
	50: 1333 (c).	
1006 (d)	50: 1181 (1) (as applicable to 50: 1195).	
	50: 1195 (a) (last 30 words).	
	50: 1195 (b) (last 30 words).	
1006 (e)	50: 1195 (c).	

In subsections (a) and (b), the words "Notwithstanding any other provisions of this chapter, except as provided in sections 1265 and 1279 of this title" and "has been credited with, or" are omitted as surplusage. The words "entitled to be" in clause (1) are inserted for clarity.

In subsection (e), the words "at the end of that period" are substituted for the word "then" for clarity. The words "before the end of that period" are substituted for the word "earlier" for clarity.

REFERENCES IN TEXT

Section 21 (e) of the Act enacting this section, referred to in subsec. (e), means section 21 (e) of Pub. L. 85-861, which is set out as a note under section 3843 of this title.

AMENDMENTS

1967—Subsec. (e). Pub. L. 90-130 eliminated references to sections 3847 and 8847 of this title.

1962—Subsec. (e). Pub. L. 87-651 substituted "section 787 of title 14" for "section 1391 of title 50."

1960—Subsec. (e). Pub. L. 86-559 eliminated references to sections 3849 and 8849 of this title.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or of national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3819, 3820, 3846, 8819, 8846 of this title; title 32 section 323.

§ 1007. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

Notwithstanding chapters 337, 363, 573, 837, and 863 of this title, a reserve commissioned officer, other than a commissioned warrant officer, who is assigned to the Selective Service System or who is a property and fiscal officer appointed, designated, or detailed under section 708 of title 32, may be retained in an active status in that assignment or position until he becomes 60 years of age. (Added Pub. L. 85-861, § 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, and amended Pub. L. 86-559, § 1(3)(B), June 30, 1960, 74 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1007	50: 1181 (1) (as applicable to 50: 1202). 50: 1202.	Sept. 3, 1954, ch. 1257, §§ 102 (1) (as applicable to § 212), 212, 68 Stat. 1149, 1153.

The words "this title" are substituted for the words "this chapter", since the provisions of this title requiring transfer from an active status are based on the source statute for this section (the Reserve Officer Personnel Act of 1954).

AMENDMENTS

1960—Pub. L. 86-559 inserted words "or serving as United States property and fiscal officers" in catchline, and inserted provisions in text authorizing retention of reserve commissioned officers who are property and fiscal officers, appointed, designated, or detailed under section 708 of Title 32.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

Chapter 53.—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1031. Administration of oath.
1032. Dual capacity: Reserve accepting employment with foreign government or concern.
1033. Compensation: Reserve on active duty accepting from any person.
1034. Communicating with a member of Congress.
1035. Deposits of savings.
1036. Escorts for dependents of members: transportation and travel allowances.
1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.
1038. Service credit: certain service in Women's Army Auxiliary Corps.
1039. Crediting of minority service.
1040. Transportation of dependent patients.
1040. Replacement of certificate of discharge.

AMENDMENTS

1968—Pub. L. 90-235, § 7(a)(2)(B), Jan. 2, 1968, 81 Stat. 763, added item 1040: "Replacement of certificate of discharge". Another item 1040: "Transportation of dependent patients", was added by Pub. L. 89-140, § 1(2), Aug. 28, 1965, 79 Stat. 579.

1966—Pub. L. 89-538, § 1(2), Aug. 14, 1966, 80 Stat. 347, substituted "Deposits of savings" for "Enlisted members' deposits" in item 1035.

1965—Pub. L. 89-140, § 1(2), Aug. 28, 1965, 79 Stat. 579, added item 1040 "Transportation of dependent patients."

Pub. L. 89-132, § 9(b), Aug. 21, 1965, 79 Stat. 548, added item 1040 "Free postage from combat zone" which was repealed by Pub. L. 89-315, § 3(b), Nov. 1, 1965, 79 Stat. 1165.

1961—Pub. L. 87-165, § 1(2), Aug. 25, 1961, 75 Stat. 401, added item 1039.

1959—Pub. L. 86-160, § 1(2), Aug. 14, 1959, 73 Stat. 358, added item 1036.

Pub. L. 86-142, § 1(2), Aug. 7, 1959, 73 Stat. 289, added item 1038.

1958—Pub. L. 85-861, § 1 (24) (B), Sept. 2, 1958, 72 Stat. 1445, added item 1037.

§ 1031. Administration of oath.

Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1031	10: 19. 34: 217a-2.	May 22, 1950, ch. 193, § 1, 64 Stat. 187.

The words "(including the reserve component)" are omitted, since the words "any component of an armed force" include the reserve components. The words "any oath required for the enlistment or appointment of any person" are substituted for the words "the oath required for the enlistment of any person, the oath required for the appointment of any person to commissioned or warrant officer grade, and any other oath required by law in connection with the enlistment or appointment of any person".

CROSS REFERENCES

Enlistment oath, who may administer, see section 502 of this title.

§ 1032. Dual capacity: Reserve accepting employment with foreign government or concern.

Subject to the approval of the Secretary concerned, a Reserve may accept civil employment with, and compensation therefor from, any foreign government or any concern that is wholly or partly controlled by a foreign government. (Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1032	50: 982.	July 9, 1952, ch. 608, § 247, 66 Stat. 495.

The words "wholly or partly" are substituted for the words "in whole or in part".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 1033. Compensation: Reserve on active duty accepting from any person.

Notwithstanding any other provision of law, any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person. (Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1033	50 App.: 454 (f) (less applicability to induction).	June 24, 1948, ch. 625, § 4 (f) (less applicability to induction), 62 Stat. 608).

The words "Notwithstanding any other provision of law" are substituted for the words "Nothing contained in this or any other Act shall be construed as forbidding". The words "firm, or corporation" are omitted since, under section 1 of title 1, the word "person" includes firms and corporations. The words "now or hereafter" and "any type of" are omitted as surplusage.

§ 1034. Communicating with a member of Congress.

No person may restrict any member of an armed force in communicating with a member of Congress,

unless the communication is unlawful or violates a regulation necessary to the security of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1034	50 App.: 454 (a) (last par.)	June 24, 1948, ch. 625, § 4 (a) (last par.); restated June 19, 1951, ch. 144, § 1 (d) (last par.), 65 Stat. 78.

The words "prevented", "directly or indirectly", "concerning any subject", "or Members", and "and safety" are omitted as surplusage. The word "unlawful" is substituted for the words "in violation of law".

§ 1035. Deposits of savings.

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed force who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of $5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 per centum a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this Act to any member is $10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status, as defined in section 551(2) of title 37, during the Vietnam conflict. Interest under this subsection shall terminate ninety days after the member's return to the United States or its possessions. For purposes of this subsection, the Vietnam conflict begins on February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status (as defined in section 551(2) of title 37) or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the member entered a missing status, or September 1, 1966, whichever is later. (Aug. 10, 1956, ch. 1041, 70A Stat. 80; Aug. 14, 1966, Pub. L. 89–538, § 1(1), 80 Stat. 347; Nov. 3, 1967, Pub. L. 90–122, § 1, 81 Stat. 361; Feb. 26, 1970, Pub. L. 91–200, 84 Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1035 (a)	10: 908 (a) (less words after last semicolon); 34: 937 (less words after last semicolon).	July 15, 1954, ch. 513, §§ 1—3, 68 Stat. 485.
1035(b)	10: 908b (1st 20, and last 13, words); 34: 938 (1st 20, and last 13, words).	
1035 (c)	10: 908a (words after last semicolon); 10: 908b (less 1st 20, and last 13, words); 34: 937 (words after last semicolon); 34: 938 (less 1st 20, and last 13, words).	
1035 (d)	10: 908c; 34: 939.	

In subsection (a), the words "in amounts of $5 or more" are substituted for the words "in sums not less than $5". 10: 908a (words before 1st semicolon of last sentence) and 34: 937 (words before 1st semicolon of last sentence) are omitted as covered by subsection (c).

In subsection (b), the word "accrues" is substituted for the words "shall be paid".

In subsection (c), the words "not less than $5" are omitted as surplusage.

AMENDMENTS

1970—Subsec. (b). Pub. 91–200 permitted the accrual of interest on savings above the $10,000 ceiling in the case of soldiers involved in the Vietnam conflict who have made deposits on or after Sept. 1, 1966, and who are in the missing status contemplated by section 551 (2) of Title 37, and set out the duration of the Vietnam conflict as starting Feb. 28, 1961, and ending on the date that the President may designate by Executive order.

1967—Subsec. (e). Pub. L. 90–122 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–538 permitted not only enlisted personnel but any member of the armed forces, provided he is on permanent duty outside the United States, to participate in the savings program organized under this section and changed the fund into which such savings deposits are made.

Subsec. (b). Pub. L. 89–538 changed the rate of interest from 4 per centum per annum to a rate prescribed by the President, not to exceed 10 per centum per annum, did away with the necessity that amounts be on deposit for six months or more, set a maximum of $10,000 upon which interest shall be paid, and provided for termination of interest 90 days after the member's return to the United States or its possessions.

Subsec. (c). Pub. L. 89–538 substituted provisions that, unless changed by joint regulations of the Secretaries concerned, payments of deposits and interest may not be made to the individual while stationed outside of the United States, for provisions that payment of deposits and interest could be made only to the member upon discharge, or before discharge as prescribed by the Secretary concerned, or to the member's heirs or legal representatives.

Subsec. (d). Pub. L. 89–538 re-enacted subsec. (d) substantially without change.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90–122 provided that: "This Act [which added subsec. (e) of this section] becomes effective as of September 1, 1966."

ADJUSTMENT OF DEPOSIT ACCOUNTS OF CERTAIN ENLISTED MEN

Pub. L. 89–738, Nov. 2, 1966, 80 Stat. 1165, provided:

"That the Secretary of a military department or his designee, shall adjust the deposit account of any enlisted member or former enlisted member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who, after July 14, 1954, and before the effective date of this Act [Nov. 2, 1966], upon discharge and immediate reenlistment or retirement and immediate recall to active duty, continued, without withdrawal and redeposit, his account for deposits made under section 1035 of title 10, United States Code, or prior laws authorizing enlisted members' deposits, to show that his deposits and interest accrued

thereon were withdrawn and redeposited on the date of such reenlistment or recall to active duty.

"SEC. 2. The Secretary of the military department concerned, or his designee, shall pay to a former enlisted member described in section 1 of this Act any amount found due as a result of the adjustment prescribed by that section if he submits an application within two years following the date of enactment of this Act [Nov. 2, 1966]. If the member is currently serving on active duty and has an active deposit account, the amount due him will automatically be credited to such account. In the case of a deceased member, application under this section shall be made within two years following the date of enactment of this Act [Nov. 2, 1966] by the person determined to be eligible under section 2771 of Title 10, United States Code.

"SEC. 3. All payments heretofore made which would, but for the fact of such payment, be payable under this Act are validated. However, if such a payment has been repaid to the United States, the fact of payment shall not affect entitlement under this Act."

RATES OF INTEREST ON DEPOSITS MADE BEFORE AUG. 14, 1966

Section 2 of Pub. L. 89-538 provided that:

"(a) Notwithstanding the first section of this Act [amending this section], an amount on deposit under section 1035 of title 10, United States Code, on the date of enactment of this Act [Aug. 14, 1966], shall accrue interest at the rate and under the conditions in effect on the day before the date of enactment of this Act [Aug. 14, 1966], until the member's current enlistment terminates or earlier, as may be jointly prescribed by the Secretaries concened. However, a member who is on a permanent duty assignment outside the United States or its possessions on the date of enactment of this Act [Aug. 14, 1966], or who reports for that duty on or after that date but before the termination of his current enlistment, will be entitled to interest on such deposit, on and after that date, at the rate and under the conditions prescribed pursuant to section 1 [amending this section]. Payments of deposits, and interest thereon, may be made to the member's heirs or legal representatives.

"(b) Any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] while a member was assigned to permanent duty within the United States and its possessions, and any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] by a member on permanent duty assignment outside the United States and its possessions which are in excess of his unallotted pay and allowances for that period, shall accrue interest at the rate in effect before enactment of this Act."

EXTENSION OF COVERAGE TO PUBLIC HEALTH SERVICE AND COAST AND GEODETIC SURVEY PERSONNEL; RULES AND REGULATIONS

Section 3(c) of Pub. L. 89-538 provided that: "Regulations prescribed by the Secretary of Commerce and the Secretary of Health, Education, and Welfare under subsections (a) and (b) [extending savings deposits benefits to personnel of the Public Health Service and the Coast and Geodetic Survey respectively] shall be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of title 10, United States Code."

EX. ORD. NO. 11298. INTEREST RATE

Ex. Ord. No. 11298, Aug. 14, 1966, 31 F.R. 10915, provided;

By virtue of the authority vested in me by Section 1035 of Title 10 of the United States Code, as amended by the Act of August 14, 1966, I hereby prescribe that amounts deposited by members of the uniformed services under that Section shall accrue interest at the rate of ten percent per annum, compounded quarterly.

This order shall be effective September 1, 1966.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 42 section 213a.

§ 1036. Escorts for dependents of members: transportation and travel allowances.

Under regulations to be prescribed by the Secretary concerned, round trip transportation and travel allowances may be paid to any person for travel performed or to be performed under competent orders as an escort for dependents of a member of the armed forces, if the travel is performed not later than one year after the member—

(1) dies;

(2) is missing; or

(3) is otherwise unable to accompany his dependents;

and it has been determined that travel by the dependents is necessary and that they are incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances. (Added Pub. L. 86-160, § 1(1), Aug. 14, 1959, 73 Stat. 358.)

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Section 4—7 of Pub. L. 86-160 provided that:

"SEC. 4. Travel and transportation allowances paid before the effective date of this Act [Aug. 14, 1959] to persons ordered by competent authority to escort dependents of members of the uniformed services are hereby validated, if they would have been authorized under section 1 of this Act [enacting this section].

"SEC. 5. Any person who was ordered by competent authority after January 1, 1950, and before the effective date of this Act [Aug. 14, 1959] to escort dependents of members of the uniformed services and who has not been paid travel and transportation allowances, or who has repaid the United States the amount so paid to him, is entitled to be paid the amount otherwise authorized by section 1 of this Act [enacting this section], if application for such payment is made not later than one year after the effective date of this Act [Aug. 14, 1959].

"SEC. 6. The Comptroller General of the United States, or his designee, shall relieve disbursing officers, including special disbursing agents, from accountability or responsibility for any payments described in section 4 of this Act, and shall allow credits in the settlement of the accounts of those disbursing officers or agents for payments which are found to be free from fraud or collusion.

"SEC. 7. No regulations under section 1 of this Act [enacting this section] relating to the military departments shall be prescribed by the Secretary of a military department unless such regulations are first approved under procedures prescribed by the Secretary of Defense. Regulations of the Secretaries of the Treasury, Commerce, and Health, Education, and Welfare under section 1, 2, or 3 of this Act [enacting this section and amending section 857a of Title 33, Navigation and Navigable Waters, and section 213a of Title 42, The Public Health and Welfare] shall, to the extent practicable, agree with regulations so approved."

PUBLIC HEALTH SERVICE

Authority vested by this section in "the Secretary concerned" to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 42 section 213a.

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial

tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of the Treasury, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section. (Added Pub. L. 85–861, § 1 (24) (A), Sept. 2, 1958, 72 Stat. 1445.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1037 (a)	50: 751.	July 24, 1956, ch. 689 (less § 3), 70 Stat. 630.
	50: 752.	
1037 (b)	50: 754.	
1037 (c)	50: 755.	

In subsection (a), the words "Under regulations to be prescribed by him" and the last sentence are substituted for 50: 752.

In subsection (b), the words "subject to the Uniform Code of Military Justice" are omitted as surplusage.

In subsection (c), the words "the terms and provisions of" are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a), is classified to chapter 47 of this title.

CROSS REFERENCES

Employment of attorneys or counsel by head of department, see section 3106 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3106.

§ 1038. Service credit: certain service in Women's Army Auxiliary Corps.

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member. (Added Pub. L. 86–142, § 1(1), Aug. 7, 1959, 73 Stat. 289.)

ELECTION OF PENSION OR COMPENSATION

Section 2 of Pub. L. 86–142 provided that: "A person entitled to pension or compensation under any law administered by the Veterans' Administration, based upon the active service described in section 1 of this Act [adding this section], may elect within one year after the enactment of this Act [Aug. 7, 1959] to receive that pension or compensation in lieu of any compensation under the Federal Employees' Compensation Act, as amended (5 U.S.C. 751 et seq.) [now covered by section 8101 et seq. of Title 5, Government Organization and Employees], to which that person is entitled on the basis of the same service. Such an election is irrevocable and does not entitle that person to the pension or compensation for any period before the date the election is made."

BACK PAY OR ALLOWANCES

Section 3 of Pub. L. 86–142 provided that: "No person is entitled to back pay or allowances because of any service credited under section 1 of this Act [adding this section]."

§ 1039. Crediting of minority service.

For the purpose of determining eligibility for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, entitlement to retired or retainer pay, and years of service in computing retired or retainer pay of a member of the armed forces, any service which would be creditable but for the fact that it was performed by him under an enlistment or induction entered into before he attained the age prescribed by law for that enlistment or induction, shall be credited. (Added Pub. L. 87–165, § 1(1), Aug. 25, 1961, 75 Stat. 401.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–165 provided that: "Section 1 [adding this section] applies to service performed, and retirements or transfers to the Fleet Reserve or the Fleet Marine Corps Reserve effected, before and after this Act takes effect [Aug. 25, 1961]."

§ 1040. Transportation of dependent patients.

(a) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States and who is on active duty for a period of more than thirty days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, round-trip transportation and travel expenses may be furnished necessary attendants.

(b) This section does not authorize transportation and travel expenses for a dependent for elective surgery which is determined to be not medically indicated by a medical authority designated under joint regulations to be prescribed under this section.

(c) "Dependent" and "uniformed services" in this section have the meanings of those terms as defined in section 1072 of this title.

(d) Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of the Treasury, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare, which shall require the use of transportation facilities of the United States insofar as practicable. (Added Pub. L. 89–140, § 1(1), Aug. 28, 1965, 79 Stat. 579.)

CODIFICATION

Another section 1040 was added by Pub. L. 90–235, § 7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762, and is set out following this section.

Another section 1040, which related to free postage from combat zones, was added by Pub. L. 89-132, § 9(a), Aug. 21, 1965, 79 Stat. 548, and was repealed by Pub. L. 89-315, § 3(a), Nov. 1, 1965, 79 Stat. 1164. See section 3401 et seq. of Title 39, Postal Service.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Act. 15, 1966. 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

§ 1040. Replacement of certificate of discharge.

If satisfactory proof is presented that a person who was discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the payment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case. (Added Pub. L. 90-235, § 7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762.)

CODIFICATION

Another section 1040 was added by Pub. L. 89-140, § 1(1), Aug. 28, 1965, 79 Stat. 579, and is set out preceding this section.

Chapter 55.—MEDICAL AND DENTAL CARE

Sec.
1071. Purpose of sections 1071—1087 of this title.
1072. Definitions.
1073. Administration of sections 1071—1087 of this title.
1074. Medical and dental care for members and certain former members.
1075. Officers and certain enlisted members: subsistence charges.
1076. Medical and dental care for dependents: general rule.
1077. Medical care for dependents: authorized care in facilities of uniformed services.
1078. Medical and dental care for dependents: charges.
1079. Contracts for medical care for spouses and children: plans.
1080. Contracts for medical care for spouses and children: election of facilities.
1081. Contracts for medical care for spouses and children: review and adjustment of payments; reports.
1082. Contracts for health care: advisory committees.
1083. Contracts for medical care for spouses and children: additional hospitalization.
1084. Determinations of dependency.
1085. Medical and dental care from another executive department: reimbursement.
1086. Contracts for health care for certain members, former members, and their dependents.[1]
1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services.
1088. Air evacuation patients: furnished subsistence.

AMENDMENTS

1970—Pub. L. 91-481, § 2(a), Oct. 21, 1970, 84 Stat. 1082, added item 1088.

1966—Pub. L. 89-614, § 2(9), Sept. 30, 1966, 80 Stat. 866, substituted "1087" for "1085" in items 1071 and 1073, "Medical care" and "authorized care in facilities of uniformed services" for "Medical and dental care" and "specific inclusions and exclusions" in item 1077, "Contracts for health care" for "Contracts for medical care for spouses and children" in item 1082, and added items 1086 and 1087.

1965—Pub. L. 89-264, § 2, Oct. 19, 1965, 79 Stat. 989, substituted "executive department" for "uniformed service" in item 1085.

1958—Pub. L. 85-861, § 1 (25) (A), (C), Sept. 2, 1958, 72 Stat. 1445, 1450, substituted "Medical and Dental Care" for "Voting by Members of Armed Forces" in heading of chapter, and substituted items 1071—1085 for former items 1071—1086.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

§ 1071. Purpose of sections 1071—1087 of this title.

The purpose of sections 1071—1087 of this title is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents. (Added Pub. L. 85-861, § 1(25) (B), Sept. 2, 1958, 72 Stat. 1445, and amended Pub. L. 89-614, § 2(1), Sept. 30, 1966, 80 Stat. 862.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1071	37: 401.	June 7, 1956, ch. 374, § 101. 70 Stat. 250.

The words "and certain former members" are inserted to reflect the fact that many of the persons entitled to retired pay are former members only. The words "and dental" are inserted to reflect the fact that members and, in certain limited situations, dependents are entitled to dental care under sections 1071—1085 of this title.

CODIFICATION

A prior section 1071, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which stated the purpose of former sections 1071—1086 of this title, and provided for their construction, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Pub. L. 89-614 substituted "1087" for "1085" in the catchline and the text.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89-614 provided that: "The amendments made by this Act [see Short Title note under this section] shall become effective January 1, 1967, except that those amendments relating to outpatient care in civilian facilities for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days shall become effective on October 1, 1966."

SHORT TITLE

Section 1 of Pub. L. 89-614 provided: "That this Act [which enacted sections 1086 and 1087 and amended sections 1071—1074, 1076—1079, 1082, and 1084 of this title, and enacted provisions set out as a note under this section] may be cited as the 'Military Medical Benefits Amendments of 1966'."

§ 1072. Definitions.

In sections 1071—1087 of this title:

(1) "Uniformed services" means the armed forces and the Commissioned Corps of the Environmental Science Services Administration and of the Public Health Service.

[1] So in original. Does not conform to section catchline.

(2) "Dependent", with respect to a member or former member of a uniformed service, means—

(A) the wife;

(B) the unremarried widow;

(C) the husband, if he is in fact dependent on the member or former member for over one-half of his support;

(D) the unremarried widower, if, because of mental or physical incapacity he was in fact dependent on the member or former member at the time of her death for over one-half of his support;

(E) an unmarried legitimate child, including an adopted child or a stepchild, who either—

(i) has not passed his twenty-first birthday;

(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Health, Education, and Welfare, as the case may be, and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; and

(F) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household.

(Added Pub. L. 85-861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446, and amended Pub. L. 89-614, 32(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89-718, § 8(a), Nov. 2, 1966, 80 Stat 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1072 (1)	37: 402 (a) (1).	June 7, 1956, ch. 374, § 102 (a) (1), (4), 70 Stat. 250.
1072 (2)	37: 402 (a) (4).	

In clause (1), the words "the armed forces" are substituted for the words "the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard" to reflect section 101 (4) of this title.

In clause (2), the words "or to a person who died while a member or retired member of a uniformed service" and "lawful" are omitted as surplusage. The word "former" is substituted for the word "retired", since a retired member or a member of the Fleet Reserve or the Fleet Marine Corps Reserve is already included as a "member" of an armed force.

Clause (2) (E) combines 37: 402 (a) (4) (E) and (G).

CODIFICATION

A prior section 1072, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which defined terms used in former sections 1071—1086 of this title, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See section 1471 of Title 50, War and National Defense.

AMENDMENTS

1966—Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey" in clause (1).

Pub. L. 89-614 substituted "1087" for "1085" in introductory phrase.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. —, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1040, 1079, 1086 of this title.

§ 1073. Administration of sections 1071—1087 of this title.

Except as otherwise provided in sections 1071—1087 of this title, the Secretary of Defense shall administer those sections for the armed forces under his jurisdiction, and the Secretary of Health, Education, and Welfare shall administer them for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and for the Environmental Science Services Administration and the Public Health Service. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1446, and amended Pub. L. 89-614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89-718, § 8(a), Nov. 2, 1966, 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1073	37: 402 (b).	June 7, 1956, ch. 374, § 102 (b), 70 Stat. 251.

The words "armed forces under his jurisdiction" are substituted for the words "Army, Navy, Air Force, and Marine Corps and for the Coast Guard when it is operating as a service in the Navy" to reflect section 101 (4) of this title.

CODIFICATION

A prior section 1073, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, which related to right to vote in war-time presidential and congressional election, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

Pub. L. 89-614 substituted "1087" for "1085" in the catchline and the text.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. —, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organizations and Employees.

§ 1074. Medical and dental care for members and certain former members.

(a) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The Secretary of Defense and the Secretary of Health, Education, and Welfare may, with the agreement of the Administrator of Veterans' Affairs, provide care to persons covered by this subsection in facilities operated by the Administrator and determined by him to be available for this purpose on a reimbursable basis at rates approved by the Bureau of the Budget. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1446, and amended Pub. L. 89-614, § 2 (2), Sept. 30, 1966, 80 Stat. 862.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1074 (a)	37: 421 (a).	June 7, 1956, ch. 374, §§ 102 (a) (3) (as applicable to § 301 (b)), 301 (a), (b), 70 Stat. 250, 253.
1074 (b)	37: 402 (a) (3) (as applicable to 37: 421 (b)). 37: 421 (b).	

In subsection (a), words of entitlement are substituted for the correlative words of obligation.

In subsection (b), the words "active duty (other than for training)" are substituted for the words "active duty as defined in section 901 (b) of Title 50" to reflect section 101 (22) of this title. The words "and dental" are inserted before the word "staff" for clarity. The words "retirement" and "retirement pay" are omitted as surplusage.

CODIFICATION

A prior section 1074, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, which related to enactment of legislation relating to voting in other elections, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See section 1451 of Title 50, War and National Defense.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-614 deleted provision which excepted from medical and dental care a member or former member who is entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training) and authorized care to be provided to persons covered by subsec. (b) in facilities operated by the Administrator of Veterans' Affairs and available on a reimbursable basis at rates approved by the Bureau of the Budget.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

OFFICE OF MANAGEMENT AND BUDGET

The Bureau of the Budget was designated as the Office of Management and Budget and offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1086, 1087 of this title.

§ 1075. Officers and certain enlisted members: subsistence charges.

When an officer or former officer of a uniformed service is hospitalized under section 1074 of this title, he shall pay an amount equal to the part of the charge prescribed under section 1078 of this title that is attributable to subsistence. An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may not be so charged. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1447.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1075	37: 422.	June 7, 1956, ch. 374, § 302, 70 Stat. 254.

The word "officer" is substituted for the words "Commissioned officers and warrant officers" to reflect section 101 (14) of this title. The words "or former officer" are substituted for the words "and retired". The word "active" is omitted as surplusage.

CODIFICATION

A prior section 1075, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to post card requests for absentee ballots, and for printing and transmission thereof, and was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

§ 1076. Medical and dental care for dependents: general rule.

(a) A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(b) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the Secretary of Defense and the Secretary of Health, Education, and Welfare shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1447, and amended Pub. L. 89-614, § 2(3), Sept. 30, 1966, 80 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1076 (a)	37: 402 (a) (2) (as applicable to 37: 403 (a)). 37: 403 (a) (1st sentence).	June 7, 1956, ch. 374, §§ 102 (a) (2) (as applicable to § 103 (a)), (3) (as applicable to § 301 (c)), 103 (a), (b), 301 (c), 70 Stat. 250, 251, 253.
1076 (b)	37: 402 (a) (3) (as applicable to 37: 421 (c)). 37: 421 (c) (less last 28 words).	
1076 (c)	37: 403 (a) (less 1st sentence). 37: 421 (c) (last 28 words).	
1076 (d)	37: 403 (b).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations dependents are entitled to dental care under 37: 403 (h) (4), restated as section 1077 of this title.

In subsection (a), the words "appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service" are omitted as surplusage, since it does not matter how a member became a member. The words "active duty for a period of more than 30 days" are substituted for the words "active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less" to reflect section 101 (22) and (23) of this title.

In subsection (b), the words "active duty (other than for training)" are substituted for the words "active duty as defined in section 901 (b) of Title 50" to reflect section 101 (22) of this title. The words "retirement" and "retirement pay" are omitted as surplusage.

In subsection (c), 37: 421 (c) (last 28 words) is omitted as unnecessary since this subsection and section 1077 of this title are written so as to apply to subsection (b) as well as subsection (a).

In subsection (d), the words "because the facility concerned is that of a uniformed service other than that of the member" is substituted for the words "because of the service affiliation of the service member".

CODIFICATION

A prior section 1076, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which related to use of post cards, waiver of registration, and voting by discharged persons, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-614 deleted provision which excepted from medical and dental care a member or former member who is, or was at the time of his death, entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1077, 1078, 1079, 1080, 1086, 1087 of this title.

§ 1077. Medical care for dependents; authorized care in facilities of uniformed services.

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.

(2) Outpatient care.

(3) Drugs.

(4) Treatment of medical and surgical conditions.

(5) Treatment of nervous, mental, and chornic conditions.

(6) Treatment of contagious diseases.

(7) Physical examinations, including eye examinations, and immunizations.

(8) Maternity and infant care.

(9) Diagnostic tests and services, including laboratory and X-ray examinations.

(10) Emergency dental care worldwide.

(11) Routine dental care outside the United States and at stations in the United States where adequate civilian facilities are unavailable.

(12) Dental care worldwide as a necessary adjunct of medical, surgical, or preventive treatment.

(13) Ambulance service and home calls when medically necessary.

(14) Durable equipment, such as wheelchairs, iron lungs, and hospital beds may be provided on a loan basis.

(b) The following types of health care may not be provided under section 1076 of this title:

(1) Domiciliary or custodial care.

(2) Prosthetic devices, hearing aids, orthopedic footwear, and spectacles except that—

(A) outside the United States and at stations inside the United States where adequate civilian

facilities are unavailable, such items may be sold to dependents at cost to the United States, and

(B) artificial limbs and artificial eyes may be provided.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447, and amended Pub. L. 89–614, § 2(4), Sept. 30, 1966, 80 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1077 (a)	37: 403 (f).	June 7, 1956, ch. 374, § 103 (f), (g), (h), 70 Stat. 251, 252.
1077 (b)	37: 403 (g).	
1077 (c)	37: 403 (h) (less clause (4)).	
1077 (d)	37: 403 (h) (clause (4)).	

In subsection (a), clause (6) is inserted to reflect subsection (b).

CODIFICATION

A prior section 1077, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which related to distribution of ballots, envelopes, and voting instructions, was repealed by Pub. L. 85–861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Pub. L. 89–614 authorized an improved health benefits program for dependents of active duty members of the uniformed services in facilities of such services, expanding health care to be provided to include: hospitalization, outpatient care, and drugs in clauses (1)—(3) of subsec. (a) (hospitalization being limited by former subsec. (b) to treatment of nervous or mental disturbances or chronic diseases or for elective medical and surgical treatment to one year period in special cases); treatment of mental and surgical conditions in clause (4) minus acute condition restriction of former subsec. (a)(2); treatment of nervous, mental, and chronic conditions in clause (5) formerly restricted as stated above; clause (6) reenactment of former subsec. (a)(3); physical, including eye, examinations in clause (7) reenacting former subsec. (a)(4) immunization provisions; clause (8) reenactment of former subsec. (a)(5); diagnostic tests and services, including laboratory and X-ray examinations (diagnosis being covered in former subsec. (a)(1)); dental care provisions in clauses (10)—(12) (provided in former subsec. (d)) as (1) emergency care to relieve pain and suffering, but not including permanent restorative work or dental prosthesis, (2) care as a necessary adjunct to medical or surgical treatment, and care outside the United States, and in remote areas inside the United States, where adequate civilian facilities are unavailable; ambulance service and home calls in clause 13 (covering former subsec. (c)(2), (3)); durable equipment on loan basis in clause (14); and to exclude in subsec. (b)(1) (incorporating last sentence of former subsec. (b)) custodial care; subsec. (b)(2)(A) reenactment of former subsec. (e)(1); and permitted in subsec. (b)(2)(B) artificial limbs and eyes to be provided.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

OBSTETRICAL CARE FACILITIES

Pub. L. 89–188, title VI, § 610, Sept. 16, 1965, 79 Stat. 818, provided that: "Except in the case of hospitals authorized for construction under this [Pub. L. 89–188] or any previous Act, any military hospital hereafter constructed in the United States or its possessions shall include facilities for obstetrical care unless sound and specific justification is made by the Secretary concerned for omitting such facilities in any hospital authorized."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1076, 1080, 1086 of this title.

§ 1078. Medical and dental care for dependents: charges.

(a) The Secretary of Defense, after consulting the Secretary of Health, Education, and Welfare, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the Secretary of Health, Education, and Welfare, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care. (Added Pub. L. 85–861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1448, and amended Pub. L. 89–614, § 2(5), Sept. 30, 1966, 80 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1078 (a)	37: 403 (c).	June 7, 1956, ch. 374, § 103 (c) (d), (e), 70 Stat. 251.
1078 (b)	37: 403 (d).	
1078 (c)	37: 403 (e).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations, dependents are entitled to dental care under 37: 403 (h) (4), restated as section 1077 (d) of this title.

In subsection (b), the word "special" is omitted as surplusage.

CODIFICATION

A prior section 1078, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which prescribed instructions for marking ballots, was repealed by Pub. L. 85–861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–614 substituted "The charge or charges prescribed shall be applied equally to all classes of dependents" for "Charges shall be the same for all dependents".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1079, 1080, 1086 of this title; title 42 section 253a.

§ 1079. Contracts for medical care for spouses and children: plans.

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than thirty days, the Secretary of Defense, after consulting with the Secretary of Health, Education,

and Welfare, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The type of health care authorized under this section shall be the same as those provided under section 1076 of this title, except that:

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service;

(3) routine care of the newborn, well-baby care, and eye examinations may not be provided;

(4) under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater.

(2) Except as provided in clause (3), the first $50 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 per centum of all subsequent charges for such care during a fiscal year.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 per centum of the additional charges for such care during a fiscal year.

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the Secretary of Defense and the Secretary of Health, Education, and Welfare.

(d) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, in the case of a dependent, as defined in section 1072(2)(A), (C), or (E) of this title, of a member of the uniformed services on active duty for a period of more than thirty days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d).

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare.

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $350 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the Secretary of Defense and the Secretary of Health, Education, and Welfare. (Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448, and amended Pub. L. 89–614, § 2(6), Sept. 30, 1966, 80 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1079 (a)	37: 402 (a) (2) (as applicable to 37: 411 (a)). 37: 411 (a).	June 7, 1956, ch. 374, §§ 102 (a) (2) (as applicable to § 201 (a)), 201 (a), (b), 204, 70 Stat. 250, 252, 253.
1079 (b)	37: 411 (b). 37: 414.	

In subsection (a), the words "appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service", in 37: 402 (a) (2) are omitted as surplusage, since it does not matter how a member became a member. The words "active duty for a period of more than 30 days" are substituted for the words "active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less", in 37: 402 (a) (2), to reflect section 101 (22) and (23) of this title. The words ", under the authority of this section," are substituted for the words "pursuant to the provisions of this title" to make clear that the section provides independent procurement authority. The words "all", "by the hospital", and "a period of", in 37: 411 (a), are omitted as surplusage.

In subsection (a) (1), the word "rooms", in 37: 411 (a), is substituted for the word "accommodations".

In subsection (a) (5), the word "services" is substituted for the word "procedures" and the word "performed" is substituted for the word "accomplished", in 37: 411 (a). The words "or surgeon" are inserted for clarity.

In subsection (b), the word "variances" is substituted for the words "limitations, additions, exclusions". The words "or care other than that provided for in sections 1076—1078 of this title" are substituted for 37: 414. The words "definitions, and related provisions", in 37: 411 (b), are omitted as surplusage, since the Secretary of an executive department has inherent authority to interpret laws and issue regulations.

CODIFICATION

A prior section 1079, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which related to establishment of right to vote, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-614 deleted "dependent" preceding "spouses and children" and substituted sentence providing that "The types of health care authorized under this section, shall be the same as those provided under section 1076 of this title", enumerating exceptions in pars. (1)—(5) for former provisions which required the insurance, medical service, or health plans to include (1) hospitalization in semiprivate rooms for not more than 365 days for each admission, (2) medical and surgical care incident to hospitalization, (3) obstetrical and maternity service, including prenatal and postnatal care, (4) services of physician or surgeon before or after hospitalization for bodily injury or surgical operation, (5) diagnostic tests and services incident to hospitalization, and (6) payments by patient of hospital expenses, now incorporated in subsec. (b)(1).

Subsec. (b). Pub. L. 89-614 incorporated existing provisions of subsec. (a)(6) in par. (1) and added pars. (2) and (3). Former subsec. (b) authorized the Secretary of Defense to make variances from subsec. (a) requirements as appropriate other than outpatient care or care other than provided for in sections 1076-1078 of this title.

Subsecs. (c)-(f). Pub. L. 89-614 added subsecs. (c)-(f).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1080, 1081, 1082, 1083, 1086 of this title.

§ 1080. Contracts for medical care for spouses and children: election of facilities.

A dependent covered by section 1079 of this title may elect to receive medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076—1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the Secretary of Health, Education, and Welfare, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2 1958, 72 Stat. 1449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1080	37: 411 (c).	June 7, 1956, ch. 374, § 201 (c) 70 Stat. 252.

The words "a plan contracted for under section 1079 of this title" are substituted for the words "such insurance, medical service, or health plan or plans as may be provided by the authority contained in this section". The words "under the terms of this chapter" are omitted as surplusage.

CODIFICATION

A prior section 1080, act Aug. 10, 1956, ch. 1041, 70A Stat. 85, which related to style and marking of envelopes, inserts, return envelopes, and to weight of ballots, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments; reports.

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the Secretary of Defense or the Secretary of Health, Education, and Welfare not later than 120 days after the close of each year the plan is in effect. Not later than 90 days after each such review, the Secretary of Defense shall report to the Committees on Armed Services of the Senate and the House of Representatives the amounts paid during the year covered by the review and the adjustments made. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1081	37: 412.	June 7, 1956, ch. 374, § 202, 70 Stat. 253.

The words "Each plan under section 1079 of this title" are substituted for the words "Any insurance, medical service, or health plan or plans which may be entered into by the Secretary of Defense with respect to medical care under the provisions of this chapter". The words "after the close of each year the plan is in effect" are substituted for the words "after the first year the plan or plans have been in effect and each year thereafter". The words "Not later than" are substituted for the word "within".

CODIFICATION

A prior section 1081, act Aug. 10, 1956, ch. 1041, 70A Stat. 86, which related to notification of elections, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1082. Contracts for health care: advisory committees.

To carry out sections 1079—1081 and 1086 of this title, the Secretary of Defense may establish advisory committees on insurance, medical service, and health plans, to advise and make recommendations to him. He shall prescribe regulations defining their scope, activities, and procedures. Each committee shall consist of the Secretary, or his designee, as chairman, and such other persons as the Secretary may select. So far as possible, the members shall be representative of the organizations in the field of insurance, medical service, and health plans. They shall serve without compensation but may be allowed transportation and a per diem payment in place of subsistence and other expenses. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1449, and

amended Pub. L. 89-614, § 2 (8), Sept. 30, 1966, 80 Stat. 866.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1082	37: 413.	June 7, 1956, ch. 374, § 203, 70 Stat. 253.

The word "organizations" is inserted for clarity. The words "consult" and "or plans" are omitted as surplusage.

CODIFICATION

A prior section 1082, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to extension of time limit for making ballots available, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Pub. L. 89-614 substituted "Contracts for health care" for "Contracts for medical care for spouses and children" in the catchline and included reference to section 1086.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967 except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

§ 1083. Contracts for medical care for spouses and children: additional hospitalization.

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the Secretary of Health, Education, and Welfare. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1083	37: 423.	June 7, 1956, ch. 374, § 303, 70 Stat. 254.

The words "dependent covered by a plan under section 1079 of this title" are substituted for the words "person who is covered under an insurance, medical service, or health plan or plans, as provided in this chapter". The words "period of", "or plans", and "required by such person in a civilian facility" are omitted as surplusage.

CODIFICATION

A prior section 1083, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to transmission, delivery, and return of post cards, ballots, etc., was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

§ 1084. Determinations of dependency.

A determination of dependency by the Secretary of Defense or the Secretary of Health, Education, and Welfare under sections 1071—1087 of this title is conclusive. However, he may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence. (Added Pub. L. 85-861, § 1 (25) (B), Sept. 2, 1958, 72 Stat. 1450, and amended Pub. L. 89-614, § 2(1), Sept. 30, 1966, 80 Stat. 862.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1084	37: 404.	June 7, 1956, ch. 374, § 304, 70 Stat. 254.

The words "the General Accounting Office" are substituted for the words "any accounting officer of the Government" for clarity. The words "All" and "for all purposes" are omitted as surplusage.

CODIFICATION

A prior section 1084, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to administration of former sections 1071—1086 of this title, was repealed by Pub. L. 85-861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1966—Pub. L. 89-614 substituted "1087" for "1085".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-614 effective Jan. 1, 1967, except that amendments relating to outpatients care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

§ 1085. Medical and dental care from another executive department: reimbursement.

If a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health, Education, and Welfare, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the Bureau of the Budget to reflect the average cost of providing such care. (Added Pub. L. 85-861, § 1(25) (B), Sept. 2, 1958, 72 Stat. 1450, and amended Pub. L. 89-264, § 1, Oct. 19, 1965, 79 Stat. 989.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1085	37: 421 (d).	June 7, 1956, ch. 374, § 301 (d), 70 Stat. 253.

The words "other than that of the member or former member concerned" are substituted for the words "that is not the service of which he is a member or retired member, or that is not the service of the member or retired member upon whom he is dependent". The word "medical" before the word "facility" is omitted to make clear that the provision also relates to dental care. The words "pursuant to the provisions of this chapter" are omitted as surplusage.

CODIFICATION

A prior section 1085, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to prevention of fraud, coercion,

and undue influence, to free discussion, and to acts done in good faith, was repealed by Pub. L. 85–861, § 36B (5), Sept. 2, 1958, 72 Stat. 1570. See chapter 30 of Title 50, War and National Defense.

AMENDMENTS

1965—Pub. L. 89–264 substituted "executive department" for "uniformed service" in the catchline, and provisions requiring reimbursement if a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives care in a facility under the jurisdiction of Secretary of Health, Education, and Welfare, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives care in a facility of an armed force under the jurisdiction of a military department, for provisions which required reimbursement if a person received care in a facility of a uniformed service other than that of the member or former member concerned.

OFFICE OF MANAGEMENT AND BUDGET

The Bureau of the Budget was designated as the Office of Management and Budget and offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents.

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the Secretary of Health, Education, and Welfare, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title.

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $50 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 per centum of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 per centum of the additional charges for such care during a fiscal year.

(3) 25 per centum of the charges for inpatient care.

(c) The following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(F) of this title.

(2) A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)(F) of this title.

However, a person who is entitled to hospital insurance benefits under title I of the Social Security Amendments of 1965 (79 Stat. 286) is not eligible for health benefits under this section.

(d) No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan.

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076—1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the Secretary of Defense and the Secretary of Health, Education, and Welfare, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. (Added Pub. L. 89–614, § 2(7), Sept. 30, 1966, 80 Stat. 865.)

REFERENCES IN TEXT

Title I of the Social Security Amendments of 1965, referred to in subsec. (c), is title I of Pub. L. 89-97, July 30, 1965, 79 Stat. 286. For distribution of title I of Pub. L. 89-97 in this Code, see short title note set out under section 1395 of Title 42, The Public Health and Welfare.

CODIFICATION

A prior section 1086, act Aug. 10, 1956, ch. 1041, 70A Stat. 88, which authorized the mailing of official post cards, ballots, voting instructions, and envelopes, free of postage, was repealed by Pub. L. 85-861, § 36(B) (5), Sept. 2, 1958, 72 Stat. 1570. See section 1472 of Title 50, War and National Defense.

EFFECTIVE DATE

Section effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services.

Space for inpatient and outpatient care may be programed in facilities of the uniformed services for persons covered by sections 1074(b) and 1076(b) of this title. The amount of space so programed shall be limited to that amount determined by the Secretary concerned to be necessary to support teaching and training requirements in uniformed services facilities, except that space may be programed in areas having a large concentration of retired members and their dependents where there is also a projected critical shortage of community facilities. (Added Pub. L. 89–614, § 2(7), Sept. 30, 1966, 80 Stat. 866.)

EFFECTIVE DATE

Section effective Jan. 1, 1967, except that amendments relating to outpatient care in civilian facilities for spouses and children of members of uniformed services on active duty for more than 30 days effective Oct. 1, 1966, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1088. Air evacuation patients; furnished subsistence.

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States. (Added Pub. L. 91-481, § 2(1), Oct. 21, 1970, 84 Stat. 1081.)

Chapter 57.—DECORATIONS AND AWARDS

Sec.
1121. Legion of Merit: award.
1122. Medal for Merit: award.
1123. Right to wear badges of military societies.
1124. Cash awards for suggestions, inventions, or scientific achievements.
1125. Recognition for accomplishments: award of trophies.
1126. Gold star lapel button: eligibility and distribution.

AMENDMENTS

1966—Pub. L. 89-718, § 9. Nov. 2, 1966, 80 Stat. 1117, redesignated item 1124, added by Pub.L. 89-534, § 1(2), Aug. 11, 1966, 80 Stat. 345, as 1126.

Pub. L. 89-534, § 1(2), Aug. 11, 1966, 80 Stat. 345, added item 1124, relating to the eligibility for and distribution of the gold star lapel button.

Pub. L. 89-529, § 1(2), Aug. 11, 1966, 80 Stat. 339, added item 1125.

1965—Pub. L. 89-198, § 1(2), Sept. 22, 1965, 79 Stat. 831, added item 1124, relating to the payment of cash awards for members of the armed forces for suggestions, inventions, or scientific achievements.

EX. ORD. NO. 11448. MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 11448, Jan. 16, 1969, 34 F.R. 915, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of a military department or the Secretary of Transportation with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders, or other appropriate officers as the Secretary concerned may designate, to any member of the armed forces of the United States who has distinguished himself by outstanding meritorious achievement or service to the United States.

SEC. 2. The Meritorious Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

SEC. 3. No more than one Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

SEC. 4. The Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

LYNDON B. JOHNSON.

EX. ORD. NO. 11544. VICE PRESIDENTIAL SERVICE CERTIFICATE AND SERVICE BADGE

Ex. Ord. No. 11544, July 8, 1970, 35 F.R. 1115, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

1. There is hereby established a Vice Presidential Service Certificate to be awarded in the name of the Vice President of the United States to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard who have been assigned to duty in the Office of the Vice President for a period of at least one year subsequent to January 20, 1969.

2. The Vice Presidential Service Certificate, the design of which accompanies and is hereby made a part of this Order, may be awarded upon recommendation of the Military Assistant to the Vice President by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation, to military personnel of their respective services.

3. There is hereby established a Vice Presidential Service Badge, the design of which accompanies and hereby made a part of this Order. The Vice Presidential Service Badge may be awarded, upon recommendation of the Military Assistant to the Vice President, by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation, to military personnel of their respective services who have been assigned to duty in the Office of the Vice President.

4. Upon award of the Vice Presidential Service Certificate, the Vice Presidential Service Badge may be worn as a part of the uniform of an individual both during and after his assignment to duty in the Office of the Vice President.

5. Only one Vice Presidential Service Certificate will be awarded to an individual during an administration. Only one Vice Presidential Service Badge will be awarded to an individual.

6. The Vice Presidential Service Certificate and the Vice Presidential Service Badge established by this Order may be granted posthumously.

RICHARD NIXON.

CROSS REFERENCES

Particular provisions relating to—
Air Force, see section 8741 et seq. of this title.
Army, see section 3741 et seq. of this title.
Navy and Marine Corps, see section 6241 et seq. of this title.

§ 1121. Legion of Merit: award.

The President, under regulations to be prescribed by him, may award a decoration called the "Legion of Merit", having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. (Aug. 10, 1956, ch. 1041, 70A Stat. 88).

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1121	10: 1408b (1).	July 20, 1942, ch. 508. § 2 (1), 56 Stat. 662.

The words "Government of the Philippines" are omitted as covered by the words "any friendly foreign nation". The words "There is created", "rules and", and "the proclamation of an emergency by the President on" are omitted as surplusage.

§ 1122. Medal for Merit: award.

The President, under regulations to be prescribed by him, may award a decoration called the "Medal for Merit", having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The

Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted. (Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1122	10: 1408b (less (1)).	July 20, 1942, ch. 508, § 2 (less (1)), 56 Stat. 663.

The words "in existence on July 20, 1942" are inserted for clarity and refer to the war in existence on the date of enactment of the source statute. The words "as then constituted" are inserted for clarity, since the United Nations organization in existence on July 20, 1942, was not the present United Nations organization. The words "There is created", "rules and", and "the proclamation of an emergency by the President on" are omitted as surplusage.

EX. ORD. NO. 9637. MEDAL FOR MERIT

Ex. Ord. No. 9637, Oct. 3, 1945, 10 F.R. 12543, as amended by Ex. Ord. No. 9857A, May 27, 1947, 12 F.R. 3583, provided:

1. The decoration of the Medal for Merit shall be awarded only by the President of the United States or at his direction. Awards of the Medal for Merit may be made to such civilians of the nations prosecuting the war under the joint declaration of the United Nations and of other friendly foreign nations as have distinguished themselves by exceptionally meritorious conduct in the performance of outstanding services since the proclamation of an emergency by the President on September 8, 1939. Awards of the Medal for Merit made to civilians of foreign nations shall be for the performance of an exceptionally meritorious or courageous act or acts in furtherance of the war efforts of the United Nations.

2. There is hereby established the Medal for Merit Board, which shall be composed of three members appointed by the President, one of whom shall be designated by the President to act as Chairman of the Board.

3. The Medal for Merit Board shall receive and consider proposals for the award of the decoration of the Medal for Merit and submit to the President the recommendations of the Board with respect thereto. In the case of proposed awards to civilians of foreign nations, such recommendations shall include the recommendations of the Secretary of State.

4. The Medal for Merit Board is authorized to prescribe, with the approval of the President, such rules and regulations not inconsistent with the provisions of this order as may be necessary to accomplish its purposes.

5. Executive Order 9331 of April 19, 1943 and the Medal for Merit Board created thereby, are superseded by this order.

6. The Medal for Merit shall not be awarded for any services relating to the prosecution of World War II performed subsequent to the cessation of hostilities, as proclaimed by Proclamation No. 2714 of December 31, 1946, and no proposal for an award for such services submitted after June 30, 1947, shall be considered by the Medal for Merit Board.

§ 1123. Right to wear badges of military societies.

(a) A member of the Army, Navy, Air Force, or Marine Corps who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chinese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, or Marine Corps who is a member of the Army and Navy Union of the United States may wear, on public occasions of ceremony, the distinctive badges adopted by that society. (Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1123 (a)	10: 1427 (1st sentence); 34: 371 (1st sentence).	Sept. 25, 1890, J. Res. 50, 26 Stat. 681. May 11, 1894, J. Res. 26, 28 Stat. 583.
1123 (b)	10: 1427 (less 1st sentence); 34: 371 (less 1st sentence).	Feb. 2, 1901, ch. 192, § 41, 31 Stat. 758. Jan. 12, 1903, J. Res. 2, 32 Stat. 1229. Mar. 2, 1907, J. Res. 18, 34 Stat. 1423.

In subsection (a), the words "an armed force" are substituted for the words "armies and navies". The words "Revolutionary War", "Civil War", and "Philippine Insurrection" are substituted for the words "War of the Revolution", "War of the Rebellion", and "incident insurrection in the Philippines", respectively, to reflect present terminology. The words "originally composed" are substituted for the words "in their own right", to reflect an opinion of the Attorney General (see 23 Op. Atty. Gen. 454).

In subsections (a) and (b), the word "member" is substituted for the words "officers and enlisted men". The words "Navy * * * or Marine Corps" are substituted for the word "Navy", since the word "Navy" in the source statute has, by long-standing administrative interpretation, been constructed to include the Marine Corps.

In subsection (b), the words "in their own right" are omitted as surplusage.

§ 1124. Cash awards for suggestions, inventions, or scientific achievements.

(a) The Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death or separation from the armed force concerned, but only if the suggestion, invention, or scientific achievement forming the basis for the award was made while he was on active duty.

(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

(1) an agreement by the member that the use by the United States of any idea, method, or device

for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

(f) The total amount of the award, or awards, made under this section for a suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy. The Secretary of Defense and the Secretary of Transportation shall send to the President annually for transmittal to Congress a progress report, with appropriate recommendations, on the awards program.

(h) For the purposes of this section, a member of the Commissioned Corps of the Environmental Science Services Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force. (Added Pub. L. 89–198, § 1(1), Sept. 22, 1965, 79 Stat. 830, and amended Pub. L. 89–718, § 10, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–623, § 2(1), Oct. 22, 1968, 82 Stat. 1314.)

AMENDMENTS

1968—Subsecs. (a), (b), (g). Pub. L. 90–623 substituted "Secretary of Transportation" for "Secretary of the Treasury".

1966—Subsec. (g). Pub. L. 89–718 substituted "progress report" for "program report".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ——, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11438. PROCEDURES GOVERNING INTERDEPARTMENTAL CASH AWARDS

Ex. Ord. No. 11438, Dec. 3, 1968, 33 F.R. 18085, provided:

By virtue of the authority vested in me by section 1124 (b) and (e) of title 10, United States Code, and section 301 of title 3, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. Any suggestion, invention, or scientific achievement by a member of the armed forces that contributes to the efficiency, economy, or other improvement of operations of the Government of the United States through its adoption or use by an executive department or agency other than the executive department having jurisdiction over the armed force of the member concerned may be the basis for honorary recognition or a cash award by the Secretary of Transportation in the case of a member of the Coast Guard when it is not operating as a service in the Navy or by the Secretary of Defense in the case of any other member of the armed forces.

SEC. 2. An executive department or agency that adopts or uses the suggestion, invention, or scientific achievement of a member of the armed forces who is not under its jurisdiction may recommend to the Department of Defense or to the Department of Transportation, as appropriate, a cash award or honorary recognition of the member and shall justify its recommendation with appropriate documentation and explanation of how the suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of the operations of the Government of the United States. Awards shall be made under regulations to be prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate. The regulations of the Department of Defense and Department of Transportation may include designations of officials to whom authority for receiving, evaluating, and making awards may be assigned.

SEC. 3. No cash awards hereunder for a single suggestion, invention, or scientific achievement may exceed $25,000 regardless of the number of agencies or departments which may adopt or use the suggestion, invention, or scientific achievement.

SEC. 4. Funds to cover the costs of cash awards to members of the armed forces shall be transferred from the account of any executive department or agency which recommends the award to the appropriate account of the Department of Transportation or the Department of Defense, as the case may be. When several executive departments or agencies benefit from the adoption or use of the suggestion, invention, or scientific achievement, the amount transferred from each such benefiting department or agency to the Department of Transportation or the Department of Defense to cover the proportionate share of the cost of the cash award shall be determined under procedures prescribed by the Civil Service Commission in accordance with the same guidelines and standards applying to awards to civilian employees.

LYNDON B. JOHNSON

§ 1125. Recognition for accomplishments: award of trophies.

The Secretary of Defense may—

(1) award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force under his jurisdiction for excellence in accomplishments or competitions related to that armed force; and

(2) provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable.

(Added Pub. L. 89–529, §1(1), Aug. 11, 1966, 80 Stat. 339.)

EX. ORD. NO. 11545. DEFENSE DISTINGUISHED SERVICE MEDAL

Ex. Ord. 11545, July 9, 1970, 35 F.R. 11161, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Defense Distinguished Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to a military officer who performed exceptionally meritorious service in a duty of great responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Distinguished Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Distinguished Service Medal in an order of precedence after the Medals of Honor and the Distinguished Service Crosses of the Armed Forces and before the Distinguished Service Medals of the Armed Forces.

SEC. 3. No more than one Defense Distinguished Service Medal shall be awarded to any one person, but for each succeeding exceptionally meritorious period of service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Distinguished Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

RICHARD NIXON.

§ 1126. Gold star lapel button: eligibility and distribution.

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces of the United States—

(1) Who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958; or

(2) who lost or lose their lives after June 30, 1958—

(i) while engaged in an action against an enemy of the United States;

(ii) while engaged in military operations involving conflict with an opposing foreign force; or

(iii) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution.

(d) In this section—

(1) "widow" includes widower;

(2) "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis;

(3) "next of kin" includes only children, brothers, sisters, half brothers, and half sisters;

(4) "children" includes stepchildren and children through adoption;

(5) "World War I" includes the period from April 6, 1917, to March 3, 1921; and

(6) "World War II" includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(Added Pub. L. 89–534, § 1(1), Aug. 11, 1966, 80 Stat. 345, § 1126, formerly § 1124, renumbered Pub. L. 89–718, § 9, Nov. 2, 1966, 80 Stat. 1117.)

Chapter 59.—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
1162. Reserves: discharge.
1163. Reserve components: members; limitations on separation.
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
1167. Regular warrant officers: severance pay.
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.

AMENDMENTS

1968—Pub. L. 90–235, § 3(a)(1)(B), Jan. 2, 1968, 81 Stat. 757, added items 1169, 1170, 1171 and 1172.

1962—Pub. L. 87–651, title I, § 106(c), Sept. 7, 1962, 76 Stat. 508, added item 1168.

CROSS REFERENCES

Regulations to carry out this chapter, see section 280 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 280 of this title.

§ 1161. Commissioned officers: limitations on dismissal.

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial; or

(3) in time of war, by order of the President.

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an of-

fense by a court other than a court-martial or other military court, and whose sentence has become final. (Aug. 10, 1956, ch. 1041, 70A Stat. 89.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1161 (a)	50: 739 (words before semicolon, less applicability to Navy and Marine Corps warrant officers).	May 5, 1950, ch. 169, § 10 (less applicability to Navy and Marine Corps warrant officers), 64 Stat. 146.
1161 (b)	50: 739 (less words before semicolon, less applicability to Navy and Marine Corps warrant officers).	

In subsections (a) and (b), the word "commissioned" is inserted since, for the Army and the Air Force, the term "officer" is intended to have the same meaning in 50:739 as it has in the Uniform Code of Military Justice (article 4). For Navy warrant officers see section 6408 of this title.

In subsection (b), the words "from his place of duty" are omitted as surplusage. The words "at least" are substituted for the words "or more". The words "by a court other than a court-martial or other military court" are substituted for the words "by the civil authorities".

RESTORATION OF RETIRED PAY TO OFFICERS DROPPED FROM ROLLS AFTER DECEMBER 31, 1954 AND BEFORE AUGUST 25, 1958

Pub. L. 85–754, Aug. 25, 1958, 72 Stat. 847, provided: "That notwithstanding any other provisions of law, a former retired officer dropped from the rolls under section 10 of the Act of May 5, 1950, ch. 169 (64 Stat. 146), or section 1161 of title 10, United States Code, after December 31, 1954, and before the date of enactment of this Act [August 25, 1958] shall, for the purposes of entitlement to retired or retirement pay after the date of enactment of this Act [August 25, 1958], be treated as if he had not been dropped from the rolls. Such an officer is also entitled to retroactive retired or retirement pay for the period beginning on the date he was dropped from the rolls and ending on the date of enactment of this Act [August 25, 1958], as if he had not been dropped from the rolls.

"SEC. 2. A former retired officer covered by this Act is subject to the penal, prohibitory, and restrictive provisions of law applicable to the pay and civil employment of retired officers of the Armed Forces and is not entitled to any other benefit provided by law or regulation for retired officers of the Armed Forces. After the date of enactment of this Act [August 25, 1958], such a former retired officer may, in the discretion of the President, have his entitlement to retired or retirement pay under this Act terminated for any reason for which any retired officer may be dismissed from, or dropped from the rolls of, any Armed Force.

"SEC. 3. Appropriations available for the payment of retired pay to members of the Armed Forces are available for payments under this Act."

CROSS REFERENCES

Dismissed officer's right to trial by court-martial, see section 804 of this title.

Female commissioned officer of Regular Army or female member of Regular Air Force, prohibition against terminating appointment by dismissal, see sections 3818, 8818 of this title.

Forfeiture of pay when dropped from rolls, see section 803 of Title 37, Pay and Allowances of the Uniformed Services.

Reserve components, limitations on separation inapplicable to dismissal under subsec. (a), see section 1163 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1163 of this title; title 37 section 803.

§ 1162. Reserves: discharge.

(a) Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 2, 1958, Pub. L. 85–861, § 1 (27), 72 Stat. 1450.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1162	50: 991.	July 9, 1952, ch. 608; § 248, 66 Stat. 495.

The word "title" is substituted for word "chapter", since the provisions of this title relating to Reserves are based on the Armed Forces Reserve Act of 1952. The word "chapter" was substituted by the editors of the United States Code for the word "Act", in section 248 of the source statute (the Armed Forces Reserve Act of 1952). The words "may be discharged" are substituted for the words "the discharge of * * * shall be effected". The words "may be discharged under regulations prescribed" are substituted for the words "the discharge of * * * shall be in accordance with regulations promulgated".

AMENDMENTS

1958—Pub. L. 85–861 designated existing provisions as subsec. (a), and added subsec. (b).

CROSS REFERENCES

Physical examination, see section 1004 of this title.

§ 1163. Reserve components: members; limitations on separation.

(a) An officer of a reserve component who has at least three years of service as a commissioned officer may not be separated from that component without his consent except under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned, or by the approved sentence of a court-martial. This subsection does not apply to a separation under subsection (b) of this section or under section 1003 of this title, to a dismissal under section 1161 (a) of this title, or to a transfer under section 3352 or 8352 of this title.

(b) The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(c) A member of a reserve component who is separated therefrom for cause, except under subsection (b), is entitled to a discharge under honorable conditions unless—

(1) he is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) he consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(d) Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless his release is approved by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 7, 1962, Pub. L. 87–651, title I, § 106(a), 76 Stat. 508.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1163 (a)	50: 992 (a).	July 9, 1952, ch. 608, § 249, 66 Stat. 495.
1163 (b)	50: 992 (b).	
1163 (c)	50: 992 (c).	

In subsection (a), the words "at least three years of service as a commissioned officer may not be separated from that component without his consent" are substituted for the words "completed three years of commissioned service shall not be involuntarily separated". The words "discharged or" are omitted as covered by the word "separated". The words "or to a dismissal under section 1161 (a) of this title" are inserted, since the word "separated", in 50: 992 (a), did not cover "dismissal". The words "or to a transfer under section 3352 (b) or 8352 (b) of this title" are inserted to reflect the automatic transfer, under those sections, of an officer of the National Guard who loses his Federal recognition.

In subsection (b), the words "of the armed force concerned" are inserted for clarity. The words "at least" are substituted for the words "or more". The words "by a court other than a court-martial or other military court" are substituted for the words "by the civil authorities". The words "and whose sentence has become final" are substituted for the word "finally".

In subsection (c), the words "is entitled to" are substituted for the words "shall be given". The words "discharged or" are omitted as covered by the word "separated".

In subsection (c) (1), the words "he is discharged * * * under" are substituted for the words "a discharge is * * * effected pursuant to".

In subsection (c) (2), the words "proceedings of a court-martial or a board" are substituted for the words "court-martial or board proceedings".

AMENDMENTS

1962—Subsec. (d). Pub. L. 87–651 added subsec. (d).

§ 1164. Warrant officers; separation for age.

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) Repealed. Pub. L. 90–130, § 1(5), Nov. 8, 1967, 81 Stat. 374.

(c) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 90; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90–130, § 1(5), 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1164 (a)	10: 600*l* (c) (as applicable to men); 10: 600r (c) (as applicable to 10: 600*l* (c)); 34: 430 (c) (as applicable to men); 34: 430c (as applicable to 34: 430 (c)).	May 29, 1954, ch. 249, §§ 14 (c), (e) (as applicable to (c)), 21 (c) (as applicable to § 14 (c)), 68 Stat. 163, 168.
1164 (b)	10: 600*l* (c) (less applicability to men); 34: 430 (c) (less applicability to men).	
1164 (c)	10: 600*l* (e) (as applicable to 10: 600*l* (c)); 34: 430 (e) (as applicable to 34: 430 (c)).	

In subsections (a) and (b), the words "Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section" are omitted as covered by section 46 of the bill and section 14 (g) of the source statute. The words "Unless retired or separated on or before the expiration of that period" are inserted for clarity. The words "becomes 62 [55] years of age" are substituted for the words "attains the age of sixty-two * * * or the age of fifty-five".

In subsection (c), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "not more than" are substituted for the words "a period not to exceed". The words "determination of his" are inserted for clarity. The words "he would otherwise be required to be separated under this section" are substituted for the words "separation would otherwise be required". The words "proper", "which is required", "possible", and "a period of" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 struck out "male" preceding "warrant officer".

Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90–130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89–718 substituted "8301" for "47a" wherever appearing.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Section 46 of act Aug. 10, 1956, provided that:

"(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949 (37 U. S. C. 311) [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, classified to former section 311 of Title 37] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later than that date which is 60 days after the date on which he attains the age of 64.

"(b) The separation of any person who, on November 1, 1954, was a female permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 55 has completed less than 20 years of active service that could be credited to her under section 511 of the Career Compensation Act of 1949 (37 U. S. C. 311) [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, classified to former section 311 of Title 37] may be deferred by the Secretary concerned until she completes 20 years of that service, but not later than that date which is 60 days after the date on which she attains the age of 60."

CROSS REFERENCES

Coast Guard warrant officers 62 years of age on retired list, prohibition against recall to active duty in time of peace, see section 332 of Title 14, Coast Guard.

Retirement of warrant officers for age, see section 1263 of this title.

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Selection board recommendation for termination under this section, see section 560 of this title.

Suspension during war or emergency, see sections 565, 599 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 438.

§ 1165. Regular warrant officers: separation during three-year probationary period.

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is not entitled to severance pay, but may be enlisted under section 515 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 90.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1165	10: 600d (less last 36 words of last sentence); 34: 135d (less last 36 words of last sentence).	May 29, 1954, ch. 249, § 6 (less last 36 words of last sentence), 68 Stat. 159.

The words "in his discretion" are omitted as surplusage. The last 10 words of the last sentence are inserted for clarity.

CROSS REFERENCES

Coast Guard warrant officers, appointment, see sections 213 and 214 of Title 14, Coast Guard.

Elimination for unfitness or unsatisfactory performance, see sections 560, 1166 of this title.

Promotion, see section 557 of this title.

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

Women officers, termination of appointments in Regular Navy and Regular Marine Corps, see section 6393 of this title.

Women's Army Corps, Regular Army, termination of appointments as warrant officers, see section 3818 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 515, 560, 1166 of this title; title 14 section 438.

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 560 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall be separated with severance pay computed under section 1167(b) of this title. However, instead of being paid severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 90; Sept. 7, 1962, Pub. L. 87-649, § 6 (f)(3), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1166 (a)	10: 600m (less last 21 words of 3d sentence); 10: 600 (d) (as applicable to 10: 600m); 34: 430a (less last 21 words of 3d sentence); 34: 135 (d) (as applicable to 34: 430a).	May 29, 1954, ch. 249, §§ 2 (d) (as applicable to § 15), 14 (e) (as applicable to § 15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166 (b)	10: 600*l* (e) (as applicable to 10: 600m); 34: 430 (e) (as applicable to 34: 430a).	

In subsection (a), the words "he shall be separated" are substituted for the words "his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated" and "his appointment shall be terminated". The words "at least three" are substituted for the words "more than three" for clarity.

In subsection (b), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "not more than" are substituted for the words "a period not to exceed". The words "he would otherwise be required to be retired or separated under this section" are substituted for the words "retirement * * * would otherwise be required". The words "determination of his" are inserted for clarity. The words "which is required", "possible", "proper", and "a period of" are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in subsec. (a), is set out as a note under section 564 of this title.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 515, 560, 1167 of this title; title 14 section 438.

§ 1167. Regular warrant officers: severance pay.

(a) The severance pay of a permanent regular warrant officer who is separated under section 564 (a)(3) of this title is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), but not more than 12, by twice the monthly basic pay to which he is entitled at the time of separation.

(b) The severance pay of a permanent regular warrant officer who is separated under section 1166 of this title is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), but not more than 12, by the monthly basic pay to which he is entitled at the time of separation.

(c) For the purposes of this section, a part of the year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(d) The acceptance of severance pay under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received severance pay under this section, until the total deductions equal the amount of the severance pay. However, no person is entitled to severance pay under this section in an amount that is more than $15,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87–509, § 4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1167 (a)	10: 600 (d) (as applicable to 10: 600n (a) (less (2), and less last sentence)); 100: 600n (a) (less (2), and less last sentence); 34: 135 (d) (as applicable to 34: 430b (a) (less (2), and less last sentence); 34: 430b (a) (less (2), and less last sentence).	May 29, 1954, ch. 249, §§ 2 (d) (as applicable to § 16), 16, 68 Stat. 157, 164.
1167 (b)	10: 600 (d) (as applicable to 10: 600n (a) (2)); 10: 600n (a) (2); 34: 135 (d) (as applicable to 34: 430b (a) (2)); 34: 430b (a) (2).	
1167 (c)	10: 600n (a) (last sentence); 10: 600 (d) (as applicable to 10: 600n (a) (last sentence)); 34: 430b (a) (last sentence); 34: 135 (d) (as applicable to 34: 430b (a) (last sentence)).	
1167 (d)	10: 600n (b); 34: 430b (b).	

In subsections (a) and (b), the words "by multiplying his years of active service * * * but not more than 12, by * * * monthly basic pay to which he is entitled at the time of separation" are substituted for the words "on the basis of * * * months' basic pay at the time of separation for each year of active service, but not to exceed a total of * * * years [year's] basic pay".

Subsection (c) is substituted for 10: 600n (a) (last sentence). The words "in computing the number of years of active service upon which to base his severance pay" are omitted as surplusage. The words "and a part of a year that is less than six months is disregarded" are inserted for clarity and to conform with section 1401, footnote 3.

In subsection (d), the words "based on the service for which he has received severance pay" are substituted for the words "attributable to the active service in respect to which severance payment shall have been made".

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in subsecs. (a) and (b), is set out as a note under section 564 of this title.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

Subsec. (b). Pub. L. 87–649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

Subsec. (d). Pub. L. 87–509 limited the maximum amount of severance pay to not more than $15,000.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 1166 of this title; title 14 section 438.

§ 1168. Discharge or release from active duty: limitations.

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a Veterans' Administration facility for necessary hospital care. (Added Pub. L. 87–651, title I, § 106(b), Sept. 7, 1962, 76 Stat. 508.)

§ 1169. Regular enlisted members: limitations on discharge.

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary concerned;

(2) by sentence of a general or special court martial; or

(3) as otherwise provided by law.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1170. Regular enlisted members: minority discharge.

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

(1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and

(2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1171. Regular enlisted members: early discharge.

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within three months before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would

have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served. (Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided: By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code [this section], effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

§ 1172. Enlisted members: during war or emergency; discharge.

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law. (Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

Chapter 61.—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.
1201. Regulars and members on active duty for more than 30 days: retirement.
1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
1203. Regulars and members on active duty for more than 30 days: separation.
1204. Members on active duty for 30 days or less; disability from injury: retirement.
1205. Members on active duty for 30 days or less; disability from injury: temporary disability retired list.
1206. Members on active duty for 30 days or less; disability from injury: separation.
1207. Disability from intentional misconduct or willful neglect: separation.
1208. Computation of service.
1209. Transfer to inactive status list instead of separation.
1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
1211. Members on temporary disability retired list: return to active duty; promotion.
1212. Disability severance pay.
1213. Effect of separation on benefits and claims.
1214. Right to full and fair hearing.
1215. Members other than Regulars: applicability of laws
1216. Secretaries: powers, functions, and duties.
1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to.
1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
1219. Statement of origin of disease or injury: limitations.
1221. Effective date of retirement or placement of name on temporary disability retired list.

AMENDMENTS

1962—Pub. L. 87–651, title I, § 107(e), Sept. 7, 1962, 76 Stat. 509, substituted "Discharge or release from active duty: claims for compensation, pension, or hospitalization" for "Explanation of rights before discharge" in item 1218, and "Statement of origin of disease or injury: limitations" for "Statement against interest void" in item 1219, and eliminated item 1220.

1958—Pub. L. 85–861, § 1(28)(C), Sept. 2, 1958, 72 Stat. 1451, added item 1221.

1957—Pub. L. 85–56, title XXII, § 2201(31)(B), June 17, 1957, 71 Stat. 161, eff. Jan. 1, 1958, added items 1218—1220.

CROSS REFERENCES

Recomputation of retired or retainer pay to reflect later active duty, see section 1402 of this title.

Uniform date for retirement of Federal personnel, see section 8301 of Title 5, Government Organization and Employees.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1402, 1431 of this title; title 33 section 857a; title 37 sections 404, 406; title 42 sections 212, 213a.

§ 1201. Regulars and members on active duty for more than 30 days: retirement.

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty; or

(iii) the disability was incurred in line of duty in time of war or national emergency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Sept. 2, 1958, Pub. L. 85–861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub. L. 87–651, title I, § 107(a), 76 Stat. 508.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1201	37: 272 (a) (less clause (5), and less 2d proviso); 37: 272 (b) (less clause (5), and less 2d and last provisos); 37: 272 (f) (less applicability to 37: 272 (c) and (e)).	Oct. 12, 1949, ch. 681, § 402 (a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to § 402 (c) and (e)), 63 Stat. 816, 817, 820.

The words "any other member" are substituted for the words "a member of a Reserve component", in 37: 272 (a) and (b), since the words "Reserve component" are defined by section 102 (k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U. S. C. 231 (k)), to include members appointed, enlisted, or inducted without component. The words "active duty (other than for training)" are substituted for the words "extended active duty" for clarity and to reflect the opinion of the Comptroller General in 31 Comp. Gen. 95, 99. The words "if the Secretary also determines that" are substituted for the words "That if condition (5) above is met by a finding that", in 37: 272 (a) and (b). The words "of such member", "upon retirement", and "to receive", in 37: 272 (a), are omitted as surplusage.

In clause (1) the words "based upon accepted medical principles" are inserted as a necessary implication of the rule stated in 37: 272 (a) (5) and (b) (5).

Clause (3) (A) is substituted for 37: 272 (f) (less applicability to 37: 272 (c) and (e)). 37: 272 (f) is omitted as surplusage.

In clause (3) (B), the words "at the time of the determination" are substituted for the word "current", in 37: 272 (a) and (b).

Clause (3) (B) (iii) is substituted for 37: 272 (a) (last proviso).

AMENDMENTS

1962—Pub. L. 87-651 substituted "training under section 270(b) of this title)" for "training) under section 270(b) of this title."

1958—Pub. L. 85-861 inserted "under section 270(b) of this title" following "(other than for training)".

PUBLIC HEALTH SERVICE

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Grade on retirement for physical disability, see section 1372 of this title.

Half rating to disabled naval enlisted personnel serving twenty years, see section 6159 of this title.

Members on temporary disability retired list, retirement under this section, see section 1210 of this title.

Pension to persons serving ten years, see section 6160 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1203, 1204, 1205, 1206, 1210, 1372, 1401, 1402 of this title; title 42 section 213a.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 92; Sept. 2, 1958, Pub. L. 85-861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub. L. 87-651, title I, § 107(a), 76 Stat. 508.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1202	37: 272 (a) (clause (5)); 37: 272 (b) (clause (5)).	Oct. 12, 1949, ch. 681, § 402 (a) (clause (5)), (b) (clause (5)), 63 Stat. 816, 817.

The first 82 words are inserted for clarity and are based on the rule stated in section 1201 of this title, which restates that part of 37: 272 (a), (b), and (f) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37: 272 (f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

AMENDMENTS

1962—Pub. L. 87-651 substituted "training under section 270(b) of this title)" for "training) under section 270(b) of this title."

1958—Pub. L. 85-861 inserted "under section 270 (b) of this title" following "(other than for training)".

CROSS REFERENCES

Grade on being placed on temporary disability retired list, see section 1372 of this title.

Temporary disability retired lists, see section 1376 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1204, 1205, 1206, 1372, 1376, 1401, 1402 of this title; title 42 section 213a.

§ 1203. Regulars and members on active duty for more than 30 days: separation.

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing actvie duty, or (ii) incurred in line of duty in time of war or national emergency;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this tilte; or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated. (Aug. 10, 1956, ch. 1041, 70A Stat. 92; Sept. 2, 1958, Pub. L. 85-861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub. L. 87-651, title I, § 107(a), 76 Stat. 508.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1203	37: 272 (a) (2d proviso); 37: 272 (b) (2d and last provisos).	Oct. 12, 1949, ch. 681, § 402 (a) (2d proviso), (b) (2d and last provisos), 63 Stat. 816, 817.

To state fully in the revised section the rule contained in 37: 272 (a) (2d proviso) and 272 (b) (2d and last provisos), the provisions of 37: 272 (a) (less clause (5), and less 1st proviso), 272 (b) (less clause (5), and less 1st proviso) and 272 (f) (less applicability to 37: 272 (c) and (e)), also contained in section 1201 of this title, are repeated. The words "the member may be separated" are substituted for the words "the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability," in 37: 272 (a) (2d proviso) and 37: 272 (b) (2d proviso).

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1201 or 1202 of this title.

Clause (4) (A) is substituted for 37: 272 (a) (1st 20 words of 2d proviso).

Clause (4) (B) is substituted for 37: 272 (b) (1st 20 words of 2d proviso).

Clause (4) (C) is substituted for 37: 272 (b) (last proviso).

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

AMENDMENTS

1962—Pub. L. 87-651 substituted "training under section 270(b) of this title)" for "training) under section 270(b) of this title."

1958—Pub. L. 85-861 inserted "under section 270 (b) of this title" following "(other than for training)".

CROSS REFERENCES

Members on temporary disability retired list, separation under this section, see section 1210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1205, 1206, 1210, 1212 of this title; title 42 section 213a.

§ 1204. Members on active duty for 30 days or less; disability from injury: retirement.

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is the proximate result of performing active duty or inactive-duty training;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 93)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1204	37: 271 (a); 37: 272 (c) (less clause (5), and less last proviso); 37: 272 (f) (as applicable to 37: 272 (c)).	Oct. 12, 1949, ch. 681, §§ 401 (a), 402 (c) (less clause (5), and less last proviso), 402 (f) (as applicable to § 402 (c)), 63 Stat. 816, 817, 820.

37:271 (a) is omitted as surplusage. As it relates to retirement it is only a statement of the general coverage of the retirement sections of this chapter. As it relates to separation it is only a statement of the general coverage of the separation sections of this chapter. The words "a member * * * not covered by section 1201, 1202, or 1203 of this title" are substituted for the words "a member * * * other than those members covered in subsections (a) and (b) of this section". The words "if the Secretary also determines that" are substituted for the words "That if condition (5) above is met by a finding that", in 37: 272 (c). The words "of such member", "upon retirement", and "to receive", in 37: 272 (c), are omitted as surplusage.

In clause (1), the words "based upon accepted medical principles" are inserted as a necessary implication of the rule stated in 37: 272 (c) (5).

In clause (2), the word "disability" is substituted for the word "injury" to make clear, in view of 37: 278, that members on active duty for 30 days or less are on the same footing as those on active duty for a longer period, with respect to the effect of misconduct or neglect.

In clause (3), the words "and was not incurred during a period of unauthorized absence" are inserted to conform to other revised sections of this chapter and because of section 1207 of this title. The words "full-time training duty, other full-time duty" are omitted as covered by the words "active duty".

Clause (4) (A) is substituted for 37: 272 (f) (as applicable to 37: 272 (c)). 37: 272 (f) (proviso) is omitted as surplusage.

In clause (4) (B), the words "at the time of the determination" are substituted for the word "current", in 37: 272 (c).

CROSS REFERENCES

Grade on retirement for physical disability, see section 1372 of this title.

Members on temporary disability retired list, retirement under this section, see section 1210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1210, 1372, 1401, 1402 of this title.

§ 1205. Members on active duty for 30 days or less; disability from injury: temporary disability retired list.

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1205	37: 272 (c) (clause (5)).	Oct. 12, 1949, ch. 681, § 402 (c) (clause (5)), 63 Stat. 818.

The first 52 words are inserted for clarity and are based on the rule stated in section 1204 of this title, which restates that part of 37: 272 (c) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37: 272 (f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

CROSS REFERENCES

Grade on being placed on temporary disability retired list, see section 1372 of this title.

Temporary disability retired lists, see section 1376 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1372, 1376, 1401, 1402 of this title.

§ 1206. Members on active duty for 30 days or less; disability from injury: separation.

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and was the proximate result of performing active duty or inactive-duty training.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated. (Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1206	37: 272 (c) (last proviso).	Oct. 12, 1949, ch. 681, § 402 (c) (last proviso), 63 Stat. 818.

To state fully in the revised section the rule contained in 37: 272 (c) (last proviso), the provisions of 37: 272 (c) (less clause (5), and less 1st proviso), and 272 (f) (as applicable to 272 (c)), also contained in section 1204 of this title, are repeated. The words "the member may be separated" are substituted for the words "the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability".

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1204 or 1205 of this title.

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

CROSS REFERENCES

Members on temporary disability retired list, separation under this section, see section 1210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1210, 1212 of this title.

§ 1207. Disability from intentional misconduct or willful neglect: separation.

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1207	37: 278.	Oct. 12, 1949, ch. 681, § 408, 63 Stat. 823.

The words "Each member * * * who" are substituted for the words "When a member * * * such member". The words "is determined to have" are omitted as surplusage.

§ 1208. Computation of service.

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation or mandatory elimination from the active list.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse after February 2, 1901, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the Environmental Science Services Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of clause (2)(B) of this subsection, active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 1333 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 2, 1966, Pub. L. 89-718, § 8, 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1208 (a)	37: 282 (less clauses (2) and (3), less applicability to persons referred to in 37: 281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	Oct. 12, 1949, ch. 681, § 412 (less clause (3), less applicability to persons referred to in § 411, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps), 63 Stat. 824.
1208 (b)	37: 282 (clause (2), less applicability to persons referred to in 37: 281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	

In subsection (a), the words "shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater" are substituted for the words "shall be interpreted to mean".

In subsection (a) (1), the words "he is considered to have" are substituted for the words "such member, former member, or person has or is deemed to have pursuant to law".

In subsection (a) (2) (A), the words "his active service" are substituted for the words "while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in other provisions of law" because of the definitions of "active service" and "active duty" in sections 101 (24) and 101 (22) of this title.

In subsection (a) (2) (C), the references to 10: 22—23, 24—26, and 30—36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 32: 70 is omitted as repealed by section 16 of the act of June 15, 1933, ch. 87, 48 Stat. 159. The reference to 10: 23a is omitted as executed. The references to 10: 38 and 32: 66 and 172—175 are omitted as covered by the words "active service". The references to 32: 144—147, 171, and 176 are omitted, since they deal with pay and do not authorize duty or training. The reference to section 502 of title 32, not contained in 37: 282, is inserted, since section 92 of the National Defense Act, as amended (32: 62) is referred to in section 412 of the Career Compensation Act of 1949 (37: 282).

In subsection (b), the words "any other member" are substituted for the words "members of the reserve components", since the words "reserve components" are defined by section 102 (k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U. S. C. 231 (k)) to include members appointed, enlisted, or inducted without component.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey" in clause (2) (B) and added provision that, for purposes of clause (2) (B) of subsec. (a), active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ——, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Sciences Administration to such newly created National Oceanic and Atmospheric Administraton. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

ADDITIONAL SERVICE CREDITABLE TO CERTAIN REGULARS

Section 39 of act Aug. 10, 1956, provided that:

"In addition to service with which he may be credited under section 1208 (a) (2) of title 10, United States Code [subsec. (a) (2) of this section], a member of a regular component of the armed forces shall be credited, for the purposes of chapter 61 of title 10, United States Code [this chapter], with all service as—

"(1) a cadet at the United States Military Academy, if appointed before August 24, 1912;

"(2) a midshipman at the United States Naval Academy, if appointed before March 4, 1913;

"(3) an Army field clerk; and

"(4) a field clerk, Army Quartermaster Corps."

OFFICERS OF THE PUBLIC HEALTH SERVICE

Applicability of subsec. (a) (2) of this section to officers of the Reserve Corps and to officers of the Regular Corps of the Public Health Service, see section 212 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1203, 1204, 1206, 1210, 1212, 1401, 1402 of this title; title 42 section 212.

§ 1209. Transfer to inactive status list instead of separation.

Any member of the armed forces who has at least 20 years of service computed under section 1332 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 1335 of this title and, if otherwise eligible, to receive retired pay under chapter 71 of this title upon becoming 60 years of age. (Aug. 10, 1956, ch. 1041, 70A Stat. 95.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1209	37: 272 (g).	Oct. 12, 1949, ch. 681, § 402 (g), 63 Stat. 820.

The words "Notwithstanding the foregoing provisions of this section", "satisfactory Federal", and "and receiving disability severance pay" are omitted as surplusage. The words "at the time of the determination" are substituted for the word "current". The word "otherwise" is substituted for the words "in all other respects".

CROSS REFERENCES

Members on active duty for 30 days or less, see section 1206 of this title.

Regulars and members on active duty for more than 30 days, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1206, 1211 of this title.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status.

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, and rating, the Secretary shall treat him as provided in section 1211 of this title.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connnection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list. (Aug. 10, 1956, ch. 1041, 70A Stat. 95.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1210 (a)	37: 272 (e) (less last sentence); 37: 274 (a); 37: 274 (b) (less 1st sentence).	Oct. 12, 1949, ch. 681, §§ 402 (d) (30th through 55th words), (e) (less 1st proviso of last sentence), (f) (as applicable to § 402 (e)), 404, 63 Stat. 818–821.
1210 (b)	37: 272 (e) (1st 37 words of last proviso of last sentence).	
1210 (c)	37: 272 (e) (last sentence, less provisos and less clause (2)); 37: 272 (e) (38th through 45th words of last proviso of last sentence).	
1210 (d)	37: 272 (f) (as applicable to 37: 272 (e)).	
1210 (e)	37: 272 (e) (clause (2) of last sentence); 37: 272 (e) (46th word of last proviso of last sentence).	
1210 (f)	37: 272 (e) (47th through 56th words of last proviso of last sentence).	
1210 (g)	37: 274 (b) (1st sentence).	
1210 (h)	37: 272 (d) (30th through 55th words).	

In subsection (a), the second sentence is substituted for 37: 274 (a). The word "resumed" is substituted for the words "reinstated at a later date", in 37: 274 (b).

In subsection (b), the last sentence is inserted for clarity to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/8438, 30 Dec. 1953) and an opinion of the Judge Advocate General of the Navy (JAG: III: 7: WBM: bg. 7 Jan. 1954).

In subsection (c), the words "or upon a final determination under subsection (b)" are substituted for the words "or upon the determination of a period of five years from the date of temporary disability retirement", in 37: 272 (e). The words "at the time of the determination" are substituted for the word "current", in 37: 272 (e). The words "and he shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section" are omitted as covered by sections 1201 and 1204 of this title. Reference to specific sections on permanent retirement are substituted for the word "permanently", before the word "retired", in 37: 272 (e).

In subsection (d), 37: 272 (f) (proviso) is omitted as surplusage.

In subsection (e), the words "and if he has less than 20 years of service computed under section 1208 of this title" are inserted to distinguish the separation requirement under this section from retirement requirements under subsection (d). 37: 272 (e) (last 19 words of clause (2) of last sentence) is omitted as covered by sections 1203 and 1206 of this title. The words "at the time of determination" are substituted for the word "current".

In subsection (f), the first 39 words are inserted for clarity.

In subsection (g), the words "members in his retired grade traveling in connection with temporary duty" are substituted for the words "the rank, grade, or rating in which retired for temporary duty travel performed". The words "for travel performed" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1211 of this title.

§ 1211. Members on temporary disability retired list: return to active duty; promotion.

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210 (f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active list of his regular component in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210 (f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W–1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W–2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a) (1) or (2) or subsection (b) (1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b) (4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a

member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list. **(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Sept. 7, 1962, Pub. L. 87-651, title I, § 107(b), 76 Stat. 508.)**

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1211 (a)	37: 275 (a); 37: 275 (b); 37: 275 (c) (1st sentence); 37: 276 (a) (less clauses (1)—(3)); 37: 276 (a) (1) (1st 7 words); 37: 276 (a) (2) (1st 10 words); 37: 276 (a) (3) (1st 8 words); 37: 277 (a).	Oct. 12, 1949, ch. 681, §§ 405, 406, 407, 63 Stat. 821.
1211 (b)	37: 275 (a); 37: 275 (b); 37: 275 (c) (1st sentence); 37: 276 (a) (less clauses (1)—(3)); 37: 276 (a) (1) (1st 7 words); 37: 276 (a) (2) (1st 10 words); 37: 276 (a) (3) (1st 8 words); 37: 277 (a).	
1211 (c)	37: 276 (a) (1) (less 1st 22 words); 37: 276 (a) (2) (11th through 18th words); 37: 276 (a) (3) (9th and 10th words); 37: 276 (b).	
1211 (d)	37: 276 (a) (1) (8th through 22d words); 37: 276 (a) (2) (less 1st 18 words); 37: 276 (a) (3) (less 1st 10 words).	
1211 (e)	37: 275 (c) (2d sentence); 37: 277 (less (a)).	
1211 (f)	37: 275 (c) (last sentence).	

In subsections (a) and (b), the words "under section 1210 (f) of this title" are substituted for the words "If, as a result of a periodic physical examination", in 37: 275 (a) and (b), and 276 (a), and the words "and who are subsequently found to be physically fit", in 37: 277 (a). The words "subject to the provisions of section 277 of this title", in 37: 275 (a), are omitted as surplusage.

In subsections (a) (2)—(6) and (b) (2)—(6), the appointment or enlistment is restricted to those already in an enlisted, warrant, or commissioned status, as the case may be, held by the member before placement of his name on the temporary disability retired list, since 37: 277 (last sentence) indicates that appointment in the next higher grade for regular warrant officer is restricted to those warrant grades to which the President alone may appoint him. Similarly 37: 275 (last 10 words) indicates that an enlisted member may only be reenlisted.

In subsection (a) (2) reference to the President, in 37: 277 (a), is omitted as inapplicable to the appointment of warrant officers of the Army and the Air Force.

Subsection (a) (5) is substituted for 37: 275 (b) (proviso) (as applicable to Army and Air Force).

Subsection (a) (6) is inserted, since the words "reserve component" are defined by section 102 (k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (b) (2), the words "by and with the advice and consent of the Senate" are added to make it clear that all appointments to the grade of commissioned warrant officer in the Navy, Marine Corps, and Coast Guard require Senate confirmation. Although these words do not appear in section 405 of the Career Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d) (3) is made applicable to members without component status, since the words "reserve component" are defined in section 102 (k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words "rank" and "rating" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (d). Pub. L. 87-651 substituted "subsection (b) (1) or (2)" for "subsection (b) (1), (2), or (3)" in cl. (1), and "subsection (b)(4)" for "subsection (b)(5)" in cl. (2).

CROSS REFERENCES

Strength in grade; temporary increases, see sections 3212 and 8212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1210, 3212, 8212 of this title.

§ 1212. Disability severance pay.

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on

the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Veterans' Administration. However, no deduction may be made from any death compensation to which his dependents become entitled after his death. (Aug. 10, 1956, ch. 1041, 70A Stat. 98.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1212 (a)	37: 273 (less 1st and last provisos).	Oct. 12, 1949, ch. 681, § 403, 63 Stat. 820.
1212 (b)	37: 273 (1st proviso).	
1212 (c)	37: 273 (last proviso).	

In subsection (a), the words "Upon separation" are inserted for clarity. The words "his years of service * * * computed under section 1208 of this title" are substituted for the words "a number of years equal to the number of years of active service to which such member is entitled under the provisions of section 282 of this title". The words "but not more than 12" are substituted for the words "but not to exceed a total of two years' basic pay", to simplify the necessary calculation. The substituted words produce the same result. The word "rating" is omitted as covered by the words "grade" and "rank".

In clause (2) (A)–(D), the words "Twice the amount of monthly" are substituted for the words "An amount equal to two months' ". The words "if his name was not carried on that list" are substituted for the words "whichever is earlier", since the member might be separated without ever being carried on the list. The word "rating" is omitted as surplusage.

In clause (2) (B), the words "the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated" are substituted for the words "the Secretary concerned" for clarity.

In clause (2) (C), the words "regular or reserve" are inserted, since they are the only "permanent" grades.

Clause (2) (D) is based on that part of the third proviso of 37: 273 relating to promotions other than regular or reserve.

In subsection (b), the words "and a part of a year that is less than six months is disregarded" are inserted to reflect the legislative history of the rule (see Senate Hearings on H. R. 5007, 81st Cong., page 313). The words "for himself or his dependents" are omitted as surplusage.

CROSS REFERENCES

Half rating to disabled naval enlisted personnel serving twenty years, see section 6159 of this title.

Pension to persons serving ten years, see section 6160 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1206 of this title; title 38 section 361.

§ 1213. Effect of separation on benefits and claims.

Unless a person who has received disability severance pay again becomes a member of an armed force, the Environmental Science Services Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law. (Aug. 10, 1956, ch. 1041, 70A Stat. 99; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1213	37: 280.	Oct. 12, 1949, ch. 681, § 410, 63 Stat. 823.

The words "a person who has received disability severance pay" are substituted for the words "Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay". The words "any payment * * * for" are substituted for the words "for any monetary obligation provided under any provision * * * on account of". The words "this section does not prohibit" are substituted for the words "shall not operate to bar". The words "the payment of money to * * * if the money is due him" are substituted for the words "from receiving or the service concerned from paying any moneys due and payable". The words "valid", "processed", and "pursuant to any provisions of law" are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ——, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 1214. Right to full and fair hearing.

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it. (Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1214	37: 283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, § 413 (less 1st 17 words), 63 Stat. 825.

The words "including regulations" are omitted as covered by section 1216 (a) of this title.

§ 1215. Members other than Regulars: applicability of laws.

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability. (Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1215	37: 272 (i).	Oct. 12, 1949, ch. 681, § 402 (i), 63 Stat. 820.

The words "is retired, or to whom retired pay is granted" are substituted for the words "heretofore or hereafter retired or granted retirement pay". The words "any other member of the armed forces" are substituted for the words "all members of the reserve components", since the words "reserve components" are defined by section 102 (k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U. S. C. 231 (k), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties.

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) The Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Administrator of Veterans' Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency. (Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1216 (a)	37: 283 (1st 17 words).	Oct. 12, 1949, ch. 681, §§ 413 (1st 17 words), 414, 63 Stat. 824, 825.
1216 (b)	37: 284 (a).	
1216 (c)	37: 284 (less (a)).	

In subsection (b), the words "of any member for reappointment, reenlistment" are inserted for clarity, since they are implied in the words "reentry into active service".

In subsections (b) and (c), the words "under this chapter" are inserted for clarity.

In subsection (c), the words "as prescribed by the President" are substituted for the words "under regulations promulgated by the President".

EX. ORD. NO. 10122. REGULATIONS GOVERNING DISABILITY PAY, HOSPITALIZATION AND RE-EXAMINATION

Ex. Ord. No. 10122, Apr. 14, 1950, 15 F. R. 2173, as amended by Ex. Ord. 10400, Sept. 27, 1952, 17 F.R. 8648, provided:

By virtue of and pursuant to the authority vested in me by section 414 (b) of the Career Compensation Act of 1949, approved October 12, 1949 (Public Law 351, 81st Congress [former section 284(b) of Title 37, now covered by subsecs. (b) and (c) of this section], and as President of the United States and Commander in Chief of the armed forces of the United States, I hereby prescribe the following regulations governing payment of disability retirement pay, hospitalization, and re-examination of members and former members of the uniformed services:

Section 1. The terms "uniformed services" and "Secretary" as used in these regulations shall have the meaning prescribed therefor by subsections (a) and (f), respectively, of section 102 of the Career Compensation Act of 1949 [section 101 (3) and (5) of Title 37, Pay and Allowances of the Uniformed Services].

Sec. 2. (a) Effective as of October 1, 1949, all duties, powers, and functions incident to the payment of disability retirement pay of members or former members of the uniformed services retired for physical disability or receiving disability retirement pay shall, except as provided in subsection (b) of this section, be vested in the Secretary concerned.

(b) Effective July 1, 1950, all duties, powers, and functions exercised by the Veterans' Administration pursuant to Executive Order No. 8099 of April 28, 1939, as amended by Executive Order No. 8461 of June 28, 1940, relative to the administration of the retirement-pay provisions of section 1 of the act of August 30, 1935, as amended by section 5 of the act of April 3, 1939, 53 Stat. 557 [former section 369a of this title, see section 671 et seq. of this title], and amendments thereof, shall, as to cases within their respective jurisdictions, be vested in the Secretary of the Army and the Secretary of the Air Force, and thereafter the Veterans' Administration shall not be charged in any case with any further responsibility in the administration of the said retirement-pay provisions. The said Executive Order No. 8099 as amended by the said Executive Order No. 8461 is hereby amended accordingly.

Sec. 3. All duties, powers, and functions incident to the hospitalization, except as provided in section 5 of this order, and re-examination of members of the uniformed services placed on the temporary disability retired list under the provisions of the Career Compensation Act of 1949 shall be vested in the Secretary concerned.

Sec. 4. Effective May 1, 1950, all duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services permanently retired for physical disability or receiving disability retirement pay shall, except as provided in section 5 of this order, be vested in the Secretary concerned: *Provided,* that all the duties, powers, and functions incident to hospitalization which such members or former members are entitled to and elect to receive in facilities of the Veterans' Administration, other than hospitals under the jurisdiction of the uniformed services, shall be vested in the Administrator of Veterans' Affairs.

Sec. 5. All duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services placed on the temporary disability retired list or permanently retired for physical disability or receiving disability retirement pay who require hospitalization for chronic diseases shall be vested in the Administrator of Veterans' Affairs: *Provided,* that all duties, powers, and functions incident to the hospitalization of such members or former members who are or have been admitted to hospitals under the jurisdiction of the uniformed services before October 15, 1952, may be exercised by the Secretary concerned until April 15, 1953: *Provided further,* that all the duties, powers, and functions incident to hospitalization for such members or former members who have completed twenty or more years of active duty, as defined in section 412 of the

Career Compensation Act of 1949 [former section 282 of Title 37, now covered by section 1208 of this title], who require hospitalization for chronic diseases other than blindness, neuropsychiatric or psychiatric disorders and tuberculosis, who are acceptable medically to the Commanding Officer of a service hospital, and who elect not to receive hospitalization in Veterans Administration facilities shall be vested in the Secretary concerned: *And provided further,* that for the purpose of this order, the term 'chronic diseases' shall be construed to include arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative diseases of the nervous system, severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, and such other diseases as may be so defined jointly by the Secretary of Defense, the Administrator of Veterans' Affairs, and the Federal Security Administrator and so described in appropriate regulations of the respective departments and agencies concerned. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to the medical care of certain personnel of the Coast Guard, Coast and Geodetic Survey, Public Health Service, and the former Lighthouse Service, is hereby amended to the extent necessary to conform to the provisions of this section.

Sec. 6. Except as provided in section 5 hereof with respect to hospitalization for chronic diseases, nothing in this order shall be construed to affect the duties, powers, and functions of the Public Health Service with respect to hospitalization and medical examination of members and former members of the Coast Guard and the Coast and Geodetic Survey under the Public Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

Sec. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Administrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled "An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War" (45 Stat. 735, as amended) [former section 581 of Title 38], or by or pursuant to the act of September 26, 1941, entitled "An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty" (55 Stat. 733) [former section 456a of this title].

CROSS REFERENCES

Review of decisions of retiring boards and similar boards, see section 1554 of this title.

§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to.

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 100; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (7), 72 Stat. 1564.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1217	No source.	No source.

The revised section is inserted to reflect the limited definition of the word "member" in section 102 (b) of the Career Compensation Act of 1949 (37 U. S. C. 231 (b)).

AMENDMENTS

1958—Pub. L. 85-861 eliminated provisions which made chapter inapplicable to aviation cadets.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Veterans' Administration, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a Veterans' Administration facility for necessary hospital care. (Added Pub. L. 85-56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 160, and amended Pub. L. 87-651, title I, § 107(c), Sept. 7, 1962, 76 Stat. 508.)

AMENDMENTS

1962—Pub. L. 87-651 amended section generally, and among other changes, substituted "Discharge or release from active duty: claims for compensation, pension, or hospitalization" for "Explanation of rights before discharge" in the catchline, and eliminated provisions which prohibited a person from being discharged or released from active duty until his certificate of discharge or release from active duty and his final pay (or a substantial portion of his final pay) are ready for delivery to him or to his next of kin or legal representative.

EFFECTIVE DATE

Section effective January 1, 1958, see section 2301 of Pub. L. 85-56, 71 Stat. 172.

§ 1219. Statement of origin of disease or injury: limitations.

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid. (Added Pub. L. 85-56, title XXII, § 2201 (31)(A), June 17, 1957, 71 Stat. 160, and amended Pub. L. 87-651, title I, § 107(c), Sept. 7, 1962, 76 Stat. 509.)

AMENDMENTS

1962—Pub. L. 87-651 substituted "Statement of origin of disease or injury: limitation" for "Statement against interest void" in the section catchline, and "A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid" for "No person in the Armed Forces may be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have. Any such statement against his own interest, whenever signed, is of no force and effect."

EFFECTIVE DATE

Section effective January 1, 1958, see section 2301 of Pub. L. 85-56, 71 Stat. 172.

§ 1220. Repealed. Pub. L. 87-651, title I, § 107(d), Sept. 7, 1962, 76 Stat. 509.

Section, Pub. L. 85-56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 160, related to location of accredited representatives at military installations, and is now covered by section 2679 of this title.

§ 1221. Effective date of retirement or placement of name on temporary disability retired list.

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section. (Added Pub. L. 85-861, § 1(28)(B), Sept. 2, 1958, 72 Stat. 1451, and amended Pub. L. 89-718, § 3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1221	5: 47a (b).	Aug. 2, 1956, ch. 876, 70 Stat. 933.

Clause (2) (A) is omitted as unnecessary since the revised section applies to the armed forces, and the revised section is made applicable to the other uniformed services by sections 3 and 4 of the act enacting this revised section. Clause (2) (B) is omitted as covered by section 101 (8) of this title and sections 3 and 4 of the act enacting this revised section.

AMENDMENTS

1966—Pub. L. 89-718 substituted "8301" for "47a".

Chapter 63.—RETIREMENT FOR AGE

Sec.
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

AMENDMENTS

1967—Pub. L. 90-130, § 1(6), Nov. 8, 1967, 81 Stat. 374, eliminated item 1255 which read: "Age 55: female regular warrant officers."

§ 1255. Repealed. Pub. L. 90-130, § 1(6), Nov. 8, 1967, 81 Stat. 374.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 100; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115, covered the retirement of female permanent regular warrant officers with 20 years of active service upon attaining age 55.

§ 1263. Age 62: warrant officers.

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 311 of title 37, and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section. (Aug. 10, 1956 ch. 1041, 70A Stat. 101; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90-130, § 1(6), 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1263 (a)	10: 600 (d) (as applicable to 10: 600*l* (b) (less (1)-(3))); 10: 600*l* (b) (less (1)-(3)); 10: 600r (c) (as applicable to 10: 600*l* (b) (less (1)—(3))); 34: 135 (d) (as applicable to 34: 430 (b) (less (1)—(3))); 34: 430 (b) (less (1)—(3)); 34: 430c (as applicable to 34: 430 (b) (less (1)—(3))).	May 29, 1954, ch. 249, §§ 2 (d) (as applicable to § 14 (b) (less (1)—(3))), 14 (b) (less (1)—(3)), 14 (e) (as applicable to (b) (less (1)—(3))), 21 (c) (as applicable to 14 (b) (less (1)—(3))), 68 Stat. 157, 162, 163, 168.
1263 (b)	10: 600*l* (e) (as applicable to 10: 600*l* (b) (less (1)—(3))); 34: 430 (e) (as applicable to 34: 430 (b) (less (1)—(3))).	

In subsection (a), the words "has at least" are substituted for the words "has attained". The words "has at least" are substituted for the words "having completed not less than". The words "on that date which" are omitted as surplusage. 10: 600*l* (b) (15 words before (1)) and 34: 430 (b) (15 words before (1)) are omitted as covered by section 1275 of this title.

In subsection (b), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "determination of his" are inserted for clarity. The words "not more than" are substituted for the words "a period not to exceed". The words "he would otherwise be required to retire under this section" are substituted for the words "retirement * * * would otherwise be required". The words "which is required", "possible", "proper", and "a period of" are omitted as surplusage.

REFERENCES IN TEXT

Section 311 of title 37, referred to in subsec. (a), was repealed by Pub. L. 87-649, § 14, Sept. 7, 1962, 76 Stat. 451.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130 struck out reference to section 1255 of this title.

1966—Subsec. (a). Pub. L. 89-718 substituted "8301" for "47a".

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title; title 14 sections 334, 438.

§ 1275. Computation of retired pay: law applicable.

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1275	No source.	No source.

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

Chapter 65.—RETIREMENT FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

AUTHORITY OF MILITARY DEPARTMENT SECRETARIES TO CONVENE BOARDS TO RECOMMEND DEFERMENT OF RETIREMENT OR SEPARATION OF NURSES

Secretaries authorized until July 1, 1972, to convene boards of officer to consider and recommend deferment of separation or retirement of officers of the Army Nurse Corps, officers of the Navy Nurse Corps, and Air Force nurses, as needs of the service require, see section 4(f) of Pub. L. 90–130, set out as a note under section 3069 of this title.

§ 1293. Twenty years or more: warrant officers.

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114). (Aug. 10, 1956, ch. 1041, 70A Stat. 101; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1293	10: 600 (d) (as applicable to 10: 600*l* (a)); 10: 600*l* (a); 34: 135 (d) (as applicable to 34: 430 (a)); 34: 430 (a).	May 29, 1954, ch. 249, §§ 2 (d) (as applicable to § 14 (a)), 14 (a), 68 Stat. 157, 162.

The words, "The Secretary concerned may * * * retire" are substituted for the words "may * * * and in the discretion of the Secretary, be retired". 10: 600*l* (a) (last 14 words) and 34: 430 (a) (last 14 words) are omitted as covered by section 1315 of this title.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in the text, is set out as a note under section 564 of this title.

AMENDMENTS

1962—Pub. L. 87–649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title; title 14 sections 334, 438.

§ 1305. Thirty years or more: regular warrant officers.

(a) A permanent regular warrant officer who has at least 30 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after he completes that service, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age. (Aug. 10, 1956, ch. 1041, 70A Stat. 101; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1305	10: 600 (d) (as applicable to 10: 600*l* (b) (2)); 10: 600*l* (b) (2) (last sentence); 10: 600r (c) (as applicable to 10:600*l* (b) (2)); 34: 135 (d) (as applicable to 34: 430 (b) (2)); 34: 430 (b) (2) (last sentence); 34: 430c (as applicable to 34: 430 (b) (2)).	May 29, 1954, ch. 249, §§ 2 (d) (as applicable to § 14 (b) (2)), 14 (b) (2), (e) (as applicable to (b) (2)), 21 (c) (as applicable to § 14 (b) (2)), 68 Stat. 157, 163, 168.
1305 (b)	10: 600*l* (e) (as applicable to 10: 600*l* (b) (2)); 34: 430 (e) (as applicable to 34: 430 (b) (2)).	
1305 (c)	10: 600*l* (b) (2) (less last sentence); 34: 430 (b) (2) (less last sentence).	

In subsection (a), the words "has at least" are substituted for the words "has completed". The words "and is not so continued on active service" and "on that date which" are omitted as surplusage. 10: 600*l* (b) (2) (last 16 words of last sentence) and 34: 430 (b) (2) (last 16 words of last sentence) are omitted as covered by section 1315 of this title.

In subsection (b), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "determination of his" are inserted for clarity. The words "not more than" are substituted for the words "a period not to exceed". The words "he would otherwise be required to retire under this section" are substituted for the words "retirement * * * would otherwise be required". The words "which is required", "possible", "proper", and "a period of" are omitted as surplusage.

In subsection (c), the words "the Secretary concerned may defer the retirement" are substituted for the words "in the discretion of the Secretary * * * be continued on active service". The words "but not later than" are substituted for the words "but not beyond that date which is".

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in subsec. (a), is set out as a note under section 564 of this title.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a".

1962—Subsec. (a). Pub. L. 87–649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Retirement of warrant officers for age, see section 1263 of this title.

Suspension during war or emergency, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1263, 1401 of this title; title 14 section 334.

§ 1315. Computation of retired pay: law applicable.

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1315	No source.	No source.

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

Chapter 67.—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
1331. Age and service requirements.
1332. Computation of years of service in determining entitlement to retired pay.
1333. Computation of years of service in computing retired pay.
1334. Time not creditable toward years of service.
1335. Inactive status list.
1336. Service credited for retired pay benefits not excluded for other benefits.
1337. Limitation on active duty.

CROSS REFERENCES

Regulations to carry out this chapter, authority of Secretary of the Navy to prescribe, see section 6034 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 676, 1406, 6034 of this title; title 5 section 8332; title 22 section 1092.

§ 1331. Age and service requirements.

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 1401 of this title, if—

(1) he is at least 60 years of age;

(2) he has performed at least 20 years of service computed under section 1332 of this title;

(3) he performed the last eight years of qualifying service while a member of any category named in section 1332 (a) (1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and

(4) he is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c) No person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 1332 (a) (1) of this title except a regular component, is eligible for retired pay under this chapter, unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947, or unless he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953.

(d) The Secretary concerned shall provide for notifying each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice must be sent, in writing, to the person concerned within one year after he has completed that service.

(e) Notwithstanding section 8301 of title 5, United States Code, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed. (Aug. 10, 1956, ch. 1041, 70A Stat. 102; Aug. 21, 1958, Pub. L. 85–704, 72 Stat. 702; Sept. 2, 1958, Pub. L. 85–861, § 3(a)(8), 72 Stat. 1564; Oct. 14, 1966, Pub. L. 89–652, § 1, 80 Stat. 902; Aug. 13, 1968, Pub. L. 90–485, § 2, 82 Stat. 754.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1331 (a)	10: 1036a (a) (less last proviso); 10: 1036d (1st sentence); 34: 440i (a) (less last proviso); 34: 440*l* (1st sentence).	June 29, 1948, ch. 708, §§ 302 (a), (d), 305 (1st sentence), 62 Stat. 1087–1089; July 12, 1952, ch. 698, 66 Stat. 590.
1331 (b)	10: 1036a (d); 34: 440i (d).	
1331 (c)	10: 1036a (a) (last proviso); 34: 440i (a) (last proviso).	

In subsection (a), the words "is entitled" are substituted for the words "shall * * * be granted". The words "in the status of a commissioned officer, warrant officer, flight officer, or enlisted person" and the references to reserve components are omitted as surplusage. Reference to the Army and the Air Force without component is inserted, since the words "reserve component", as used in 10: 1036a (a), include all members of the Army and the Air Force except members of the regular components thereof. The words "service, computed under section 1332 of this title" are substituted for the words "satisfactory Federal service" to make it clear that some service that is not normally covered by the latter term may be counted in determining rights to retired pay under this chapter. Section 311 of the source statute, which made title III of that act applicable to the Coast Guard, was expressly repealed by the act of August 4, 1949, ch. 393, § 20, 63 Stat. 565, the act which codified Title 14 of the United States Code. 14 U. S. C. 755 (e) provides for Coast Guard Reservists the same retirement benefits as those prescribed by law for the Naval Reserve, and, for this purpose, confers upon the Secretary of the Treasury the same authority as that conferred upon the Secretary of the Navy, when the Coast Guard is operating under the Treasury Department. Accordingly, the revised chapter is made expressly applicable to the Coast Guard.

In subsection (c), the words "the Army without component or other category covered by section 1332 (a) (1) of this title" are inserted, since the words "reserve component", as used in 10: 1036a (a), also cover members without component and members of the other special categories listed. The words "annual training duty, or attendance at a school designated as a service school by law or by the Secretary of the appropriate military department" are inserted since the words "active Federal service", as used in 10: 1036a (a), also cover the additional service listed. The words "active duty" are substituted for the words "active Federal service" for uniformity.

AMENDMENTS

1968—Subsec. (e). Pub. L. 90–485 added subsec. (e).

1966—Subsec. (d). Pub. L. 89–652 added subsec. (d).

1958—Subsec. (a) (3). Pub. L. 85–861 eliminated provisions which related to service as a member of the Army or the Air Force without component.

Subsec. (c). Pub. L. 85–704 made persons who performed active duty (other than for training) after June

26, 1950, and before July 28, 1953, eligible for retired pay under this chapter.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

ENTITLEMENT TO RETIREMENT PAY AFTER OCT. 14, 1966: CONCLUSIVENESS

Notification of completion of requisite years of service as conclusive for entitlement to retirement pay if made after Oct. 14, 1966, see section 3 of Pub. L. 89–652, set out as a note under section 1406 of this title.

CROSS REFERENCES

Computation of years of service, see section 1405 of this title.

Retention of Reserve officers with 18 or more years of service, see section 1006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1401, 1405, 1406, 4342, 6954, 9342 of this title.

§ 1332. Computation of years of service in determining entitlement to retired pay.

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 1331 of this title, his years of service are computed by adding—

(1) his years of service, before July 1, 1949, in—

(A) the armed forces;

(B) the federally recognized National Guard before June 15, 1933;

(C) a federally recognized status in the National Guard before June 15, 1933;

(D) the National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States;

(E) the Naval Reserve Force;

(F) the Naval Militia that conformed to the standards prescribed by the Secretary of the Navy;

(G) the National Naval Volunteers;

(H) the Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901;

(I) the Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072); and

(J) an active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist;

(2) each one-year period, after July 1, 1949, in which he has been credited with at least 50 points on the following basis—

(A) one point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications;

(B) one point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32; and

(C) points at the rate of 15 a year for membership in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by subsection (a)(1) except a regular component.

For the purpose of clauses (A), (B), and (C), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment;

(3) his years of active service in the Commissioned Corps of the Public Health Service during such time as the Commissioned Corps was a military service pursuant to declaration made by the President under section 216 of the Public Health Service Act (42 U.S.C. 217); and

(4) his years of active commissioned service in the Coast and Geodetic Survey during such time as he was transferred to the service and jurisdiction of a military department pursuant to section 16 of the Act of May 22, 1917 (33 U.S.C. 855).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(Aug. 10, 1956, ch. 1041, 70A Stat. 102; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(9), 72 Stat. 1565; Aug. 25, 1959, Pub. L. 86-197, § 1 (1)—(3), 73 Stat. 425; Oct. 8, 1964, Pub. L. 88-636, § 1, 78 Stat. 1034.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1332 (a)	10: 1036e (less (a)—(f)); 10: 1036a (b); 10: 1036a (c); 10: 1036e (a); 10: 1036e (a); 10: 1036e (b); 10: 1036e (c) (less applicability to determination of retired pay); 10: 1036e (d) (less applicability to determination of retired pay); 34: 440m (less (a)—(f)); 34: 440i (b); 34: 440i (c); 34: 440m (a); 34: 440m (b); 34: 440m (c) (less applicability to determination of retired pay); 34: 440m (d) (less applicability to determination of retired pay).	June 29, 1948, ch. 708, § 302 (b), (c), 62 Stat. 1089; Sept. 7, 1949, ch. 547, §§ 1, 2, 63 Stat. 693. June 29, 1948, ch. 708, § 306 (less (c) and (d), as applicable to determination of retired pay), 62 Stat. 1088.
1332 (b)	10: 1036e (e); 10: 1036e (f); 34: 440m (e); 34: 440m (f).	

Subsection (a) consolidates the provisions of 10: 1036a and 1036e (b)—(d), and 34: 440i and 440m (b)—(d), relating to service that may be counted in determining eligibility for retired pay under this chapter. 10: 1036e (a) and 34: 440m (a) are omitted as covered by the enumeration of the service that may be counted for the purposes of the revised section.

In subsection (a) (1) (A)—(F), the requirement that the service must have been satisfactory is omitted as executed, since all service before July 1, 1949, has been found to have been satisfactory by the Secretaries concerned.

In subsection (a) (1) (A), the words "the armed forces" are substituted for clauses (1), (2), (5)—(7), (9), (10), and (13)—(16), of 10: 1036e (c) and 34: 440m (c), and so much of clause (8) of 10: 1036e (c) and 34: 440m (c) as relates to the Naval Reserve and the Naval Reserve Force as constituted after February 28, 1925, since the service covered by those clauses when added to service in the regular components, comprises all service in the armed forces.

In subsection (a) (1) (B)—(C), the words "June 15" are inserted to reflect the exact date of the change in National Guard status made by section 5 of the act of June 15, 1933, ch. 87, 48 Stat. 155, which established the National Guard of the United States as a reserve component of the Army.

In subsection (a) (1) (D), 10: 1036e (c) (8) (last 25 words), 10: 1036e (c) (9) (last 22 words), 34: 440m (c) (8) (last 25 words), and 34: 440m (c) (9) (last 22 words) are omitted as covered by subsection (b) (5).

In subsection (a) (2) (A), the words "service that conformed to required standards and qualifications" are substituted for 10: 1036e (b) and 34: 440m (d). In clause (a) (2) (A), 10: 1036e (d) and 34: 440m (d), which make it clear that "active Federal service", in the sense in which that term is used in 10: 1036 a—e and 34: 440 i—m, includes annual training duty and attendance at service schools, are omitted as covered by sections 101 (22) and 101 (24) of this title.

In subsection (a) (2) (A) and (B), specific reference is made to National Guard service to reflect the opinion of the Judge Advocate General of the Army (JAGA, 1956/1908, 13 Feb. 1956).

In subsection (a) (2) (C), the words "other than active Federal service" are omitted, since the points for membership are not reduced by active duty (see opinion of the Judge Advocate General of the Army (JAGA, 1953/2016, 3 Mar. 1953)).

In subsections (a) and (b), the words "active service" are substituted for the words "active Federal service" for uniformity of expression. In clause (5), the words "transferred thereto after completion of 16 or more years of active naval service" are omitted, since other authorized fleet reserve categories have not been used and authority for them is omitted from this revised title as unnecessary.

Subsection (b) (1)—(4) is inserted because of 10: 1036e (e) and (f) and 34: 440m (e) and (f), which state that the service enumerated in those clauses may not be considered in determining eligibility for retired pay under this chapter. Clause (5) is based on the exclusions in 34: 440m (c) (8)—(9).

Subsection (b) (6) is inserted for clarity since 10: 1036a and 34: 440i were limited in applicability to service in the status of a "commissioned officer, warrant officer, flight officer, or enlisted person."

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-636 added clauses (3) and (4).

1959—Subsec. (a). Pub. L. 86-197, §§ (1), (2), redesignated former clauses (D)—(F) as (E)—(G), and added clauses (D), (H), (I), and (J), and provisions requiring, for the purpose of clauses (A), (B), and (C), service in the National Guard to be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

Subsec. (b)(6). Pub. L. 86-197, § 1(3), added subsec. (b)(6). Former subsec. (b)(6) redesignated (b)(7).

Subsec. (b)(7). Pub. L. 86-197, § 1(3), redesignated former subsec. (b)(6) as (b)(7), and prohibited the counting of service as a nurse, as an appointed aviation cadet, and that service described in clauses (I) and (J) of subsec. (a)(1) of this section.

1958—Subsec. (a). Pub. L. 85-861 substituted "full-time service under" for "service under", and inserted a reference to section 502 of this title, in cl. (2)(A)(ii).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88-636 provided that: "The amendments made by this Act [to subsec. (a) of this section] shall apply to any period before enactment of this Act [Oct. 8, 1964] during which the Commissioned Corps of the Public Health Service has had the status of a military service, and to any period before enactment of this Act during which commissioned personnel of the Coast and Geodetic Survey were transfered to the service and jurisdiction of a military department."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SAVINGS PROVISION

Section 3 of Pub. L. 86-197 provided that: "This Act [amending this secton and sections 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 1431 and 3441 of this title] does not deprive any person of any service credit to which he was entitled on the day before the effective date of this Act [August 25, 1959]."

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat.

1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

COAST GUARD WOMEN'S RESERVE; CONSTRUCTIVE SERVICE CREDIT; RETIREMENT BENEFITS; RETROACTIVE PAY

Pub. L. 87-482, June 12, 1962, 76 Stat. 95, provided:

"That any person who was a member of the Coast Guard Women's Reserve and who served on active duty therein for at least one year prior to July 25, 1947; who was separated therefrom under honorable conditions; and who also had membership therein for any period between November 1, 1949, and July 1, 1956, shall be deemed to have served on inactive duty with the Coast Guard Women's Reserve from July 25, 1947, to November 1, 1949, in the grade or rating satisfactorily held on active duty prior to July 25, 1947.

"SEC. 2. Creditable constructive service for a person qualified under section 1 hereof shall be applied when providing retirement benefits under the Army and Air Force Vitalization and Retirement Equalization Act of 1948, as amended, or any other Act under which the individual may be entitled to retirement from the Armed Forces.

"SEC. 3. Additional pay accruing to any person by virtue of increased creditable service resulting from the inclusion of constructive service creditable by application of section 1 hereof shall not be made for active or inactive duty for which pay is authorized by competent authority which is performed prior to the first day of the calendar quarter next succeeding the calendar quarter in which this Act becomes effective."

ADDITIONAL CLERICAL SERVICE CREDITABLE UNDER THIS CHAPTER

Section 15 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1558, provided that:

"(a) Notwithstanding section 1332 (b) (6) of title 10, United States Code [subsec. (b) (6) of this section], a person is entitled to count his service as an Army field clerk or as a field clerk, Quartermaster Corps, as active service in determining his entitlement to retired pay under chapter 67 of title 10, United States Code [this chapter], and in computing his retired pay under that chapter.

"(b) Notwithstanding section 1332 (b) (6) of title 10, United States Code [subsec. (b) (6) of this section], a warrant officer is entitled to count classified service as an Army headquarters clerk or as a clerk of the Army Quartermaster Corps that he performed under any law in effect before August 29, 1916, as active service in determining his entitlement to retired pay under chapter 67 of title 10, United States Code [this chapter], and in computing his retired pay under that chapter."

CROSS REFERENCES

Active duty, retention after becoming qualified for retired pay, see section 676 of this title.

Retention of reserve commissioned officer in active status after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Standards and qualifications for reserve commissioned officer to be retained in active status, see section 1002 of this title.

Transfer to inactive status list instead of separation, see section 1209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 676, 1002, 1006, 1209, 1331, 1333, 3571, 3850, 5867, 6389, 6391, 8571, 8850 of this title; title 37 section 416.

§ 1333. Computation of years of service in computing retired pay.

For the purpose of computing the retired pay of a person under this chapter, his years of service and any fraction of such a year are computed by adding—

(1) his days of active service;

(2) his days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

(3) one day for each point credited to him under clause (B) or (C) of section 1332 (a) (2) of this title, but not more than 60 days in any one year; and

(4) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 1332 (a) (1) of this title except a regular component;

and by dividing the sum of that addition by 360. (Aug. 10, 1956, ch. 1041, 70A Stat. 103; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (10), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1333	10: 1036b (less 1st 91 words, and less 1st proviso); 10: 1036e (c) (as applicable to determination of retired pay); 10: 1036e (d) (as applicable to determination of retired pay); 34: 440j (less 1st 91 words, and less 1st proviso); 34: 440m (c) (as applicable to determination of retired pay); 34: 440m (d) (as applicable to determination of retired pay).	June 29, 1948, ch. 708, §§ 303 (less 1st 91 words, and less 1st proviso), 306 ((c) and (d), as applicable to determination of retired pay), 62 Stat. 1088—1090; Sept. 7, 1949, ch. 547, § 3, 63 Stat. 693.

The revised section consolidates provisions of 10: 1036b and 1036e, and 34: 440j and 440m, relating to the years of service that may be counted in determining retired pay for persons entitled to that pay under this chapter.

Clause (1) is substituted for 10: 1036b (i). In clause (3), the words "and porportionately for each fraction of a year" are inserted to make clear that parts of years must be counted. 10: 1036e (d) and 34: 440m (d) are omitted as covered by sections 101 (22) and 101 (24) of this title.

AMENDMENTS

1958—Pub. L. 85-861 eliminated former cl. (1), which permitted the addition of the days of service credited under section 1332(a)(2)(A) of this title, added cl. (1) and (2), and redesignated former cl. (2) and (3) as (3) and (4).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Computation of years of service, see section 1405 of this title.

Retirement or separation for physical disability, computation of service, see section 1208 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1405 of this title.

§ 1334. Time not creditable toward years of service.

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement (without pay) for failure to conform to standards and qualifications prescribed under section 1001 of this title may not be credited in a computation of years of service under this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 104; Sept. 7, 1962, Pub. L. 87-651, title I, § 108, 76 Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1334 (a)	10: 1036c (last sentence, as applicable to inactive status); 10: 1036g (last 41 words of 2d sentence); 34: 440k (last sentence, as applicable to inactive status); 34: 440o (last 41 words of 2d sentence); 50: 931 (b) (less 1st 16 words).	June 29, 1948, ch. 708, §§ 304 (last sentence), 308 (last 41 words of 2d sentence), 62 Stat. 1088, 1090. July 9, 1952, ch. 608, § 211 (b) (less 1st 16 words), 66 Stat. 485.
1334 (b)	10: 1036c (last sentence, less applicability to inactive status); 34: 440k (last sentence, less applicability to inactive status).	

Subsection (a) is substituted for 10: 1036c (1st 17 words of last sentence, as applicable to inactive status), 10: 1036g (last 41 words of 2d sentence), 34: 440k (last 17 words of last sentence, as applicable to inactive status), and 34: 440o (last 41 words of 2d sentence). 10: 1036c (proviso of last sentence, as applicable to inactive status) and 34: 440k (proviso of last sentence, as applicable to inactive status) are omitted as executed. 10: 1036c (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) and 34: 440k (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) are omitted as surplusage.

In subsection (b), 10: 1036c (proviso of last sentence, less applicability to inactive status) and 34: 440k (proviso of last sentence, less applicability to inactive status) are omitted as executed. 10: 1036c (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) and 34: 440k (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) are omitted as surplusage.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-651 substituted "retirement (without pay) for failure to conform to standards and qualifications prescribed under section 1001 of this title may not be credited in a computation" for "retirement or transfer to the Retired Reserve may not be credited in any computation."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 305 of Pub. L. 87-651 provided in part that the amendment of subsec. (b) of this section is effective as of Aug. 10, 1956, for all purposes.

§ 1335. Inactive status list.

(a) A person who would be eligible for retired pay under this chapter but for the fact that he is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a person is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1335 (a)	10: 1036g (1st sentence); 34: 440o (1st sentence).	June 29, 1948, ch. 708, § 308 (less last 41 words of 2d sentence), 62 Stat. 1090.
1335 (b)	10: 1036g (2d sentence, less last 41 words); 34: 440o (2d sentence, less last 41 words).	
1335 (c)	10: 1036g (less 1st and 2d sentences); 34: 440o (less 1st and 2d sentences).	

In subsection (a), the words "would be eligible but for the fact that he is under 60 years of age" are substituted for the words "has not attained the age of sixty years but is eligible in all other respects". The words "for members of his armed force, other than members of a regular component" are substituted for the words "for the reserve components of the Army of the United States or Air Force of the United States", since the source statute applied to all members except members of the regular components. The words "as has been, or" and "by law or regulation" are omitted as surplusage.

In subsection (b), the words "after the effective date of such transfer" are omitted as surplusage.

In subsection (c), 10: 1036g (last 32 words of last sentence) and 34: 440o (last 32 words of last sentence) are omitted as surplusage.

CROSS REFERENCES

Transfer to inactive status list instead of separation for physical disability, see section 1209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1209 of this title.

§ 1336. Service credited for retired pay benefits not excluded for other benefits.

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it. (Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1336	10: 1036d (less 1st sentence); 34: 440l (less 1st sentence).	June 29, 1948, ch. 708, § 305 (less 1st sentence), 62 Stat. 1089.

§ 1337. Limitation on active duty.

No member of the armed forces may be ordered to active duty solely for the purpose of qualifying him for retired pay under this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1337	10: 1036h; 34: 440p.	June 29, 1948, ch. 708, § 309, 62 Stat. 1090.

10: 1036h (1st sentence) and 34: 440p (1st sentence) are omitted as surplusage. The words "member of the armed forces" are substituted for the word "person", since only a member may be "ordered to active duty".

Chapter 69.—RETIRED GRADE

Sec.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
1374. Reserve commissioned officers: grade on retirement or transfer to Retired Reserve.
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Retired lists.

AMENDMENTS

1958—Pub. L. 85-861, § 1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a; title 42 section 213a.

§ 1371. Warrant officers: general rule.

Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days. (Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1371	10: 600*l* (d) (1st sentence); 10: 600*l* (f) (1st sentence, as applicable to retired grade); 34: 430 (d) (1st sentence); 34: 430 (f) (1st sentence, as applicable to retired grade).	May 29, 1954, ch. 249, § 14 (d) (1st sentence), (f) (1st sentence, as applicable to retired grade), 68 Stat. 163, 164.

The first 13 words are substituted for 10: 600*l* (f) (1st sentence, as applicable to retired grade) and 34: 430 (1st sentence, as applicable to retired grade). The words "for a period of more than 30 days" are substituted for the words "under * * * orders specifying that the period of such duty shall be for a period in excess of thirty days or for an indefinite period", to conform to the definition of those words in section 101 (23) of this title. The words "any full time duty" are omitted, since the duty specified would necessarily be full time duty. The words "under this section" and "competent" are omitted as surplusage.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 sections 334, 438.

§ 1372. Grade on retirement for physical disability: members of armed forces.

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of his physical examination for promotion.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of his physical examination for promotion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1372	37: 272 (d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos), 37: 279 (less applicability to 37: 272 (d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402 (d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos), 409 (less applicability to § 402 (d) (last proviso)), 63 Stat. 818, 823.

Clause (1) is substituted for 37: 272 (d) (104th through 128th words, as applicable to retired grade). The words "if his name was not carried on that list" are substituted for the words "whichever is earlier".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty.

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402 (d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section. (Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1373	37: 272 (d) (last proviso, as applicable to retired grade); 37: 279 (as applicable to 37: 272 (d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402 (d) (last proviso, as applicable to retired grade), 409 (as applicable to § 402 (d) (last proviso)), 63 Stat. 819, 823.

The applicability of the rule stated in 37: 279 to all members whose retired pay is computed under 37: 272 (d) (last proviso) is based on an opinion of the Judge Advocate General of the Army (JAGA 1953/3305, 24 Apr. 1953).

§ 1374. Reserve commissioned officers: grade on retirement or transfer to Retired Reserve.

(a) Unless holding an appointment in a higher grade or entitled to a higher grade under another provision of law, a reserve commissioned officer who is recommended for promotion to a higher reserve grade or who is found qualified for Federal recognition in a higher reserve grade, and who, before being promoted, is transferred to the Retired Reserve, except under section 1002 of this title, because of physical disability or as a result of completing the number of years of service or reaching the age

at which his retirement, transfer to the Retired Reserve, or discharge is required by law, transfers in the grade for which he has been recommended or found qualified for Federal recognition.

(b) Unless entitled to a higher grade under another provision of law, a reserve commissioned officer who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 1376 (a) of this title in the highest grade in which he served satisfactorily, as determined by the Secretary concerned, in the armed force in which he is serving on the date of transfer.

(c) A commissioned officer of the Retired Reserve who while serving on active duty (other than for training) is promoted to a higher temporary grade is entitled, upon his release from that duty, to be advanced on the retired list established by section 1376 (a) of this title to that grade.

(d) Unless otherwise provided by law, no person is entitled to increased pay or other benefits because of this section.

(e) This section does not apply to commissioned warrant officers. (Added Pub. L. 85–861, § 1 (29), Sept. 2, 1958, 72 Stat. 1451, and amended Pub. L. 86–559, § 1(4), June 30, 1960, 74 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1374 (a)	50: 1196 (a) (less last sentence).	Sept. 3, 1954, ch. 1257, §§ 102 (1) (as applicable to § 206), 206, 68 Stat. 1149, 1152.
1374 (b)	50: 1196 (b) (less last sentence).	
1374 (c)	50: 1196 (c) (less last sentence).	
1374 (d)	50: 1196 (a) (last sentence). 50: 1196 (b) (last sentence). 50: 1196 (c) (last sentence).	
1374 (e)	50: 1181 (1) (as applicable to 50: 1196).	

In subsection (a), the words "a higher reserve grade" are substituted for the words "any grade under this chapter". The words "before being promoted" are substituted for the words "at any time prior to promotion".

In subsection (b), the words "is entitled to be placed" are substituted for the words "shall * * * be advanced", since the officer concerned is being placed on the retired list for the first time. The words "in which he served" are substituted for the words "held by him". The words "permanent or temporary" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559 substituted "is transferred to the Retired Reserve, except under section 1002 of this title, because of physical disability or as a result of completing the number of years of service or reaching the age at which his retirement, transfer to the Retired Reserve, or discharge is required by law," for "is found to be incapacitated for service because of a physical disability and is transferred to the Retired Reserve."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title; title 33 section 857a; title 42 section 213a.

§ 1375. Entitlement to commission: commissioned officers advanced on retired list.

A commissioned officer of the Army, Navy, Air Force, or Marine Corps who is advanced on a retired list is entitled to a commission in the grade to which he is advanced. (Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1375	10: 1014; 34: 394.	Mar. 4, 1911, ch. 266, 36 Stat. 1354.

The words "has been or shall hereafter", "by operation of or in accordance with law", and "and shall receive" are omitted as surplusage. The words "in the grade to which he is advanced" are substituted for the words "in accordance with such advanced rank".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 42 section 213a.

§ 1376. Retired lists.

(a) Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve.

(b) The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 105; Sept. 2, 1958, Pub. L. 85–861, § 1 (31), 72 Stat. 1451.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1376 (a)	50: 927 (a) (less 1st 11 words); 50: 927 (b) (less last 7 words of 1st sentence).	Oct. 12, 1949, ch. 681, § 401 (less (a)), 63 Stat. 816. July 9, 1952, ch. 608, § 207 (a) (less 1st 11 words), (b) (less last 7 words of 1st sentence), 66 Stat. 483.
1376 (b)	37: 271 (less (a)).	

In subsection (a), the word "maintained" is substituted for the word "established", and in subsection (b), the word "maintain" is substituted for the word "established", since the lists have been established and are published annually.

In subsection (a), the words "who are in the Retired Reserve" are substituted for 50: 927 (a) (last 11 words), since section 271 of this title prescribes the conditions for being placed in the Retired Reserve. 50: 927 (b) (last sentence) is omitted, since the revised section provides that both lists be maintained.

In subsection (b), the words "containing the names placed thereon under section 1202 or 1205 of this title" are substituted for the words "upon which shall be placed the names of all members of his service entitled to such placement pursuant to the provisions of this subchapter".

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 eliminated provisions requiring publication of the temporary disability retired list annually in the official register or other official publication of the armed force concerned.

CROSS REFERENCES

Provisions relating to election of annuities applicable to members of armed forces whose names are on list maintained under subsec. (a) of this section, see section 1431 of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 1374, 1431 of this title; title 33 section 857a; title 42 section 213a.

Chapter 71.—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty.
1403. Disability retired pay: treatment under title 26.
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Limitations on revocation of retired pay.

AMENDMENTS

1966—Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115, substituted "8301" for "47a" in item 1404.

Pub. L. 89–652, § 2(2), Oct. 14, 1966, 80 Stat. 902, added item 1406.

1963—Pub. L. 88–132, § 5(g)(2), Oct. 2, 1963, 77 Stat. 214, inserted item 1401a.

1958—Pub. L. 85–422, § 11(a)(1)(B), May 20, 1958, 72 Stat. 131, added item 1405.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1209, 1275, 1315 of this title; title 42 section 213a.

§ 1401. Computation of retired pay.

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Monthly basic pay [1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.[4]	As member elects— (1) 2½% of years of service credited to him under section 1208; [3] or (2) the percentage of disability on date when retired.		Excess over 75% of pay upon which computation is based.
2	1202 1205	Monthly basic pay [1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.[4]	As member elects— (1) 2½% of years of service credited to him under section 1208; [3] or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based.	Excess over 75% of pay upon which computation is based.
3	1331	Monthly basic pay [2] of highest grade held satisfactorily by person at any time in the armed forces.	2½% of years of service credited to him under section 1333.		Excess over 75% of pay upon which computation is based.
4	564 1255 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.	2½% of years of service that may be credited to him under section 1504 of this title.[3]		Excess over 75% of pay upon which computation is based.

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.
[2] Compute at rates applicable on date when retired pay is granted.
[3] Before applying a percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.
[4] For an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, compute at the highest rates of basic pay applicable to him while he served in that office. For an enlisted person who has served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, or sergeant major of the Marine Corps, compute at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; May 20, 1958, Pub. L. 85–422, §§ 6(7), 11(a)(2), 72 Stat. 129, 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(1), 77 Stat. 214; Aug. 21, 1965, Pub. L. 89–132, § 6, 79 Stat. 547; Dec. 16, 1967, Pub. L. 90–207, § 3(1), 81 Stat. 653.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1401 Introductory clause.	10: 600*l* (f) (1st sentence, less applicability to retired grade); 34: 430 (f) (1st sentence, less applicability to retired grade).	June 29, 1948, ch. 708, § 303 (1st 91 words and 1st proviso), 62 Stat. 1088. Oct. 12, 1949, ch. 681, §§ 402 (d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402 (e) (1st proviso of last sentence), 63 Stat. 818, 819. May 29, 1954, ch. 249, § 14 (d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401 (1)	37: 272 (d) (less 1st 55 words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th, and last provisos); 37: 272 (e) (1st proviso of last sentence).	
1401 (2)	37: 272 (d) (1st 29, and 51st through 55th, words, and 4th proviso).	
1401 (3)	10: 1036b (1st 91 words and 1st proviso); 34: 440j (1st 91 words and 1st proviso).	

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1401 (4)	10: 600*l* (d) (2d sentence); 10: 600*l* (f) (last sentence); 34: 430 (d) (2d sentence); 34: 430 (f) (last sentence).	
1401, footnote 1.	No source.	
1401, footnote 2.	No source.	
1401, footnote 3.	37: 272 (d) (1st proviso); 10: 600*l* (d) (less 1st and 2d sentences); 34: 430 (d) (less 1st and 2d sentences).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes

above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words "whichever is earlier", in 37: 272 (d) (clause (2)), are omitted, since they are contrary to the rule stated in 37: 272 (e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.). The words "which he would receive if serving, at the time granted such pay, on active duty" are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words "at any time" are substituted for the words "during his entire period of service".

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words "at rates applicable on date of retirement * * * and adjust to reflect later changes in permanent rates", in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words "and disregard a part of a year that is less than six months" are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H. R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

AMENDMENTS

1967—Pub. L. 90–207 added the sentence to footnote 4 of the table requiring the computation of retired pay for an enlisted person who has served as senior noncommissioned officer of his service at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

1965—Pub. L. 89–132 eliminated words, "increased, for members credited with two or less years of service for basic pay purposes, by 6%" from column 1 of formula 1 and column 1 of formula 2.

1963—Pub. L. 88–132 eliminated from footnote 1 to the table ", and adjust to reflect later changes in applicable permanent rates" following "as the case may be."

1958—Pub. L. 85–422, § 6(7)(A), inserted provisions in Column 1 of formulas 1 and 2 permitting the taking of the monthly basic pay to which a member was entitled on the day before retirement or placement on temporary disability retired list, increased, for members credited with two or less years of service for basic pay purposes, by 6 percent.

Pub. L. 85–422, § 11(a)(2), substituted "under section 1405 of this title" for "in computing basic pay" in Column 2 of formula 4.

Pub. L. 85–422, § 6(7)(B), added footnote 4.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective on June 1, 1958.

INCREASE IN PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD.

Section 5 of Pub. L. 90–207 provided that:

"Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224)."

INCREASE IN RETIRED OR RETAINER PAY OF MEMBERS ENTITLED THERETO ON OR AFTER OCT. 1, 1967

Section 6 of Pub. L. 90–207 provided that: "Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [amending section 203(a) of Title 37]."

INCREASES IN RETIRED OR RETAINER PAY

Pub. L. 89–501, title III, § 303, July 13, 1966, 80 Stat. 278, provided that: "Notwithstanding any other provision of law, a member of former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending section 203(a) of Title 37]."

Effective date of section 303 of Pub. L. 89–501 as the first day of the first pay period which begins on or after July 1, 1966, see section 304 of Pub L. 89–501, set out as Effective Date of 1966 Amendments note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Section 5(a) of Pub. L. 89–132 provided that: "The retired pay or retainer pay of a member or former member of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the effective date of this Act [Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act has increased over the average monthly index for calendar year 1962."

CONTINUATION OF PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 7 of Pub. L. 89–132 provided that:

"Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224)."

INCREASE IN RETIRED PAY TO PERSONS RETIRED BEFORE JUNE 1, 1958

Section 4 of Pub. L. 85–422, as amended by Pub. L. 85–855, § 1 (a), Aug. 28, 1958, 72 Stat. 1104, provided that:

"(a) Except for members covered by section 7 of this Act, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

"(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

"(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [June 1, 1958]".

Section 1 (b) of Pub. L. 85–855 provided that the amendment of section 4 (a) of Pub. L. 85–422, which eliminated the words "and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list" preceding "members and former members" should be effective June 1, 1958.

COAST AND GEODETIC SURVEY

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised, with respect to the Coast and Geodetic Survey, by the Secretary of Commerce or his designee, see section 857a(b) of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Computation of years of service for purposes of formula 4, see section 1405 of this title.

Retired pay for non-regular service, see section 1331 et seq. of this title.

Retirement of warrant officers upon second failure of promotion, see section 564 of this title.

Retirement or separation for physical disability, see section 1201 et seq. of this title.

Section not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., see section 438 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 564, 1201, 1202, 1204, 1205, 1210, 1331, 1403, 1405, 8791 of this title; title 5 section 5532; title 14 section 438; title 33 section 857a; title 42 section 213a.

§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.

(a) Unless otherwise specifically provided by law, the retired pay or retainer pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces. In this section, "Index" means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(b) The Secretary of Defense shall determine monthly the percent by which the index has increased over that used as the basis (base index) for the most recent adjustment of retired pay and retainer pay under this subsection. If the Secretary determines that, for three consecutive months, the amount of the increase is at least 3 per centum over the base index, the retired pay and retainer pay of members and former members of the armed forces who become entitled to that pay before the first day of the third calendar month beginning after the end of those three months shall, except as provided in subsection (c), be increased, effective on that day, by the per centum obtained by adding 1 per centum and the highest per centum of increase in the index during those months, adjusted to the nearest one-tenth of 1 per centum.

(c) Nothwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

(e) Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based. (Added Pub. L. 88–132, § 5(g)(1), Oct. 2, 1963, 77 Stat. 213, and amended Pub. L. 89–132, § 5(b), Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, § 2(a)(1), Dec. 16, 1967, 81 Stat. 652; Pub. L. 91–179, § 1, Dec. 30, 1969, 83 Stat. 837.)

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–179 provided for a 1 percent addition in computing increases in retired and retainer pay of present and former members of the armed forces, whenever the Secretary made such adjustments to effect increases in the consumer index over the base index.

1967—Subsec. (a). Pub. L. 90–207 substituted "may not be recomputed" for "shall not be recomputed", deleted "if that increase becomes effective after the effective date of this section" following "armed forces" and added the sentence defining "Index".

Subsec. (b). Pub. L. 90–207 revised subsec. (b) generally and, among other changes, substituted provisions requiring the Secretary of Defense to determine monthly the percent by which the index has increased over that used as the basis for the most recent adjustment of retired and retainer pay under this subsection for provisions which required the Secretary of Defense to determine the per centum that the index for each calendar month after the calendar month immediately preceding the effective date of Pub. L. 89–132 has increased over the base index (that for the calendar month immediately preceding the effective date of Pub. L. 89–132 or, if later, that used as the basis for the most recent adjustment of retired and retainer pay under this subsection).

Subsecs. (c)–(e). Pub. L. 90–207 added subsecs. (c)–(e).

1965—Subsec. (b). Pub. L. 89–132 substituted provisions requiring the Secretary of Defense to determine the per centum for each calendar month that the Consumer Price Index has increased over the base Consumer Price Index, and if the index has shown an increase of at least 3 per centum over the base index for three consecutive calendar months to increase the retired or retainer pay by the highest per centum of increase in the index, for provisions which required a determination of the increase over the preceding calendar year and permitted an increase in the retired or retainer pay if the index advanced 3 per cent or more for a full calendar year.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 2 of Pub. L. 91–179 provided that: "The provisions of this Act [amending subsec. (b) of this section] become effective on October 31, 1969."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

RETROACTIVE ADJUSTMENT OF RETIRED OR RETAINER PAY OF PERSONS ENTITLED THERETO AFTER NOV. 30, 1966, BUT PRIOR TO EFFECTIVE DATE OF NEXT INCREASE AFTER JULY 1, 1966

Section 2(b) of Pub. L. 90–207 provided that: "Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act [Dec. 16, 1967] and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1402 of this title; title 5 section 5532.

§ 1402. Recomputation of retired or retainer pay to reflect later active duty.

(a) A member of an armed force who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty as follows:

Col. 1, take—	Col. 2, multiply by—	Col. 3, subtract—
Monthly basic pay [1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]	Excess over 75 percent of pay upon which computation is based.

[1] For a member who has been entitled, for a continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying the percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that

aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed as follows:

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title; [1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.[1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

[1] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; June 30, 1960, Pub. L. 86–559, § 1(5), 74 Stat. 265; Oct. 2, 1963, Pub. L. 88–132, § 5(*l*)(1), 77 Stat. 214; Dec. 16, 1967, Pub. L. 90–207, § 2(a)(2), 81 Stat. 653.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1402 (a)	37: 316.	Oct. 12, 1949, ch. 681, §§ 402 (d) (last proviso, less applicability to retired grade), 516, 63 Stat. 819, 832.
1402 (b), (c).	37: 272 (d) (1st 128 words of last proviso, less applicability to retired grade).	
1402 (d)	37: 272 (d) (last proviso, less 1st 128 words, and less applicability to retired grade).	

In subsection (a), columns 1 and 2 of the table are based on 37: 316 (1st proviso). Column 4 is based on 37: 316 (last proviso). Footnote 1 is based on 37: 316 (2d proviso). 37: 316 (3d proviso) is omitted as operationally obsolete.

In subsections (a) and (d), the words "and disregard a part of a year that is less than six months" are added to footnote 1 to conform to footnote 3 of section 1401 of this title.

In subsection (b), the words "for which he would otherwise be eligible for retired pay under chapter 61 of this title" are substituted for the words "in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration" and "if qualified".

In subsection (c), the requirement that the physical disability incurred be 30 percent or more is omitted as surplusage, since it is also required that the member be qualified for physical disability retirement under section 1201 or 1204 of this title.

In subsection (d), the rules stated in 37: 316 (2d and last provisos) are repeated in column 4 of the table and the footnote to the table, since they apply to all cases of increased pay for active duty performed after retirement.

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–207, § 2(a)(2)(A), inserted "increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay" following "retired,".

Subsec. (e). Pub. L. 90–207, § 2(a)(2)(B), added subsec. (e).

1963—Subsec. (a). Pub. L. 88–132 substituted in the introductory clause "who has become entitled to retired pay or retainer pay" for "who has been retired or has become entitled to retainer pay" and "to recompute his retired pay or retainer pay upon his release from that duty" for ", upon release from that duty, to recompute his retired or retainer pay" and inserted in such clause "(other than for training)" following "active duty"; substituted in column 1 of the table "Monthly basic pay" for "Monthly basic pay or base and longevity pay, as the case may be,", designated existing provisions as (1) and added (2); substituted in (1) of column 2 of the table "retired pay or retainer pay" for "retired or retainer pay" and in (2) of such column 2 "after becoming entitled to retired pay or retainer pay" for "after retirement or becoming entitled to retainer pay", eliminated column 3 relating to addition and redesignated column 4 as 3; added footnote 1 to the table and redesignated former footnote 1 as 2; and added the provisions for recomputation of retired pay upon release from active duty of officers ordered to active duty in a higher grade based upon special commendation for performance of duty in actual combat.

1960—Subsec. (a). Pub. L. 86–559 prohibited recomputation of retired pay under subsec. (a) on the basis of any period of active duty that was of less than six consecutive months' duration or on the basis of any active duty for training for a reserve officer who is or has been retired under section 3911, 6323, or 8911 of this title or under section 232 of Title 14.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

RETIRED PAY AND RETAINER PAY; PROHIBITION AGAINST RECOMPUTATION UNDER 1963 PAY RATES; EXCEPT INCREMENTS BASED ON THE GREATER OF A 5 PERCENT INCREASE OR RECOMPUTATION UNDER 1958 PAY RATES FOR MEMBERS RETIRED PRIOR TO OCTOBER 1949 FOR REASONS OTHER THAN PHYSICAL DISABILITY, MEMBERS RECEIVING RETIRED PAY UNDER CAREER COMPENSATION ACT OF 1949 AND FORMER CHIEFS OF STAFF; ADDITIONAL 5 PERCENT INCREASE FOR OTHER RETIRED MEMBERS; EXCLUSION FROM INCREASE OF OFFICERS RETIRED UNDER CERTAIN PROVISIONS

Section 5(a)—(f) of Pub. L. 88–132 provided that:

"(a) Except as provided in section 1402 of title 10, United States Code [this section], the changes made by this Act [see Short Title note under section 201 of Title 37] in the rates of basic pay of members of the uniformed services do not increase the retired pay or retainer pay to which a member or former member of the uniformed services was entitled on the day before the effective date of this Act [Oct. 1, 1963]. However, except for a member covered by section 6331 of title 10, United States Code who became entitled to retainer pay before April 1, 1963, and subject to subsection (j) of this section [set out as a note under this section], a member or former member of a uniformed service who became entitled to retired pay or retainer pay after March 31, 1963, but before the effective date of this Act [Oct. 1, 1963], is entitled—

"(1) to have the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963] recomputed under the rates of basic pay prescribed by section 2 of this Act [amending section 203 of Title 37]; or

"(2) to continue to have that pay computed under the rates of basic pay that were in effect under section 203 of title 37, United States Code, on the day before the effective date of this Act [Oct. 1, 1963], plus the percentage increase provided by subsection (e) of this section;

whichever pay is the greater. For the purposes of the preceding sentence, a member or former member who became entitled to retired pay on April 1, 1963, by virtue of section 1 of the Act of April 23, 1930, ch. 209, as amended (5 U.S.C. 47a) [now covered by section 8301 of Title 5], shall be considered as having become entitled to that pay before April 1, 1963.

"(b) A member or former member of a uniformed service who was retired other than for physical disability and who, in accordance with section 511 of the Career Compensation Act of 1949 (63 Stat. 829) [former section 311 of Title 37], is entitled to retired pay or retainer pay computed by 'method' (a) of that section using rates of basic pay that were in effect before October 1, 1949, is entitled—

"(1) to have pay recomputed by 'method' (b) of that section using the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

"(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

"(c) A member or former member of a uniformed service who is entitled to retired pay or retainer pay computed under the rates of basic pay that were in effect under the Career Compensation Act of 1949 before June 1, 1958, including a member or former member who is entitled to retired pay under section 7 (b) or (c) of the Act of May 20, 1958, Public Law 85–422 (72 Stat. 130), is entitled—

"(1) to have that pay recomputed under the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

"(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

"(d) A member or former member of a uniformed service who was entitled to retired pay on the day before the effective date of this Act [Oct. 1, 1963] and who served as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps is entitled—

"(1) to have his retired pay recomputed under the formula for computing retired pay applicable to him—

"(A) when he retired; or

"(B) if he served on active duty after he retired and his retired pay was recomputed by reason of that service, when his retired pay was so recomputed;

using as his rate of basic pay the rate of basic pay prescribed for officers serving on active duty in those positions on June 1, 1958, by footnote 1 to table for commissioned officers in section 201(a) of the Career Compensation Act of 1949, as amended (72 Stat. 122) [see section 203 of Title 37]; or

"(2) to an increase of 5 percent in the retired pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

"(e) A member or former member of a uniformed service who was entitled to retired pay or retainer pay on the day before the effective date of this Act [Oct. 1, 1963], other than a member or former member who is covered by subsection (b), (c), or (d) of this section, is entitled to an increase of 5 percent in the retired or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963].

"(f) Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Oct. 1, 1963] shall continue to receive the pay and allowances to which he was entitled on that day:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224)."

RETIRED PAY AND RETAINER PAY; RETROACTIVE EFFECT

Section 5(j) of Pub. L. 88–132 provided that: "A member or former member of a uniformed service is not entitled to an increase in his retired pay or retainer pay because of the enactment of this Act [see Short Title note under section 201 of Title 37] for any period before the effective date of this Act [Oct. 1, 1963]."

SAVINGS PROVISION

Section 5(1)(2) of Pub. L. 88–132 provided that: "Notwithstanding paragraph (1) of this subsection [amending subsec. (a) of this section], and unless otherwise entitled to higher retired pay or retainer pay, a member of a uniformed service who is on active duty (other than for training) on the effective date of this Act [Oct. 1, 1963], who was entitled to retired pay or retainer pay before he entered on that duty, and who is released from that duty on or after the effective date of this Act [Oct. 1, 1963] after having served on that duty for a continuous period of at least one year shall, upon that release from active duty, be entitled to recompute his retired pay or retainer pay under the table in section 1402 of title 10, United States Code [this section], subject to section 6483(c) of title 10, as that table and that section were in effect on the day before the effective date of this Act [Oct. 1, 1963], using rates of basic pay prescribed by this Act [section 203 of Title 37]."

CROSS REFERENCES

Higher grade for later physical disability: retired officers recalled to active duty, see section 1373 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1373, 1403, 6330 of this title; title 37 section 205.

§ 1403. Disability retired pay: treatment under title 26.

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402 (d), of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from

active service in the armed forces, under section 104 (a) of title 26. (Aug. 10, 1956, ch. 1041, 70A Stat. 108.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1403	37: 272 (h).	Oct. 12, 1949, ch. 681, § 402 (h), 63 Stat. 820.

§ 1404. Applicability of section 8301 of title 5.

The retirement provisions of this title are subject to section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 108; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1404	No source.	No source.

The effect of the act of April 23, 1930 (5 U. S. C. 47a), in temporarily deferring retirement dates otherwise specifically fixed by law is reflected in the sections of the proposed text that name those dates. This section is inserted to make clear that under that act such deferments have no effect on the applicability of the specific rates that are to be used in computing retired pay.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a" in the section catchline and the body of the section.

§ 1405. Years of service.

For the purposes of section 1401 (formula 4), 3888 (1), 3927(b)(1), 3991 (formula B), 6151(b), 6323 (e), 6325(a)(2) and (b)(2), 6381(a)(2), 6383(c)(2), 6390(b)(2), 6394(h), 6396(c)(2), 6398(b)(2), 6400 (b)(2), 8888(1), 8927(b)(1), or 8991 (formula B) of this title, the years of service of a member of the armed forces are computed by adding—

(1) his years of active service:

(2) the years of service credited to him under section 205(a) (7) and (8) of title 37;

(3) the years of service, not included in clause (1) or (2) with which he was entitled to be credited, on the day before the effective date of this section, in computing his basic pay; and

(4) the years of service, not included in clause (1), (2), or (3), with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under section 1331 of this title.

For the purpose of this section, a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded. (Added Pub. L. 85–422, § 11 (a) (1) (A), May 20, 1958, 72 Stat. 136, and amended Pub. L. 85–861, § 1 (31A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–649, § 6(f)(4), Sept. 7, 1962, 76 Stat. 494; Pub. L. 87–651, title I, § 109, Sept. 7, 1962, 76 Stat. 509; Pub. L. 90–130, § 1(7), Nov. 8, 1967, 81 Stat. 374.)

REFERENCES IN TEXT

The effective date of this section, referred to in cl. (3), means the effective date of Pub. L. 85–422, which became effective on the first day of the month following May, 1958.

AMENDMENTS

1967—Pub. L. 90–130 eliminated references to section 6399(c)(2) of this title.

1962—Pub. L. 87–651 eliminated references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87–649 substituted "section 205(a) (7) and (8) of title 37" for "section 233(a)(7) of title 37" in cl. (2).

1958—Pub. L. 85–861 inserted references to sections 6323(e) and 6391(h) of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649, effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3888, 3927, 6151, 6323, 6325, 6381, 6383, 6390, 6394, 6496, 6397, 6400, 8888, 8927 of this title; title 14 section 423.

§ 1406. Limitations on revocation of retired pay.

After a person has been granted retired pay under chapter 67 of this title, or has been notified in accordance with section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 1331(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person. The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date he is granted retired pay. (Added Pub. L. 89–652, § 2(1), Oct. 14, 1966, 80 Stat. 902.)

ENTITLEMENT TO RETIREMENT PAY AFTER OCT. 14, 1966; CONCLUSIVENESS

Section 3 of Pub. L. 89–652 provided that:

"Notwithstanding section 1406 of title 10, United States Code, as added by this Act [this section]—

"(1) the granting of retired pay to a person under chapter 67 of that title is conclusive as to that person's entitlement to such pay only if the payment of that retired pay is begun after the effective date of this Act [Oct. 14, 1966]; and

"(2) a notification that a person has completed the years of service required for eligibility for retired pay under chapter 67 of that title is conclusive as to the person's subsequent entitlement to such pay only if the notification is made after the effective date of this Act."

Chapter 73.—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Sec.
1431. Election of annuity: members of armed forces.
1432. Election of annuity: former members of armed forces.
1433. Mental incompetency of member.
1434. Kinds of annuities that may be elected.
1435. Eligible beneficiaries.
1436. Computation of reduction in retired pay; withdrawal for severe financial hardship.
1437. Payment of annuity.
1438. Deposits for amounts not deducted.
1439. Refund of amounts deducted from retired pay.
1440. Annuities not subject to legal process.
1441. Annuities in addition to other payments.
1442. Recovery of annuity erroneously paid.
1443. Board of Actuaries.
1444. Regulations; reports to Congress; determinations.
1445. Correction of administrative deficiencies.
1446. Restriction on participation.

AMENDMENTS

1961—Pub. L. 87-381, §§ 1(1), 6 (2), (3) Oct. 4, 1961, 75 Stat. 810, 812, amended chapter heading by substituting "Retired Serviceman's Family Protection Plan" for "Annuities Based on Retired or Retainer Pay", inserted "; withdrawal for severe financial hardship" in item 1436, and added items 1445 and 1446.

CROSS REFERENCES

Retired pay defined, see section 8311 of Title 5, Government Organization and Employees.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 sections 8311, 8317; title 26 sections 72, 101, 122, 2039, 2517, 6334; title 33 section 857a; title 42 section 213a.

§ 1431. Election of annuity: members of armed forces.

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 1376(a) of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after the date of enactment of this amendment is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his widow or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces. (Aug. 10, 1956, ch. 1041, 70A Stat. 108; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(11), 72 Stat. 1565; Oct. 4, 1961, Pub. L. 87-381, § 2, 75 Stat. 810; Aug. 13, 1968, Pub. L. 90-485, § 1(1), (2), 82 Stat. 751.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1431 (a)	37: 371 (less (e) and (f)); 37: 372 (a) (2d sentence).	Aug. 8, 1953, ch. 393, §§ 2 (less (e) and (f)), 3 (a) (less 5th sentence), (b), 67 Stat. 501, 502; Apr. 29, 1954, ch. 176, 68 Stat. 64.
1431 (b)	37: 372 (a) (less 2d, 5th, 6th, and last sentences); 37: 372 (b) (less last sentence).	
1431 (c)	37: 372 (a) (6th and last sentences).	
1431 (d)	37: 372 (b) (last sentence).	

In subsection (a), the language of the revised subsection is substituted for 37: 371 (b) and (c), to make clear that the section was intended to include enlisted members and members of the Army, or the Air Force, without component. The words "the United States Air Force Academy" are inserted to reflect its establishment by the Air Force Academy Act (68 Stat. 47). The words "retirement pay" are omitted as covered by the words "retired pay". The words "equivalent pay" are omitted as surplusage. 37: 371 (c) (less 1st 21 words) is omitted as executed, since the persons described must have completed 18 years of the required service on the effective date of the source statute and exercised the option by 180 days after that date. 37: 371 (a) is omitted, since the revised chapter applies only to the armed forces. 37: 371 (d) is omitted, since the words "person entitled to retired or retainer pay", or their equivalent, are used throughout the revised chapter. 37: 371 (g) is omitted, since the words "retired or retainer pay" are used throughout the revised chapter. 37: 371 (h) is omitted as unnecessary in view of the definitions contained in section 101 (5), (7), and (8). 37: 372 (a) (2d sentence) is omitted as surplusage.

In subsection (b), 37: 372 (a) (last 28 words of 1st sentence) is omitted as covered by section 1434 of this title. The words "or naval" are omitted as covered by the word "military". The last sentence is substituted for 37: 372 (a) (4th sentence, less 61st through 81st words). 37: 372 (a) (3d sentence, and 61st through 85th words of 4th sentence) and 37: 372 (b) (less last sentence) are omitted as executed.

In subsection (c), the words "is retired or becomes entitled to retired or retainer pay" are substituted for the words "his retirement" and "he retires" since, under

sections 1331—1333 of this title, a person may be granted retired pay without having been retired. The last eight words are substituted for 37: 372 (a) (7th through 17th words of last sentence). 37: 372 (a) (last sentence, less 1st 17 words) is omitted as surplusage.

REFERENCES IN TEXT

The date of enactment of this amendment, referred to in subsec. (b), is the date of enactment of Pub. L. 90–485, which was approved Aug. 13, 1968.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–485, § 1(1), increased from eighteen to nineteen the number of years of service the annuitant must complete, decreased from three to two years before eligibility the time required to make an election, and added provisions that an election made after Aug. 13, 1968 will not be effective if the conditions of cls. (1)—(3) are satisfied.

Subsec. (c). Pub. L. 90–485, § 1(2), decreased from three to two years before the first day for which retired or retainer pay is granted the time required to change or revoke an election when the gound of restored mental competency is not present, added the provision that any change or revocation in an election after the completion of 19 years of service is effective if made before the first day for which retired or retainer pay is granted, and provided for a change or revocation in an election before the first day for which retired or retainer pay is granted when there is a change in marital or dependency status, if such change or revocation of election is made within two years of such change in marital or dependency status.

1961—Subsec. (a). Pub. L. 87–381 substituted "other than a list maintained under section 1376(a) of this title" for "or who are in the Retired Reserve", redesignated pars. (4) and (5) as (2) and (3), and deleted former pars. (2) and (3) which related to reserves on an inactive status list, and members assigned to the inactive National Guard, respectively.

Subsec. (b). Pub. L. 87–381 required that unless the election is made before 18 years of service, it must be made at least three years before the first day for which retired or retainer pay is granted, inserted assignment to an isolated station among the reasons permitting a delayed election, changed the period within which to make such delayed election from within six months after return to the jurisdiction of his armed force, to within one year after he ceases to be assigned to the isolated station or his return to the jurisdiction of his armed force, and if the member is retroactively granted retired or retainer pay, and is eligible for an election, he may elect within 90 days after notice of such grant.

Subsec. (c). Pub. L. 87–381 substituted "the first day for which retired or retainer pay is granted" for "his retirement or before he becomes entitled to retired or retainer pay", the requirement that the change or revocation is not effective if made less than 3 years before the first day for which retired or retainer pay is granted, for a required period of five years after change or revocation before retirement or becoming entitled to retired or retainer pay, and deleted "If he revokes the election, he may not change or withdraw the revocation."

Subsec. (d). Pub. L. 87–381 substituted permission to make a corrected election within 90 days after notice that the election is void for any reason, except fraud or willful intent of the member making election, with such election effective as of the date of the election it replaces, for provisions which denied the ability to revoke any election by a person retired or granted retired or retainer pay before Nov. 1, 1953, and who elected within 180 days after that date to receive reduced pay to provide for an annuity.

1958—Subsec. (b). Pub. L. 85–861 eliminated words "in action" following "he is missing"

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–485 provided in part that: "Clause (1) and clause (6) of section 1 [which amended subsec. (b) of this section and section 1436(b) of this title], and sections 2, 3, and 4 of this Act [which amended section 1331 of this title and enacted material set out as notes under this section] are effective on the date of enactment [Aug. 13, 1968]. Remaining provisions of this Act [which amended subsec. (c) of this section and sections 1434, 1435, 1437 and 1446 of this title, and enacted provisions set out as a note under this section] are effective on the first day of the third calendar month following the date of enactment [Aug. 13, 1968]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUG. 13, 1968

Section 3 of Pub. L. 90–485 provided that: "For members to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968], the provisions of section 1434(c) of that title, as amended by this Act [section 1(3) of Pub. L. 90–485] are effective immediately and automatically".

ELECTION OF ANNUITY MADE PRIOR TO AUG. 13, 1968

Section 4 of Pub. L. 90–485 provided that: "A retired member who elected an annuity under chapter 73 of title 10, United States Code [this chapter], before the date of enactment of this Act [Aug. 13, 1968], but did not make the election that was then provided by section 1434 (c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444(a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are $25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed $25. No amounts by which a member's retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436 (b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title."

ELECTIONS SUBJECT TO COST TABLES APPLICABLE ON DATE OF RETIREMENT; ANNUITIES PAYABLE TO BENEFICIARIES ELIGIBLE UNDER LAW IN EFFECT THE DAY PRIOR TO AUG. 13, 1968

Section 5 of Pub. L. 90–485 provided, effective on the first day of the third calendar month following Aug. 13, 1968, that: "Notwithstanding any other provision of this Act [see Effective Date note set out under this section], elections in effect on the date of enactment [Aug. 13, 1968] will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act."

APPLICABILITY OF PROVISIONS IN EFFECT ON THE DAY PRIOR TO AUG. 13, 1968

Section 6 of Pub. L. 90–485 provided in part that: "Notwithstanding any other provision of this Act [see Effective Date note under this section], any member to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968] may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431 (b) or (c) of title 10, United States Code [subsec. (b) or (c) of this section] as in effect on the day before the date of enactment of this Act."

ELECTION OF ANNUITY BY CERTAIN PERSONNEL

Pub. L. 86–197, § 4, Aug. 25, 1959, 73 Stat. 426, provided that: "Any person who, on the effective date of this Act [August 25, 1959], would not have completed 18 years of service for which he is entitled to credit in the computation of his basic pay under the laws in effect prior to the effective date of this Act, and who, as a result of the enactment of this Act [amending sections 1332, 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 1332 and 3441 of this title], is credited with more than 17 years of such service, shall be allowed twelve months from the effective date of this Act to make the election provided by section 1431(b) of title 10, United States Code [subsection (b) of this section], notwithstanding the requirement of the second sentence of that section."

PROVISIONS APPLICABLE TO CERTAIN PERSONS RETIRING AFTER OCT. 4, 1961, FOR DISABILITY

Section 8 of Pub. L. 87–381 provided that:

"Any person who—

"(1) made an election before the date of enactment of this Act [Oct. 4, 1961], which would be effective if he retired on the day before such date; and

"(2) hereafter retires for physical disability before completing 18 years of service for which he is entitled to credit in the computation of his basic pay—

shall be considered as having applicable to him all of the provisions of chapter 73 of title 10, United States Code [this chapter], existing on the date preceding the date of enactment of this Act [Oct. 4, 1961], except that any revocation or change of an election is not effective until three years after the date of filing such revocation or change, or the date of enactment of this Act [Oct. 4, 1961], whichever is later."

CHANGE OF REVOCATION OF AN ELECTION FILED PRIOR TO OCT. 4, 1961

Section 7 of Pub. L. 87–381 provided that: "Any person who, before the date of enactment of this Act [Oct. 4, 1961], has filed a change or revocation, subject to section 1431(c) of title 10, United States Code [subsec. (c) of this section], of an election made under section 1431(b) of that title [subsec. (b) of this section], which change or revocation would be ineffective if the first day for which retired or retainer pay is granted were to be the date of enactment of this Act [Oct. 4, 1961], shall have that change or revocation become effective on that date, or three years after the date upon which it was filed, whichever is later."

CHANGE OR REVOCATION OF ELECTION BY CERTAIN COLONELS AND LIEUTENANT COLONELS

Pub. L. 86–616, § 11, July 12, 1960, 74 Stat. 396, provided that: "Notwithstanding section 1431 of title 10. United States Code [this section], a change or revocation of an election made under that section by an officer who is retired under section 10 of this Act [set out as a note under section 3297 of this title] is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3916, 3921, 8916, or 8921 of title 10, as appropriate."

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS OF REGULAR NAVY AND REGULAR MARINE CORPS

Pub. L. 86–616, § 13, July 12, 1960, 74 Stat. 396, provided that: "An officer who has been considered but not recommended for continuation on the active list under section 1 of the Act of August 11, 1959. Public Law 86–155 (73 Stat. 333) [set out as a note under section 5701 of this title], and who retired or retires voluntarily before the second day of the month following the month in which this Act is enacted [July 1960], may, within six months following the enactment of this Act [July 12, 1960], affirm a change or revocation of an election made under section 1431 of title 10, United States Code [this section], before his retirement, if the change or revocation would have been effective under section 3 of the Act of August 11, 1959, Public Law 86–155, as amended by this Act [set out as a note under section 5701 of this title], but for his voluntary retirement. If an officer takes no action under this section, his currently valid election under section 1431 of title 10, United States Code [this section], shall remain unchanged. The computation of the revised reduction in retired pay in the case of an officer who affirms a change of election under this section shall be in accordance with section 1436 of title 10, United States Code, and according to the conditions that existed on the day the officer became eligible for retired pay. An affirmation or revocation made under this section is effective on the first day of the month in which made. No refund may be made and no additional payment may be required with respect to any period before that date."

INTERIM AUTHORITY FOR SELECTION OF COMMANDERS AND CAPTAINS FOR CONTINUATION ON ACTIVE DUTY

Section 3(q) of Pub. L. 88–130 rendering election, change, or revocation of election under this section effective if made prior to the convening date of the board which considers Coast Guard commanders and captains for continuation, is set out as a note under section 285 of Title 14, Coast Guard.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Effective date of change or revocation of election by certain officers, see section 3 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 336, set out as a note under section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1432, 1433, 1434 of this title.

§ 1432. Election of annuity: former members of armed forces.

A person who was a former member of an armed force on November 1, 1953, and who is granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1432	37: 372 (a) (5th sentence).	Aug. 8, 1953, ch. 393, § 3 (a) (5th sentence), 67 Stat. 502.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434 of this title.

§ 1433. Mental incompetency of member.

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Veterans' Administration, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Veterans' Administration or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deduc-

tions made from his retired or retainer pay before that date may not be refunded. (Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1433	37: 372 (less (a) and (b)).	Aug. 8, 1953, ch. 393, § 3 (less (a) and (b)), 67 Stat. 502.

The first 19 words are substituted for 37: 372 (c) (1st 9 words). The words "who would be eligible to be made beneficiaries under section 1435 of this title" are inserted to reflect the limitations in 37: 371 (f). The words "for that reason cannot" are substituted for the words "because of such mental incompetency is incapable of". The words "or is adjudged mentally incompetent", "provided for in this section", and "where appropriate is subsequently adjudged mentally competent" are omitted as surplusage. The last sentence is substituted for 37: 372 (c) (last sentence).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431 of this title.

§ 1434. Kinds of annuities that may be elected.

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 per centum nor less than 12½ per centum of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death or remarriage of that spouse, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 per centum nor less than 12½ per centum of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse. (Aug. 10, 1956, ch. 1041, 70A Stat. 109; Oct. 4, 1961, Pub. L. 87–381, § 3, 75 Stat. 811; Aug. 13, 1968, Pub. L. 90–485, § 1(3), 82 Stat. 751.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1434 (a)	37: 373 (a) (less 4th par.)	Aug. 8, 1953, ch. 393, § 4 (less (c) and (d)), 67 Stat. 502.
1434 (b)	37: 373 (b).	
1434 (c)	37: 373 (a) (4th par.)	

In subsection (a), the first 17 words are substituted for 37: 373 (a) (1st 26 words of 1st sentence). The words "may be 50, 25, or 12½ percent" are substituted for the words "in such amount, expressed as a percentage of the reduced amount of his retired pay * * * in amounts equal to one-half, one-quarter or one-eighth". 37: 373 (a) (last 53 words of 1st sentence of 2d par., and last 53 words of 1st sentence of 3d par.) is omitted as covered by section 1435 (2) of this title. Clause (1) is substituted for 37: 373 (a) (1). Clause (2) is substituted for 37: 373 (a) (2) (less last 53 words of 1st sentence). Clause (3) is substituted for 37: 373 (a) (3) (less last 53 words of 1st sentence). The word "eligible" is inserted in clauses (2) and (3) to reflect the limitations in 37: 371 (f).

In subsection (c), the first 11 words are substituted for 37.373 (a) (4) (1st 24 words). The words "the annuity" are substituted for the words "an annuity payable under the election made by him".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–485 substituted provisions allowing election of an annuity amount, in conformance with the selected actuarial tables, of not more than 50 percent nor less than 12½ percent of retired or retired or retainer pay, but in no case less than $25, for provisions allowing election of an annuity amount of 50, 25, or 12½ percent of reduced retired or retainer pay.

Subsec. (b). Pub. L. 90–485 substituted provisions that the combined amount of annuities may not be more than 50 percent nor less than 12½ percent of retired or retainer pay, but in no case less than $25, for provisions that the combined amount of annuities may be only 25 or 12½ percent of reduced retired or retainer pay and provisions that the reduction in retired or retainer pay on account of each annuity, and the amount of each annuity, be determined in the same manner that it would be determined if the other annuity had not been elected.

Subsec. (c). Pub. L. 90–485 made mandatory the provisions that an election of any annuity under cls. (1) or (2) of subsec. (a), or any combination of annuities under subsec. (b), and the provision that an election of an annuity under cl. (3) of subsec. (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died or there is no eligible spouse because of death or divorce, respectively, and added provision determining what constitutes an eligible beneficiary.

Subsec. (d). Pub. L. 90–485 reenacted subsec. (d) without change.

1961—Subsec. (b). Pub. L. 87–381, § 3(1), substituted permission to elect only 25 or 12½ percent of the member's reduced retired or retainer pay for each annuity for provisions limiting the combined amount of the annuities to not more than 50 percent or the reduced pay, and added that the reduction in pay on account of each

annuity, and the amount of each annuity, shall be determined as if the other annuity had not been elected.

Subsec. (d). Pub. L. 87–381, § 3(2), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on the first day of the third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUG. 13, 1968

Provisions of this section as amended by Pub. L. 90–485 effective immediately and automatically for members to whom section 1431 of this title applies on Aug. 13, 1968, see section 3 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 1436 of this title.

§ 1435. Eligible beneficiaries.

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this chapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

For the purposes of clause (2)(B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bona fide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval. (Aug. 10, 1956, ch. 1041, 70A Stat. 110; Aug. 13, 1968, Pub. L. 90–485, § 1(4) (5), 82 Stat. 752.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1435 (1)	37: 371 (e).	Aug. 8, 1953, ch. 393, § 2 (e), (f), 67 Stat. 501.
1435 (2)	37: 371 (f).	

In clauses (1) and (2), the words "is retired or becomes entitled to retired or retainer pay" are substituted for the words "retired member", since the words "retired member", as defined in the source statute, included former members who have been awarded that pay.

In clause (1), the words "'widow' includes a widower" are omitted as covered by the definition of "spouse" in section 101 (32) of this title.

AMENDMENTS

1968—Pub. L. 90–485 added provisions in cl. (2)(B) concerning children of the member who are at least 18, but under 23 and pursuing a full-time course of study or training and added material following cl. (2)(E) relating to children considered to be pursuing a full-time course of study or training.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on the first day of the third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434, 1437 of this title.

§ 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship.

(a) The reduction in the retired or retainer pay of any person who elects an annuity under this chapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay but without regard to any increase in that pay to reflect changes in the Consumer Price Index. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

(2) to withdraw from participation in an annuity program under this title; or

(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.

A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection. (Aug. 10, 1956, ch. 1041, 70A Stat. 110; Oct. 4, 1961, Pub. L. 87–381, § 4, 75 Stat. 811; Dec. 6, 1967, Pub. L. 90–207, § 2(a)(3), 81 Stat. 653; Aug. 13, 1968, Pub. L. 90–485, § 1(6), 82 Stat. 753.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1436	37: 373 (c).	Aug. 8, 1953, ch. 393, § 4 (c), 67 Stat. 503.

The words "of any person who elects an annuity" are substituted for the words "of an active or retired member who has made an election". The words "in each individual case" and "designated in section 8" are omitted as surplusage. The words "and as of the date of election in the case of a retired member" are omitted as executed. 37: 373 (c) (1st 23 words of last sentence) is omitted as otherwise covered by the language of the revised section.

CODIFICATION

Provisions following cl. (4) of subsec. (b) have been included in the text of subsec. (b) since this appears to be the intent of Congress, even though section 1(6) of Pub. L. 90–485 placed within the quotation marks setting off the amended subsec. (b) only the material up to the end of cl. (4).

AMENDMENTS

1968—Subsec.(b). Pub. L. 90–485 substituted provisions authorizing the Secretary to allow the member to reduce the amount of the annuity, allow the member to withdraw from participation in an annuity program, allow the member to elect the annuity provided in section 1434(a)(1) in place of the annuity provided in section 1434(a)(3) under the specified conditions, and allow the member to elect that a child at least 18, but under 23, not be eligible for the specified annuities, setting forth the times when such reduction, withdrawal, or change of election may take place, and disallowing the refunding or crediting of any amount previously withheld, for provisions authorizing the Secretary to allow the member to withdraw from participation in an annuity program whenever the Secretary considers it necessary because of the member's severe financial hardship, the absence of an eligible beneficiary not of itself to be a basis for such action.

1967—Subsec. (a). Pub. L. 90–207 inserted "but without regard to any increase in that pay to reflect changes in the Consumer Price Index" following "that pay".

1961—Pub. L. 87–381 designated existing provisions as subsec. (a), added subsec. (b) and amended the catchline by inserting "; withdrawal for severe financial hardship."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCE

Report to Congress by the President containing information on cases in which relief is granted under this section, see subsec. (b) of section 1444 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1444 of this title.

§ 1437. Payment of annuity.

(a) Except as provided in subsection (b) each annuity payable under this chapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month prior to the effective date of this subsection. (Aug. 10, 1956, ch. 1041, 70A Stat. 110; Aug. 13, 1968, Pub. L. 90–485, § 1(7), 82 Stat. 753.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1437	37: 379.	Aug. 8, 1953, ch. 393, § 10, 67 Stat. 504.

The words "the person upon whose reduced pay the annuity is based" are substituted for the words "the retired member" since persons other than retired members may elect an annuity. The words "due and" and "or be paid" are omitted as surplusage.

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (b), is the first day of the third calendar month following Aug. 13, 1968.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–485 designated existing provisions as subsec. (a), and, as so redesignated, added "Except as provided in subsection (b)" and substituted "whose pay" for "whose reduced pay".

Subsec. (b). Pub. L. 90–485 added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on the first day of the third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1438. Deposits for amounts not deducted.

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity. (Aug. 10, 1956, ch. 1041, 70A Stat. 110.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1438	37: 374.	Aug. 8, 1953, ch. 393, § 5, 67 Stat. 504.

The words "a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter" are substituted for the words "a retired member of a uniformed service who has made the election specified in section 372 of this title", since the revised chapter applies to persons who are receiving retired pay as well as retired members. The word "otherwise" is substituted for the words "had he been receiving that pay". The words "to provide the annuity" are inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8316; title 26 sections 122, 2039.

§ 1439. Refund of amounts deducted from retired pay.

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this chapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list. (Aug. 10, 1956, ch. 1041, 70A Stat. 111.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1439	37: 373 (d).	Aug. 8, 1953, ch. 393, § 4 (d), 67 Stat. 503.

The words "person whose name is on" are substituted for the words "Any active member or former member on the". The words "is entitled to a refund" are substituted for the words "shall have refunded to him". The words "permanent", "a sum which represents", and "in accordance with his election under section 372 of this title" are omitted as surplusage. The words "retirement or grant of retired pay" are substituted for the words "permanent retirement", since under chapter 67 of this title a member of the Army or Air Force may be granted retired pay without being retired.

§ 1440. Annuities not subject to legal process.

No annuity payable under this chapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process. (Aug. 10, 1956, ch. 1041, 70A Stat. 111.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1440	37: 378.	Aug. 8, 1953, ch. 393, § 9, 67 Stat. 504.

The words "either in law or equity" are omitted as surplusage.

§ 1441. Annuities in addition to other payments.

An annuity under this chapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Veterans' Administration. (Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 2, 1958, Pub. L. 85–857, § 13(v)(i), 72 Stat. 1266; Sept. 2, 1958, Pub. L. 85–861, § 1(31B), 72 Stat. 1452; Aug. 29, 1959, Pub. L. 86–211, § 8(a), 73 Stat. 436; Dec. 24, 1970, Pub. L. 91–588, § 8(b), 84 Stat. 1584.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1441	37: 380.	Aug. 8, 1953, ch. 393, § 11, 67 Stat. 504.

The word "is" is substituted for the words "may now or hereafter be".

AMENDMENTS

1970—Pub. L. 91–588 eliminated "except section 415(g) and chapter 15 of title 38" which followed "Veterans' Administration."

1959—Pub. L. 86–211 inserted a reference to chapter 15 of Title 38.

1958—Pub. L. 85–861 inserted "except section 1115 of title 38" following "Administration".

Pub. L. 85–857 substituted "section 415(g) of title 38" for section 1115 of title 38".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–588 effective Jan. 1, 1971, see section 10 of Pub. L. 91–588, set out as a note under section 521 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–211 effective July 1, 1960, see section 10 of Pub. L. 86–211, set out as a note under section 521 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1446 of this title.

§ 1442. Recovery of annuity erroneously paid.

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the

recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this chapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this chapter or against equity and good conscience. (Aug. 10, 1956, ch. 1041, 70A Stat. 111.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1442	37: 376.	Aug. 8, 1953, ch. 393, § 7, 67 Stat. 504.

The words "In addition to other methods of recovery provided by law, the Secretary concerned may" are substituted for 37: 376 (a) (1st 15 words of 1st sentence). The words "from later payments to an annuitant" are substituted for 37: 376 (a) (2d sentence).

§ 1443. Board of Actuaries.

To advise on the administration of this chapter, the President shall convene at least once a year a Board of Actuaries composed of the Government Actuary, the Chief Actuary of the Social Security Administration, and an actuary who is a member of the Society of Actuaries. The compensation of the member from the Society of Actuaries shall be prescribed by the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 111.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1443	37: 377 (less 1st and 2d sentences).	Aug. 8, 1953, ch. 393, § 8 (less 1st and 2d sentences), 67 Stat. 504.

The words "at least once a year" are substituted for the words "annually, or oftener if he deems necessary". 37: 377 (last sentence) is omitted as covered by section 1436 of this title.

§ 1444. Regulations; reports to Congress; determinations.

(a) The President shall prescribe regulations to carry out this chapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the Environmental Science Services Administration, and the Public Health Service.

(b) The President shall report to Congress annually on the administration of this chapter. In addition to a report on the administration of this chapter, the report shall also contain a detailed account, including an actuarial analysis, of those cases in which relief is granted under sections 1436(b) and 1552 of this title, or any other statutory or administrative procedure.

(c) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this chapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 111; Oct. 4, 1961, Pub. L. 87–381, § 5, 75 Stat. 811; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1444 (a)	37: 377 (1st sentence).	Aug. 8, 1953, ch. 393, §§ 6, 8 (1st and 2d sentences), 67 Stat. 504.
1444 (b)	37: 377 (2d sentence).	
1444 (c)	37: 375.	

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

1961—Subsec. (b). Pub. L. 87–381 required the report to contain a detailed account, including an actuarial analysis, of cases in which relief is granted under sections 1436(b) and 1552 of this title, or any other statutory or administrative procedure.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. —, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1436, 1445 of this title.

§ 1445. Correction of administrative deficiencies.

Whenever he considers it necessary, the Secretary concerned may, under regulations prescribed under section 1444(a) of this title, correct any election, or any change or revocation of an election, under this chapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States. (Added Pub. L. 87–281, § 6(1), Oct. 4, 1961, 75 Stat. 811.)

§ 1446. Restriction on participation.

(a) Notwithstanding section 1441 of this title, if a person—

(1) has made an election under the chapter; and

(2) is retired for physical disability before he completes 19 years of service for which he is entitled to credit in the computation of his basic pay;

and thereafter dies, his beneficiaries are not entitled to the annuities provided under this chapter until they give proof to the department concerned that they are not eligible for benefits under chapter 11 or 13 of title 38. If the beneficiaries are not eligible

for benefits under chapter 11 or 13 of title 38, the annuity shall begin on the first day of the month in which the death occurs.

(b) Whenever the beneficiaries on whose behalf the election was made are restricted, under subsection (a), from participating in the annuities provided under this chapter, the amount withheld from the elector's retired or retainer pay as a result of an election under this chapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this chapter, and in either case without interest. (Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811, and amended Pub. L. 90–485, § 1(8), Aug. 13, 1968, 82 Stat. 754.)

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90–485 substituted "19" for "18".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on the first day of the third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

Chapter 75.—DEATH BENEFITS

Sec.
1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.
1476. Death gratuity: death after discharge or release from duty or training.
1477. Death gratuity: eligible survivors.
1478. Death gratuity: amount.
1479. Death gratuity: delegation of determinations, payments.
1480. Death gratuity: miscellaneous provisions.
1481. Recovery, care, and disposition of remains: decedents covered.
1482. Expenses incident to death.
1483. Prisoners of war and interned enemy aliens.
1484. Pensioners, indigent patients, and persons who die on military reservations.
1485. Dependents of members of armed forces.
1486. Other citizens of United States.
1487. Temporary interment.
1488. Removal of remains.

AMENDMENTS

1965—Pub. L. 89–150, § 1(2), Aug. 28, 1965, 79 Stat. 585, deleted from item 1485 "; death while outside United States".

1958—Pub. L. 85–861, § 1 (32) (B), (C), Sept. 2, 1958, 72 Stat. 1455, eliminated "Care of the Dead" from the heading of the chapter, and added items 1475—1480.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a; title 42 section 213a.

§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

(2) a Reserve of an armed force who dies while on inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active duty for training, or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies from an injury incurred by him after December 31, 1956, while traveling directly to or from that active duty for training or inactive duty training;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Universal Military Training and Service Act (50 App. U. S. C. 451 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death. (Added Pub. L. 85–861, § 1 (32) (A), Sept. 2, 1958, 72 Stat. 1452, and amended Pub. L. 88–647, title III, § 301(1), Oct. 13, 1964, 78 Stat. 1071.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1475 (a)	38: 1101 (2) (less last sentence, as applicable to death gratuity). 38: 1101 (4) (as applicable to death gratuity, less (D) (as applicable to 38: 1133 (a))). 38: 1101 (5) (as applicable to death gratuity, less (D) (as applicable to 38: 1133 (a))). 38: 1101 (6) (A) (less clause (3) of 2d sentence, as applicable to death gratuity). 38: 1001 (6) (B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii)) (as applicable to 38: 1133 (a))). 38: 1101 (11) (E) (less last 27 words, as applicable to death gratuity). 38: 1131 (a).	Aug. 1. 1956, ch. 837, §§ 102 (2) (less last sentence, as applicable to death gratuity), 102 (2) (last sentence, as applicable to death gratuity), (4) (as applicable to death gratuity, less (D) (as applicable to § 303 (a))), (5) (as applicable to death gratuity, less (D) (as applicable to § 303 (a))), (6) (A) (as applicable to death gratuity), (B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii) (as applicable to § 303 (a))), (11) (E) (less last 27 words, as applicable to death gratuity), 301 (a), 70 Stat. 858—861, 868.
1475 (b)	38: 1101 (2) (last sentence, as applicable to death gratuity under 38: 1131 (a)). 38: 1101 (6) (A) (clause (3) of 2d sentence, as applicable to death gratuity under 38: 1131 (a)).	

In subsection (a), the word "receiving" is inserted for clarity. Clause (1) is substituted for 38: 1101 (2) (1st sentence, and clauses (A)—(C) of 2d sentence); 38: 1101 (4) (A), (C), and (D); and 38: 1101 (5) (A), (C), and (D). Clause (2) is based on the words "inactive duty training", in 38: 1131 (a). Clause (3) (less words in parentheses) is substituted for 38: 1101 (6) (B) (1st sentence, less last 32 words). 38: 1101 (6) (A) (1st sentence) is omitted as covered by section 101 (31) of this title. The words in parentheses in clause (3) are substituted for 38: 1101 (6) (A) (2d sentence, less clause (3)). Clause (4) is substituted for 38: 1101 (2) (clause (D) of 2d sentence) and (5) (C). Clause (5) is substituted for 38: 1101 (2) (E), (11) (E) (less last 27 words). The words "active duty for training", in 38: 1131 (a), are omitted as covered by the definition of "active duty" in section 101 (22) of this title.

AMENDMENTS

1964—Subsec. (a)(4). Pub. L. 88–647 inserted provisions covering applicants for membership in a reserve officers' training corps while attending, or in travel to or from field training or a practice cruise.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1478, 1479, 1480 of this title; title 32 section 321.

§ 1476. Death gratuity: death after discharge or release from duty or training.

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title of each person who dies within 120 days after his discharge or release from—

(1) active duty; or

(2) inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

if the Administrator of Veterans' Affairs determines that the death resulted from (A) disease or injury incurred or aggravated while performing duty under clause (1) or the travel described in subsection (b), or (B) injury incurred or aggravated while performing training under clause (2) or the travel described in subsection (b) (2).

(b) The travel covered by subsection (a) is—

(1) authorized travel to or from the duty described in subsection (a) (1); or

(2) travel directly to or from the duty or training described in subsection (a) (1) or (2) that is performed by a Reserve who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform that duty or training and whose injury was incurred or aggravated after December 31, 1956.

(c) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Veterans' Administration, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(d) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death. (Added Pub. L. 85–861, § 1 (32) (A), Sept. 2, 1958, 72 Stat. 1452.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1476 (a)	38: 1133 (a).	Aug. 1, 1956, ch. 837, §§ 102 (2) (last sentence, as applicable to death gratuity under § 303 (a)), 102 (4) (D) (as applicable to § 303 (a)), 102 (5) (D) (as applicable to § 303 (a)), 102 (6) (A) (clause (3) of 2d sentence, as applicable to death gratuity under § 303 (a)), 102 (6) (B) (ii) (as applicable to § 303 (a)), 303 (a), (c), 70 Stat. 858, 859, 868, 869.
1476 (b)	38: 1101 (4) (D) (as applicable to 38: 1133 (a)).	
	38: 1101 (5) (D) (as applicable to 38: 1133 (a)).	
	38: 1101 (6) (B) (ii) (as applicable to 38: 1133 (a)).	
1476 (c)	38: 1133 (c).	
1476 (d)	38: 1101 (2) (last sentence, as applicable to death gratuity under 38: 1133 (a)).	
	38: 1101 (6) (A) (clause (3) of 2d sentence, as applicable to death gratuity under 38: 1133 (a)).	

In subsection (a), the words "Except as provided in section 1480 of this title" are inserted to reflect 38: 1134 (a). The words "to the survivor prescribed by section 1477 of this title" are inserted for clarity. The words "on or after January 1, 1957" are omitted as executed. The words in parentheses in clause (2) are inserted to reflect 38: 1101 (6) (A) (2d sentence). The words "active duty for training" are omitted as covered by the definition of "active duty" in section 101 (22) of this title.

In subsection (c), the word "criteria" is omitted as covered by the word "standards".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1478, 1480 of this title; title 32 section 321; title 38 section 423.

§ 1477. Death gratuity: eligible survivors.

(a) A death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list:

(1) His surviving spouse.

(2) His children, as prescribed by subsection (b), in equal shares.

(3) If designated by him, any one or more of the following persons:

(A) His parents or persons in loco parentis, as prescribed by subsection (c).

(B) His brothers.

(C) His sisters.

(4) His parents or persons in loco parentis, as prescribed by subsection (c), in equal shares.

(5) His brothers and sisters in equal shares.

Clauses (3) and (5) of this subsection include brothers and sisters of the half blood and those through adoption.

(b) Subsection (a) (2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Administrator of Veterans' Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(c) Clauses (3) and (4) of subsection (a), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before he acquired a status described in section 1475 or 1476 of this title. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered that status.

(d) If an eligible survivor dies before he receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (a). (Added Pub. L. 85-861, § 1 (32) (A), Sept. 2, 1958, 72 Stat. 1453.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1477 (a)	38: 1131 (c) (less words in parentheses in clause (2)). 38: 1134 (d).	Aug. 1, 1956, ch. 837, § 102 (7) (as applicable to death gratuity), 301 (c), (d), 304 (d), 70 Stat. 860, 868, 869.
1477 (b)	38: 1101 (7) (as applicable to children and as applicable to death gratuity). 38: 1131 (c) (words in parentheses in clause (2)).	
1477 (c)	38: 1101 (7) (less applicability to children, as applicable to death gratuity).	
1477 (d)	38: 1131 (d).	

In subsection (a), the words "highest on the following list" are substituted for the words "first listed below", in 38: 1131 (c). The words "as prescribed by subsection (b)" are inserted in clause (2) to reflect that subsection. The words "or persons in loco parentis, as prescribed by subsection (c)" are inserted in clauses (3) (A) and (4) to reflect the fact that certain persons who are not parents in the normal sense are included as eligible survivors.

In subsection (d), the words "the death gratuity" are substituted for the words "the amount to which he is entitled under this subchapter". The words "next in the order prescribed" are substituted for the words "first listed under".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1476, 1478, 1480 of this title; title 32 section 321.

§ 1478. Death gratuity: amount.

(a) The death gratuity payable under sections 1475–1477 of this title shall be equal to six months' pay at the rate to which the decedent was entitled on the date of his death, except that the gratuity may not be less than $800 or more than $3,000. For this purpose:

(1) A person covered by subsection (a) (1) of section 1475 of this title who died while traveling to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a) (3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a) (3) of section 1475 of this title who died while traveling directly to or from inactive duty training is considered to have been on inactive duty training on the date of his death.

(4) A person covered by subsection (a) (4) of section 1475 of this title who died while performing annual training duty or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209 (c) of title 37. A person covered by section 1475 (a) (4) of this title who dies while attending field training or a practice cruise under section 2104 (b) (B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209 (c) of title 37.

(5) A person covered by subsection (a) (5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(6) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(7) A person covered by section 1475 or 1476 of this title who performed active duty, or inactive duty training, without pay is considered to have been entitled to basic pay while performing that duty or training.

(8) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or inactive duty training and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or inactive duty training, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released. (Added Pub. L. 85-861, § 1 (32) (A), Sept. 2, 1958, 72 Stat. 1454, and amended Pub. L. 88-647, title III, § 301(2), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 89-718, § 11, Nov. 2, 1966, 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1478 (a)	38: 1101 (6) (B) (last 32 words of 1st sentence, as applicable to death gratuity). 38: 1101 (10) (B) (as applicable to death gratuity). 38: 1101 (11) (E) (last 27 words, as applicable to death gratuity). 38: 1131 (b). 38: 1133 (d). 38: 1134 (c).	Aug. 1, 1956, ch. 837, §§ 102 (6) (B) (last 32 words of 1st sentence, as applicable to death gratuity), (10) (B) (as applicable to death gratuity), (11) (E) (last 27 words, as applicable to death gratuity), (12) (as applicable to death gratuity), 301 (b), 303 (d), 304 (c), 70 Stat. 859–861, 868, 869.
1478 (b)	38: 1101 (12) (as applicable to death gratuity).	

In subsection (a), the word "pay" is substituted for the words "basic pay (plus special and incentive pays)", since the word "pay", as defined in section 101 (27) of this title, includes those types of pay. Clause (1) is inserted

to reflect section 1475 (a) (1) of this title. Clauses (2) and (3) are substituted for 38: 1101 (6) (B) (last 32 words of 1st sentence). Clause 4 is substituted for 38: 1101 (10) (B). The words "to the pay prescribed by section 4385 (c) or 9385 (c) of this title" are inserted to reflect those sections, which prescribe the training pay of members of reserve officers' training corps units. Clause (5) is substituted for 38: 1101 (11) (E) (last 27 words). Clause (6) is substituted for 38: 1133 (d). In clause (6), the word "pay" is substituted for the words "basic pay (plus special and incentive pays)", since the word "pay", as defined in section 101 (27) of this title, includes those kinds of pay. Clauses (7) and (8) are substituted for 38: 1134 (c). In those clauses, the words "active duty for training" are omitted as covered by the definition of "active duty" in section 101 (22) of this title. In clause (8), the words "and who became entitled to basic pay" are substituted for the words "and is placed in a pay status" and the words "is entitled to that pay" are substituted for the words "remains in a pay status".

In subsection (b), the words "on or after January 1, 1957" are omitted as executed. The words "(other than for training)" are inserted, since the words "active duty" in the source statute did not include active duty for training. The words "is considered to continue on that duty" are substituted for the words "shall be deemed to continue on active duty". The last sentence is substituted for 38: 1101 (12) (last 14 words).

AMENDMENTS

1966—Subsec. (a)(4). Pub. L. 89-718 substituted reference simply to "title 37" for reference to "title 37, United States Code".

1964—Subsec. (a)(4). Pub. L. 88-647 substituted "the first sentence of section 209(c) of title 37, United States Code" for "section 4385(c) or 9385(c) of this title", and provided that a person covered by section 1475(a)(4) of this title who dies in field training or on a practice cruise, or in travel to or from such training or cruise, is considered entitled on the day of his death to the pay prescribed by the second sentence of section 209(c) of Title 37.

§ 1479. Death gratuity: delegation of determinations, payments.

For the purpose of making immediate payments under section 1475 of this title, the Secretary concerned shall—

(1) authorize the commanding officer of a territorial command, installation, or district in which a survivor of a person covered by that section is residing to determine the beneficiary eligible for the death gratuity; and

(2) authorize a disbursing or certifying officer of each of those commands, installations, or districts to make the payments to the beneficiary, or certify the payments due them, as the case may be.

(Added Pub. L. 85-861, § 1 (32) (A), Sept. 2, 1958, 72 Stat. 1455.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1479	38: 1132.	Aug. 1, 1956, ch. 837, § 302, 70 Stat. 868.

The word "territorial" is substituted for the words "military or naval", since the subsection could only apply to that type of command, installation, or district. Clause (2) is substituted for 38: 1132 (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 321.

§ 1480. Death gratuity: miscellaneous provisions

(a) A payment may not be made under sections 1475—1477 of this title if the decedent was put to death as lawful punishment for a crime or a military offense, unless he was put to death by a hostile force with which the armed forces of the United States were engaged in armed conflict.

(b) A payment may not be made under section 1476 unless the Administrator of Veterans' Affairs determines that the decedent was discharged or released, as the case may be, under conditions other than dishonorable from the last period of the duty or training that he performed.

(c) For the purposes of section 1475 (a) (3) of this title, the Secretary concerned shall determine whether the decedent was authorized or required to perform the duty or training and whether or not he died from injury so incurred. For the purposes of section 1476 of this title, the Administrator of Veterans' Affairs shall make those determinations. In making those determinations, the Secretary or the Administrator, as the case may be, shall consider—

(1) the hour on which the Reserve began to travel directly to or from the duty or training;

(2) the hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) the method of travel used;

(4) the itinerary;

(5) the manner in which the travel was performed; and

(6) the immediate cause of death.

In cases covered by this subsection, the burden of proof is on the claimant.

(d) Payments under sections 1475—1477 of this title shall be made from appropriations available for the payment of members of the armed force concerned. (Added Pub. L. 85-861, § 1 (32) (A), Sept. 2, 1958, 72 Stat. 1455.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1480 (a)	38: 1134 (a).	Aug. 1, 1956, ch. 837, §§ 102 (6) (B) (less 1st sentence, as applicable to death gratuity), 303 (e), 304 (a), (b), 70 Stat. 859, 869.
1480 (b)	38: 1133 (e).	
1480 (c)	38: 1101 (6) (B) (less 1st sentence, as applicable to death gratuity).	
1480 (d)	38: 1134 (b).	

In subsection (a), the words "was put to death" are substituted for the words "suffered death". The words "or naval" are omitted as covered by the word "military".

In subsection (b), the words "last period * * * that he performed" are substituted for the words "such period".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1476 of this title; title 32 section 321.

§ 1481. Recovery, care, and disposition of remains: decedents covered.

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of—

(1) any Regular of an armed force, or member of an armed force without component, under his jurisdiction who dies while on active duty;

(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at

the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

(4) any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel;

(5) any accepted applicant for enlistment in an armed force under his jurisdiction;

(6) any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death;

(7) any retired member of an armed force under his jurisdiction who becomes a patient in a United States hospital while he is on active duty for a period of more than 30 days, and who continues to be such a patient until the date of his death; and

(8) any military prisoner who dies while in his custody.

(b) This section applies to each person covered by subsection (a) (1)—(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death. (Aug. 10, 1956, ch. 1041, 70A Stat. 112; Oct. 13, 1964, Pub. L. 88-647, title III, § 301(3), 78 Stat. 1071.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1481 (a)	5: 2151 (as applicable to armed forces); 5: 2152 (1st 27 words, as applicable to armed forces); 5: 2153 (less 1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§ 1, 2 (1st 25 words, as applicable to armed forces), 3 (less 1st 16 words, as applicable to armed forces), 4 (as applicable to armed forces), 68 Stat. 478.
1481 (b)	5: 2154 (as applicable to armed forces).	

In subsection (a), 5: 2151 is omitted as covered by the revised sections of this chapter. In clauses (1), (2), (5)—(7), the words "under his jurisdiction" are inserted for clarity. In clause (1) the words "regular member of an armed force, or member of an armed force without component" are substituted for the words "military personnel", since all other members of the military services are covered by more specific rules set forth in clauses (2) and (7). In clauses (2) and (3), the words "active duty for training" are omitted as covered by the words "active duty". The words "injury incurred, or disease contracted" are substituted for the words "injuries, illness, or disease contracted or incurred". The words "by law", "authorized", "proper authority", and "as authorized by law" are omitted as surplusage. In clause (3), the words "while entitled to" are substituted for the words "in respect of duty for which they are entitled by law to receive". In clause (4), the words "injury incurred, or disease contracted" are substituted for the words "injury, disease or illness contracted or incurred". The words "as authorized by law" are omitted as surplusage. In clause (6), the word "person" is substituted for the words "former enlisted members". In clause (7), the words "active duty for a period of more than 30 days" are substituted for the words "extended active duty".

In subsection (b), the words "This section applies to each person * * * even though" are substituted for the words "The benefits of this Act shall not be denied in respect of a person * * * on the ground".

AMENDMENTS

1964—Subsec. (a)(4). Pub. L. 88-647 substituted ", or applicant for membership in, a reserve officers' training corps" for "the Army Reserve Officers' Training Corps, Naval Reserve Officers' Training Corps, or Air Force Reserve Officers' Training Corps."

PUBLIC HEALTH SERVICE

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

CROSS REFERENCES

American Battle Monuments Commission, see section 121 et seq. of Title 36, Patriotic Societies and Observances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1482 of this title.

§ 1482. Expenses incident to death.

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of—

(1) recovery and identification of the remains;

(2) notification to the next of kin or other appropriate person;

(3) preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains;

(4) furnishing of a uniform or other clothing;

(5) furnishing of a casket or urn, or both, with outside box;

(6) hearse service;

(7) funeral director's services;

(8) transportation of the remains, and round-trip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized;

(9) interment of the remains;

(10) presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody of the Secretary and while under a sentence that includes a discharge; and

(11) presentation of a flag of equal size to the flag presented under clause (10) to the parents or parent, if the person to be presented a flag under clause (10) is other than the parent of the decedent; for the purpose of this clause, the term

"parent" includes a natural parent, a stepparent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this clause shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) Only the following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The surviving spouse of the decedent.

(2) Blood relatives of the decedent.

(3) Adoptive relatives of the decedent.

(4) If no person covered by clauses (1)—(3) can be found, a person standing in loco parentis to the decedent.

(d) When, as a result of a disaster involving the multiple deaths of persons covered by section 1481 of this title, the Secretary concerned has possession of commingled remains that cannot be individually identified, and burial of those remains in a common grave in a national cemetery is considered necessary, he may, for the interment services of each known decedent, pay the expenses of round-trip transportation to the cemetery of (1) the person who would have been designated under subsection (c) to direct disposition of the remains if individual identification had been made, and (2) two additional persons selected by that person who are closely related to the decedent. The transportation expenses authorized to be paid under this subsection may not exceed the transportation allowances authorized for members of the armed forces for travel on official business, but no per diem allowance may be paid.

(e) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the effective date of this subsection, or the date of death, whichever is later.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113; Aug. 21, 1958, Pub. L. 85–716, 72 Stat. 708; Sept. 1, 1970, Pub. L. 91–397, 84 Stat. 837; Oct. 22, 1970, Pub. L. 91–487, 84 Stat. 1086.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1482 (a)	5: 2152 (less 1st 27 words, as applicable to armed forces); 5: 2153 (1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§ 2 (less 1st 25 words, as applicable to armed forces), 3 (1st 16 words, as applicable to armed forces), 11 (as applicable to armed forces), 12 (as applicable to armed forces), 68 Stat. 478, 480, 481.
1482 (b)	5: 2161 (as applicable to armed forces).	
1482 (c)	5: 2162 (as applicable to armed forces).	

In subsection (a), the list of payable expenses has been rearranged to produce a generally chronological result. The words "person designated" are substituted for the words "person recognized as the person."

In subsection (a) (4), the words "articles of" are omitted as surplusage.

In subsection (a) (8), the word "place" is substituted for the words "town or city".

In subsection (a) (10), the words "other than honorable" are omitted, since a person cannot be sentenced to an honorable discharge.

In subsection (b), the words "If an individual pays" are substituted for the words "In any case where expenses * * * are borne by individuals". The second sentence of 5: 2161 is omitted as executed. The last sentence is substituted for the last sentence of 5: 2161.

In subsection (c), 5: 2162 (1st sentence) is omitted since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The introductory language is substituted for 5: 2162 (1st 22 words of 2d sentence). The words "ascertained and" are omitted as surplusage.

AMENDMENTS

1970—Subsec. (a) (11). Pub. L. 91–397 added cl. (11). Subsec. (e). Pub. L. 91–487 added subsec. (e).

1958—Subsec. (d). Pub. L. 85–716 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 901.

§ 1483. Prisoners of war and interned enemy aliens.

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to the cemetery or other place selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1483	5: 2155 (as applicable to armed forces).	July 15, 1954, ch. 507, § 5 (as applicable to armed forces), 68 Stat. 479.

The list of payable expenses has been rearranged to produce a generally chronological result. The words "incurred for", and the words "articles of" in clause (3), are omitted as surplusage. In clause (5), the words "cemetery or other place" are substituted for the words "town, city, or cemetery".

§ 1484. Pensioners, indigent patients, and persons who die on military reservations.

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to a cemetery selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1484	5: 2156 (as applicable to armed forces).	July 15, 1954, ch. 507, § 6 (as applicable to armed forces), 68 Stat. 479.

The words "If proper disposition of the remains cannot otherwise be made" are substituted for 5: 2156 (last sentence). The words "maintained and" and "incurred for", and the words "articles of" in clause (3), are omitted as surplusage. The words "of that department" are inserted for clarity.

§ 1485. Dependents of members of armed forces.

(a) The Secretary concerned may, if a dependent of a member of an armed force dies while the member is on active duty (other than for training), provide for, and pay the necessary expenses of, transporting the remains of the deceased dependent to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies. (Aug. 10, 1956, ch. 1041, 70A Stat. 114; Aug. 28, 1965, Pub. L. 89–150, § 1(1), 79 Stat. 585.

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1485 (a)	5: 2157 (1st sentence, as applicable to armed forces).	July 15, 1954, ch. 507, § 7 (a) (as applicable to armed forces), 68 Stat. 479.
1485 (b)	5: 2157 (2d sentence, as applicable to armed forces).	
1485 (c)	5: 2157 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the words "a member of an armed force" are substituted for the words "military personnel". The words "the continental limits * * * or in Alaska" are omitted as covered by the definition of "United States" in section 101 (1) of this title. The words "while traveling" are substituted for the words "while in transit".

In subsection (b), the word "services" is substituted for the word "facilities".

In subsection (c), the words "the authority of" and "the payments of" are omitted as surplusage. The words "at the time of reimbursement" are substituted for the word "current".

AMENDMENTS

1965—Pub. L. 89–150 deleted from the catchline "; death while outside United States".

Subsec. (a). Pub. L. 89–150 substituted provision for payment of transportation expenses of remains of deceased dependent of a member of an armed force while the member is on active duty (other than for training), for former provision for payment of the expenses where the member of the armed force is on active duty at a place outside the United States and the dependent dies while residing with that member or while traveling to or from that place.

CROSS REFERENCES

Definition of dependents of female members, see sections 3685, 6033, 8685 of this title.

§ 1486. Other citizens of United States.

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from non-appropriated funds.

(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this section, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services, supplies, and transportation. (Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1486 (a)	5: 2158 (1st sentence as applicable to armed forces).	July 15, 1954, ch. 507, § 8 (as applicable to armed forces), 68 Stat. 480.
1486 (b)	5: 2158 (2d sentence, as applicable to armed forces).	
1486 (c)	5: 2158 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the word "services" is substituted for the word "facilities". The words "the continental limits * * * or in Alaska" are omitted as covered by definition of "United States" in section 101 (1) of this title. In clause (3), the word "masters" is omitted as covered by the word "officer". In clause (4), the words "under the jurisdiction of the Secretary" are inserted for clarity. In clause (5), the words "otherwise covered" are substituted for the words "specifically enumerated". In clause (6), the words "who is covered" are substituted for the words "within the classes enumerated". The words "outside the United States" are substituted for the word "abroad". The words "that person" are substituted for the words "the supporting citizens concerned".

In subsection (b), the word "Government" is omitted as surplusage.

In subsection (c), the words "the authority of" are omitted as surplusage. The words "at the time of reimbursement" are substituted for the word "current".

§ 1487. Temporary interment.

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1487	5: 2159 (as applicable to armed forces).	July 15, 1954, ch. 507, § 9 (as applicable to armed forces), 68 Stat. 480.

The words "as authorized by this chapter, section 103a (c) of this Title, and section 224 of Title 42", "by purchase or otherwise", "care and", and "single or multiple" are omitted as surplusage. The word "continental" is omitted as covered by the definition of "United States" in section 101 (1) of this title.

§ 1488. Removal of remains.

If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery. With respect to any deceased member of an armed force under his jurisdiction whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery. (Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1488	5: 2160 (as applicable to armed forces).	July 15, 1954, ch. 507, § 10 (as applicable to armed forces), 68 Stat. 480.

The words "national cemeteries, other installation cemeteries, or" are omitted as surplusage.

Chapter 77.—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.
1521. Posthumous commissions.
1522. Posthumous warrants.
1523. Posthumous commissions and warrants: effect on pay and allowances.
1524. Posthumous commissions and warrants: determination of date of death.

AMENDMENTS

1966—Pub. L. 89-718, § 12(a)(2), Nov. 2, 1966, 80 Stat. 1117, added item 1524.

§ 1521. Posthumous commissions.

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death in line of duty;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death in line of duty; or

(3) was officially recommended for appointment or promotion to a commissioned grade and the recommendation for whose appointment or promotion was approved by the Secretary concerned but was unable to accept the promotion or appointment because of death in line of duty.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or approval, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or approval to the date of his death. (Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1521 (a)	10: 491a (words before semicolon); 10: 491b (words before semicolon); 10: 491c (words before semicolon); 34: 285b, (words before semicolon); 34: 285c (words before semicolon); 34: 285d (words before semicolon).	July 28, 1942, ch. 528, §§ 1—3, 56 Stat. 722, 723; July 17, 1953, ch. 220, § 1 (a)—(c), 67 Stat. 176.
1521 (b)	10: 491a (words after semicolon); 10: 491b (words after semicolon); 10: 491c (words after semicolon); 34: 285b (words after semicolon); 34: 285c (words after semicolon); 34: 285d (words after semicolon).	

In subsection (a), the words "a member of" are substituted for the words "any person who, while in", in 10: 491a, 491b, 491c, and 34: 285b, 285c, and 285d. The words "armed forces" are substituted for the words "military service of the United States", in 10: 491a, 491b, and 491c; and the words "naval service of the United States", in 34: 285b, 285c, and 285d (which did not appear in the source statute for the revised section, as amended by the Act of July 17, 1953, ch. 220, § 1 (b), 67 Stat. 177). The words "to such grade", in 10: 491a and 34: 285b, "receive or", in 10: 491c and 34: 285d, are omitted as surplusage.

In subsection (b), the words "if any" are substituted for words "of the service". The words "appointment and", in 10: 491b and 34: 285c, and "appointment or promotion and", in 10: 491c and 34: 285d, are omitted as surplusage.

DETERMINATION OF DATE OF DEATH UNDER MISSING PERSONS ACT

Section 5 of Act July 28, 1942, ch. 528, as added July 17, 1953, ch. 220, § 1(e), 67 Stat. 177, which provided that for purposes of this chapter, in any case where the date of death is established under the Missing Persons Act, as amended, the date of death is the date of receipt by the head of the department concerned of evidence that the person is dead, or the date the finding of death is made under section 5 of that Act, was repealed by Pub. L. 89–718, § 12(b), Nov. 2, 1966, 80 Stat. 1117. See section 1524 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1524 of this title.

§ 1522. Posthumous warrants.

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death in line of duty.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death. (Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1522 (a)	10: 612 (words before semicolon); 34: 285e (words before semicolon).	July 28, 1942, ch. 528, § 4, 56 Stat. 723; July 17, 1953, ch. 220, § 1 (a)—(d), 67 Stat. 176.
1522 (b)	10: 612 (words after semicolon); 34: 285e (words after semicolon).	

In subsection (a), the words "a member of" are substituted for the words "any person who, while in", in 10: 612 and 34: 285e. The words "armed forces" are substituted for the words "the military service of the United States", in 10: 612; and "the naval service of the United States", in 34: 285e (which did not appear in the source statute for the revised section, as amended by the act of July 17, 1953, ch. 220, § 1 (b), 67 Stat. 177). The words "other than a commissioned grade" are substituted for the words "noncommissioned grade" to make it clear that the revised section covers warrant officers. The words "receive or" are omitted as surplusage.

In subsection (b), the words "appointment or promotion", "and branch of the service", "official", and "by such warrant" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1524 of this title.

§ 1523. Posthumous commissions and warrants: effect on pay and allowances.

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant. (Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1523	10: 491d; 34: 285f.	July 28, 1942, ch. 528, § 6, 56 Stat. 723; July 17, 1953, ch. 220, § 1 (e) (1st 7 words), 67 Stat. 177.

The word "receive" is omitted as surplusage. The words "because of a posthumous commission or warrant" are substituted for the words "by virtue of any provision of sections 491a—491d [285b—285d] and 612 [285e] of this title", in 10: 491d and 34: 285f.

§ 1524. Posthumous commissions and warrants: determination of date of death.

For the purposes of sections 1521 and 1522 of this title, in any case where the date of death is established or determined under sections 551—558 of title 37, the date of death is the date the Secretary concerned receives evidence that the person is dead, or the date the finding of death is made under section 555 of title 37. (Added Pub. L. 89–718, § 12(a)(1), Nov. 2, 1966, 80 Stat. 1117.)

Chapter 79.—CORRECTION OF MILITARY RECORDS

Sec.
1551. Correction of name after separation from service under an assumed name.
1552. Correction of military records: claims incident thereto.
1553. Review of discharge or dismissal.
1554. Review of retirement or separation without pay for physical disability.

AMENDMENTS

1962—Pub. L. 87–651, title I, § 110(b), Sept. 7, 1962, 76 Stat. 510, substituted "discharge or dismissal" for "discharges or dismissals" in item 1553, and "retirement or separation without pay for physical disability" for "decisions of retiring boards and similar boards" in item 1554.

1958—Pub. L. 85–857, § 13(v)(3), Sept. 2, 1958, 72 Stat. 1268, added items 1553 and 1554.

§ 1551. Correction of name after separation from service under an assumed name.

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, or Marine Corps honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences. (Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1551	5: 200; 34: 597.	Apr. 14, 1890, ch. 80; restated June 25, 1910, ch. 393, 36 Stat. 824. Aug. 22, 1912, ch. 329, 37 Stat. 324.

The word "shall" is substituted for the words "is authorized and required". The word "separated" is substituted for the word "discharged", since the revised section covers acceptances of resignations as well as certificates of discharge. The words "enlisted or" and "while minors or otherwise" are omitted as surplusage. The words "the War of the Rebellion" are omitted as obsolete. The word "with" is substituted for the words "between the United States and". The words "honorably or under honorable conditions" are substituted for the word "honorably".

§ 1552. Correction of military records: claims incident thereto.

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs. (Aug. 10, 1956, ch. 1041, 70A Stat. 116; June 29, 1960, Pub. L. 86–533, § 1(4), 74 Stat. 246.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1552 (a)	5: 191a (a) (less 2d and last provisos); 5: 275 (a) (less 2d and last provisos).	Aug. 2, 1946, ch. 753, § 207; restated Oct. 25, 1951, ch. 588, 65 Stat. 655.
1552 (b)	5: 191a (a) (2d and last provisos); 5: 275 (a) (2d and last provisos).	
1552 (c)	5: 191a (b), (c); 5: 275 (b), (c).	
1552 (d)	5: 191a (d); 5: 275 (d).	
1552 (e)	5: 191a (f); 5: 275 (f).	
1552 (f)	5: 191a (e); 5: 275 (e).	

In subsection (a), the words "and approved by the Secretary of Defense" are substituted for 5: 191a (a) (1st proviso). The words "when he considers it" are substituted for the words "where in their judgment such action is", in 5: 191a and 275. The words "officers or employees" and "means of", in 5: 191a and 275, are omitted as surplusage. The word "naval", in 5: 191a and 275, is omitted as covered by the word "military".

In subsection (b), the words "before October 26, 1961" are substituted for the words "or within ten years after the date of enactment of this section", in 5: 191a and 275. The last sentence of the revised subsection is substituted for 5: 191a (a) (last proviso) and 275 (a) (last proviso).

In subsection (c), the words "if, as a result of correcting a record under this section * * * the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be" are substituted for the words "which are found to be due on account of military or naval service as a result of the action * * * hereafter taken pursuant to subsection (a) of this section", in 5: 191a and 275. The words "heretofore taken pursuant to this section", in 5: 191a and 275, are omitted as executed. The words "of any persons, their heirs at law or legal representative as hereinafter provided", "(including retired or retirement pay)", "as the case may be", "duly appointed", "otherwise due hereunder", "decedent's", "precedence or succession", and "of precedence", in 5: 191a and 275, are omitted as surplusage. The last sentence is substituted for 5: 191a (c) and 275 (c).

In subsection (b), the word "but" is substituted for the words "That, continuing payments are authorized to be made to such personnel", in 5: 191a and 275. The words "if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate" are substituted for the words "without the necessity for reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached", in 5: 191a and 275. The words "or one year following the date of enactment of this section", in 5: 191a and 275, are omitted as executed. The words "for payment of such sums as may be due for", in 5: 191a and 275, are omitted as surplusage. The words "(including retired or retirement pay)", in 5: 191a and 275, are omitted as covered by the definition of "pay" in section 101 (27) of this title.

In subsection (e), the words "No payment may be made under this section" are substituted for the words "Nothing in this section shall be construed to authorize the payment of any amount as compensation", in 5: 191a and 275.

AMENDMENTS

1960—Subsec. (f). Pub. L. 86–533 repealed subsec. (f) which required reports to the Congress every six months with respect to claims paid under this section.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the

Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

CROSS REFERENCE

Report to Congress by the President containing information on cases in which relief is granted under this section, see subsec. (b) of section 1444 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1444 of this title; title 38 sections 1662, 3010.

§ 1553. Review of discharge or dismissal.

(a) The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of Veterans' Affairs under chapter 59 of title 38. (Added Pub. L. 85-857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267, and amended Pub. L. 87-651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 509.)

AMENDMENTS

1962—Pub. L. 87-651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective January 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1662, 3010.

§ 1554. Review of retirement or separation without pay for physical disability.

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in his case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of Veterans' Affairs under chapter 59 of title 38. (Added Pub. L. 85-857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267, and amended Pub. L. 87-651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 510.)

AMENDMENTS

1962—Pub. L. 87-651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 1571 to 1577. Repealed. Pub. L. 90-83, § 3(2), Sept. 11, 1967, 81 Stat. 220.

Sections, Pub. L. 89-690, § 1, Oct. 15, 1966, 80 Stat. 1016, created Exemplary Rehabilitation Certificates to be issued by the Secretary of Labor to persons discharged or dismissed from the Armed Forces under conditions other than honorable or to persons who had received a general discharge but who had established that they had rehabilitated themselves and established the administrative and other authority in connection therewith. The provisions for the certificates are now covered by chapter 13 of Title 29, Labor.

Chapter 81.—CIVILIAN EMPLOYEES

Sec.
1581. Appointment: professional and scientific services.
1582. Professional and scientific services: reports to Congress on appointments.
1583. Employment of certain persons without compensation.
1584. Laws relating to employment of non-citizens: not applicable to research and development activities.
1585. Carrying of firearms.
1586. Rotation of career-conditional and career employees assigned to duty outside the United States.

AMENDMENTS

1966—Pub. L. 89-718, § 13, Nov. 2, 1966, 80 Stat. 1117, eliminated item 1580.

1962—Pub. L. 87-651, title II, § 206(b), Sept. 7, 1962, 76 Stat. 520, added item 1580.

1960—Pub. L. 86-585, § 2, July 5, 1960, 74 Stat. 327, added item 1586.

1958—Pub. L. 85-577, § 1(2), July 31, 1958, 72 Stat. 456, added item 1585.

§ 1580. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 663.

Section, Pub. L. 87-651, title II, § 206(a), Sept. 7, 1962, 76 Stat. 519, related to appointment of civilian employees by the Secretary of Defense.

§ 1581. Appointment: professional and scientific services.

(a) The Secretary of Defense may establish not more than five hundred thirty civilian positions in the Department of Defense to carry out research and development relating to the national defense, military medicine, and other activities of the Department of Defense that require the services of specially qualified scientists or professionsal personnel.

(b) Subject to the Civil Service Commission's approval as to rates, the Secretary may fix the compensation for positions established under subsection (a). However, the per annum compensation may not be less than the minimum rate of grade 16 of the General Schedule of the Classification Act of 1949, as amended, nor more than the highest rate of grade 18 of the General Schedule of such Act.

(c) Positions established under subsection (a) are in the classified civil service of the United States. However, if the Civil Service Commission or a person designated by it approves a proposed appointee's qualifications, no competitive examination may be required. (Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85-861, § 1 (34), 72 Stat. 1456; May 29, 1959, Pub. L. 86-36, § 3, 73 Stat. 63; Sept. 23, 1959, Pub. L. 86-377, § 2, 73 Stat. 701; Oct. 4, 1961, Pub. L. 87-367, title II, § 203, 75 Stat. 790; Oct. 11, 1962, Pub. L. 87-793, § 1001(b), 76 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1581 (a)	5: 171p (less 9th through 13th words, and less last par.).	Aug. 1, 1947, ch. 433, § 1 (a); restated June 24, 1948, ch. 624, § 1 (a); restated July 13, 1949, ch. 332, § 1 (a), 63 Stat. 410.
1581 (b)	5: 171p (9th through 13th words and last par.).	Aug. 1, 1947, ch. 433, § 1 (c); restated June 24, 1948, ch 624, § 1 (c); restated July 13, 1949, ch. 332, § 1 (c), 63 Stat. 411.
1581 (c)	5: 171q.	Aug. 1, 1947, ch. 433, § 2, 61 Stat. 715.

In subsection (a), the word "civilian" is inserted for clarity. The words "each such position being established" and "any and all" are omitted as surplusage. The words "to carry out research and development" are substituted for the words "to effectuate those research and development functions". The words "and naval" are omitted as covered by the word "military".

In subsection (b), the words "The rates of * * * for positions established pursuant to the provisions of sections 171p—171r of this title" are omitted as surplusage. The word "may" is substituted for the word "shall".

In subsection (c), the words "established under" are substituted for the words "created pursuant to". The last sentence is substituted for 5: 171q (last 35 words).

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (b), is classified to chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-793 substituted provisions requiring the per annum compensation to be not less than the minimum rate of grade 16 nor more than the highest rate of grade 18 of the General Schedule, for provisions which prescribed per annum compensation of not less than $12,500 nor more than $19,000.

1961—Subsec. (a). Pub. L. 87-367 authorized the Secretary of Defense to increase the number of civilian scientific and professional positions from four hundred fifty to five hundred thirty.

1959—Subsec. (a). Pub. L. 86-377 increased from 292 to 450 the number of civilian positions authorized to be established by Secretary of Defense.

Pub. L. 86-36 deleted from subsec. (a), as modified by section 12(a) of the Federal Employees Salary Increase Act of 1958 (72 Stat. 213), ", and not more than fifty civilian positions in the National Security Agency," and "and the National Security Agency, respectively," following "Department of Defense". Section 12(a) of Pub. L. 85-462, June 20, 1958, 72 Stat. 213, had increased the limitation on the number of civilian positions in the National Security Agency from 25 to 50. See "Number of Positions; Rates of Compensation" note under this section.

1958—Subsec. (a). Pub. L. 85-861, § 1 (34) (A), increased from 6 to 120 the number of positions which the Secretary may establish in the Department of Defense, and authorized the Secretary to establish not more than 25 civilian positions in the National Security Agency.

Subsec. (b). Pub. L. 85-861, § 1 (34) (B), substituted "$12,500" for "$10,000" and "$19,000" for "$15,000".

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-793 effective on the first day of the first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87-793.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-36 effective on the first day of the first pay period which begins later than the thirtieth day following May 29, 1959, see section 8 of Pub. L. 86-36, set out as a note under section 402 of Title 50, War and National Defense.

Amendment of this section by Pub. L. 86-36 effective on the first day of the first pay period which begins later than the thirtieth day following May 29, 1959, see section 8 of Pub. L. 86-36, set out as a note under section 402 of Title 50, War and National Defense.

SHORT TITLE

Section 1 of Pub. Y. 87-793 provided: "That this Act [enacting sections 3106 and 4008 of former Title 39, and sections 659, 632f; 1171-1174 and 2268 of former Title 5, Executive Departments and Government Officers and Employees, amending this section and sections 507, 711, 2302, 2303, 3101, 3301, 3335, 3541, 3542, 3543, 3544, 3552, 3554, 3559, 3560, 4052, 4253, 4303, 4355, 4357, 5358, 4359, 4362, 4422, 4451, 4452, 4552, 4554, 4651, 4653, 4654 and 6402 of former Title 39, sections 298a, 1105, 1107, 1113, 1121-1123, 1132, 1133, 1161, 1162, 2251, 2259 and 2260 of former Title 5, section 113a of Title 21, Food and Drugs, sections 290a, 867, 870, 1017, 2385, 2454 and 2506 of Title 22, Foreign Relations and Intercourse, section 508 of Title 28, Judiciary and Judicial Procedure, sections 4103, 4107, 4108 and 4111 of Title 38, Veterans' Benefits, sections 210, 2201 and 2473 of Title 42, The Public Health and Welfare, section 1343 of Title 49, Transportation, and notes set out under section 402 of Title 50, War and National Defense, repealing sections 3558, 4360, 4361 and 4652 of former Title 39, sections 483-2, 592d, 1073, 1124 and 1125 of former Title 5, and provisions of section 1857 of Title 7, Agriculture, of section 742b(a) of Title 16, Conservation, of section 2521(d) of Title 42, and note set out under section 3535 of this title, and enacting provisions set out as notes under sections 507, 3335, 3541, 3542, 3560 and 4001 of former Title 39, sections 60a and 60f of Title 2, The Congress, sections 1105, 1113, 1162, 1171, 2251 and 2259 of former Title 5, section 590h of Title 16, section 867 of Title 22, sections 508, 603, 604 and 753 of Title 28, sections 4103, 4108 and 4111 of Title 38, and section 2521 of Title 42] may be cited as the 'Postal Service and Federal Employees Salary Act of 1962'."

Section 701 of Pub. L. 87-793 provided that: "This title [enacting section 3106 of former Title 39, amending

sections 3101, 3301, 3335, 3541, 3542, 3543, 3544, 3559, 3560 and 6402 of former Title 39, repealing section 3558 of former Title 39, and enacting provisions set out as notes under sections 3335, 3541, and 3560 of former Title 39, and amending section 1310(a) of Act Nov. 1, 1951, set out as a note under section 43 of former Title 5, Executive Departments and Government Officers and Employees] may be cited as the 'Postal Employees Salary Adjustment Act of 1962.' "

NATIONAL SECURITY AGENCY

Authority of Secretary of Defense to establish in the National Security Agency fifty civilian positions involving research and development functions and to fix their compensation at rates not in excess of the maixmum rate authorized by subsection (b) of this section, see section 4 of Pub. L. 86–36, set out as a note under section 402 of Title 50, War and National Defense.

NUMBER OF POSITIONS; RATES OF COMPENSATION

Subsecs. (a) and (c) of section 1 of act Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended by acts June 24, 1948, ch. 624, § 1, 62 Stat. 604; July 13, 1949, ch. 332, § 1, 63 Stat. 410; Aug. 10, 1949, ch. 412, § 12 (a), 63 Stat. 591; July 31, 1956, ch. 804, title I, § 117 (a), title V, § 501 (a), 70 Stat. 741, 761, provided that:

"(a) The Secretary of Defense is authorized to establish and fix the compensation for not more than one hundred and twenty positions in the Department of Defense and not more than twenty-five positions in the National Security Agency, each such position being established to effectuate those research and development functions, relating to the national defense, military and naval medicine, and any and all other activities of the Department of Defense and the National Security Agency, as the case may be, which require the services of specially qualified scientific or professional personnel.

"(c) The rates of compensation for positions established pursuant to the provisions of this Act shall not be less than $12,500 per annum nor more than $19,000 per annum and shall be subject to the approval of the Civil Service Commission."

See section 49 (a) of act Aug. 10, 1956, set out as a note preceding section 101 of this title.

National Security Agency positions referred to in section 1(a) of act Aug. 1, 1947, as amended, as affected by Pub. L. 86–36, see 1959 Amendment note under this section.

ADDITIONAL POSITIONS IN PROFESSIONAL AND SCIENTIFIC SERVICE

Section 601 of Pub. L. 85–322, Feb. 11, 1958, 72 Stat. 8, as amended by section 103(8) of Pub. L. 87–367, provided that: "In order to more effectively administer the programs relating to advanced research activities the Secretary of Defense may authorize the creation of fifteen positions in the professional and scientific service in accordance with the provisions of Public Law 313, Eightieth Congress, as amended. These positions shall be in addition to those now authorized by law."

Positions existing prior to Oct. 4, 1961, compensation thereof and appointments thereto unaffected by changes made by Pub. L. 87–367 and positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action is taken under title I of Pub. L. 87–367, see section 104 of Pub. L. 87–367.

CROSS REFERENCES

Civil Service Commission and qualified civil service, see section 1101 et seq. of Title 5, Government Organization and Employees.

Classification of civilian positions, see section 5101 et seq. of Title 5.

§ 1582. Professional and scientific services: reports to Congress on appointments.

The Secretary of Defense shall report to Congress not later than February 1 of each year on the number of positions established under section 1581 of this title during the immediately preceding calendar year. The report shall list the name, rate of compensation, functions, and qualifications of each incumbent. However, the Secretary may omit any item, if he considers that a full public report on it would be detrimental to the national security. In such a case, he shall present the information, in executive session, to such committees of the Senate and the House of Representatives as are designated by the presiding officers of those bodies. (Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, § 1(35), 72 Stat. 1456; Sept. 23, 1959, Pub. L. 86–377, § 3, 73 Stat. 701.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1582	5: 171r.	Aug. 1, 1947, ch. 433, § 3; restated June 24, 1948, ch. 624, § 2; restated July 13, 1949, ch. 332, § 2, 63 Stat. 411.

The words "each calendar year" are substituted for the words "not later than December 31 of each year". The words "In such a case, he shall" are substituted for the words "In any instance when * * * and in lieu thereof, to", since the Secretary is required to submit a report and this sentence only authorizes the omission of items upon which a full report would be detrimental to the national security. The words "description of", "from his annual report", "in the Department of Defense", and "a statement of the * * * performed by each" are omitted as surplusage.

AMENDMENTS

1959—Pub. L. 86–377 substituted in first sentence thereof the words "not later than February 1 of each" for "each calendar", and "the immediately preceding" for "that".

1958—Pub. L. 85–861 amended section to eliminate provisions which required a report as to the number of positions established under sections 4021, 7471 and 9021 of this title.

NATIONAL SECURITY AGENCY

Reports to Congress on appointments to research and development positions in the National Security Agency, see section 6(b) of Pub. L. 86–36, May 29, 1959, 73 Stat. 64, set out as a note under section 402 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1581 of this title.

§ 1583. Employment of certain persons without compensation.

The Secretary of Defense may employ, without compensation, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and not more than $15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 118; Nov. 2, 1966, Pub. L. 89–718, § 14, 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1583 (a)	5: 171v (less words of 1st sentence after semicolon).	Jan. 6, 1951, ch. 1213, subch. VII, § 704, 64 Stat. 1235.
1583 (b)	5: 171v (words of 1st sentence after semicolon).	

AMENDMENTS

1966—Pub. L. 89–718 removed the designation "(a)" at the beginning of the section and repealed subsec. (b) which authorized the Secretary, by regulation, to exempt

persons employed under provisions formerly designated subsec. (a) from former sections 281, 283, 284, 434, and 1914 of title 18 and former section 99 of title 5.

§ 1584. Laws relating to employment of non-citizens: not applicable to research and development activities.

Laws prohibiting the employment of, or payment of compensation or expenses to, a person who is not a citizen of the United States do not apply to any expert, scientist, technician, or professional person whose employment in connection with the research and development activities of a military department is determined to be necessary by the Secretary of that department. (Aug. 10, 1956, ch. 1041, 70A Stat. 118.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
584	5: 235c; 5: 475h; 5: 628c.	July 16, 1952, ch. 882, § 2, 66 Stat. 725.

The words "appointment or" are omitted as surplusage.

CROSS REFERENCES

Department of Navy, employment of aliens by, see section 7473 of this title.

Research and development contracts, delegation of authority, see section 2356 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2356 of this title.

§ 1585. Carrying of firearms.

Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe. (Added Pub. L. 85–577, § 1 (1), July 31, 1958, 72 Stat. 455.)

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States.

(a) In order to advance the programs and activities of the Defense Establishment, it is hereby declared to be the policy of the Congress to facilitate the interchange of civilian employees of the Defense Establishment between posts of duty in the United States and posts of duty outside the United States through the establishment and operation of programs for the rotation, to the extent consistent with the missions of the Defense Establishment and sound principles of administration, of such employees who are assigned to duty outside the United States.

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

(1) who, while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States,

(2) who satisfactorily completes such duty, and

(3) who applies, not later than thirty days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c) of this section.

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3) of this subsection, or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than thirty days after the date on which he is determined to be immediately available to exercise such right, in accordance with the following provisions:

(1) The employee shall be placed in the position which he held immediately before his assignment to duty outside the United States, if such position exists.

(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States.

(3) If the positions described in paragraph (1) and paragraph (2) of this subsection do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of ninety days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within ninety days after his placement in a position under paragraph (3) of this subsection a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the ninety-day period referred to in paragraphs (3) and (4) of this subsection, the

employee cannot be placed in a position under such paragraph (4), he shall be reassigned or separated under the regulations prescribed by the United States Civil Service Commission to carry out sections 3501–3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph (1) of this subsection) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, of this subsection, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) of this section shall be paid at a rate of basic compensation which is not less than the rate of basic compensation to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) of this section shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic compensation not less than the last rate of basic compensation to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1) of this subsection, he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the United States Civil Service Commission to carry out sections 3501–3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) For the purposes of this section—

(1) "rotation" means the assignment of civilian employees referred to in subsection (b) of this section to duty outside the United States and the return of such employees to duty within the United States; and

(2) "grade" means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(Added Pub. L. 86–585, § 1, July 5, 1960, 74 Stat. 325, and amended Pub. L. 89–718, § 15, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, § 3(3), Sept. 11, 1967, 81 Stat. 220.)

AMENDMENTS

1967—Subsec. (g)(2). Pub. L. 90–83 substituted "General Schedule as prescribed in section 5104 of title 5" for "compensation schedule for the General Schedule of the Classification Act of 1949, as amended,".

1966—Pub. L. 89–718 substituted "sections 3501–3503 of title 5" for "section 12 of the Act of June 27, 1944 (5 U.S.C. 861)" wherever appearing.

EX. ORD. NO. 10895. DUTY IN ALASKA OR HAWAII

Ex. Ord. No. 10895, Nov. 25, 1960, 25 F.R. 12165, provided:

By virtue of the authority vested in me by section 1586(f) of title 10 of the United States Code [subsec. (f) of this section], and as President of the United States, and having determined that such action is necessary in the national interest, it is ordered as follows:

SECTION 1. Assignment of an employee to duty in the State of Alaska or Hawaii under regulations prescribed pursuant to section 1586 of title 10 of the United States Code [this section] shall be held and considered for the purposes of that section, to be an assignment to duty outside the United States.

SEC. 2. The Secretary of Defense shall from time to time, and at least annually, consider the need for continuing this order in effect, and he shall recommend the revocation thereof at such time as he may deem such action advisable.

DWIGHT D. EISENHOWER.

PART III.—TRAINING

Chap.		Sec.
101.	Training Generally	2001
102.	Junior Reserve Officers' Training Corps	2031
103.	Senior Reserve Officers' Training Corps	2101

AMENDMENTS

1964—Pub. L. 88–647, title I, § 101(2), title II, § 201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added chapters 102 and 103.

Chapter 101.—TRAINING GENERALLY

Sec.
2001. Reserve components.
2002. Dependents of members of armed forces: language training.

AMENDMENTS

1970—Pub. L. 91–278, § 2(3), June 12, 1970, 84 Stat. 306, substituted "armed forces" for "Army, Navy, Air Force, or Marine Corps" in item 2002.

1965—Pub. L. 89–160, § 1(2), Sept. 1, 1965, 79 Stat. 615, added item 2002.

CROSS REFERENCES

Particular provisions relating to—

Air Force, see section 9301 et seq. of this title.

Army, see section 4301 et seq. of this title.

Navy and Marine Corps, see section 6901 et seq. of this title.

§ 2001. Reserve components.

As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the kinds and degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2001	50: 934.	July 9, 1952, ch. 608, § 214, 66 Stat. 485.

CROSS REFERENCES

Generally, see section 261 et seq. of this title.

Active duty, see section 672 et seq. of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 2002. Dependents of members of armed forces: language training.

(a) Notwithstanding section 1041 of title 22 or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation, language training may be provided in—

(1) a facility of the Department of Defense;

(2) a facility of the Foreign Service Institute established under section 1041 of title 22; or

(3) a civilian educational institution;

to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.

(b) For the purposes of this section, the word "dependent" has the same meaning that it has under section 401 of title 37. (Added Pub. L. 89–160, § 1(1), Sept. 1, 1965, 79 Stat. 615, and amended Pub. L. 91–278, § 2, June 12, 1970, 84 Stat. 306.)

AMENDMENTS

1970—Pub. L. 91–278, § 2(1), substituted "armed forces" for "Army, Navy, Air Force, or Marine Corps" in the catchline.

Subsec. (a). Pub. L. 91–278, § 2(2)(A), authorized Secretary of Transportation to prescribe regulations for Coast Guard when not operating as a service in the Navy.

Subsec. (a)(3). Pub. L. 91–278, § 2(2)(B), substituted "armed forces" for "Army, Navy, Air Force, or Marine Corps".

Chapter 102.—JUNIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2031. Junior Reserve Officers' Training Corps.

AMENDMENTS

1964—Pub. L. 88–647, title I, § 101(1), Oct. 13, 1964, 78 Stat. 1063, added item 2031 and the chapter heading.

§ 2031. Junior Reserve Officers' Training Corps.

(a) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. Not more than 200 units may be established by all of the military departments each year beginning with the calendar year 1966, and the total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on the date of enactment of this section, may not exceed 1,200. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation.

(b) No unit may be established or maintained at an institution unless—

(1) the unit contains at least 100 physically fit male students who are at least 14 years of age and are citizens of the United States;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned; and

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve Officers' Training Corps program—

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1), the Secretary of the military department concerned may authorize qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers, and members of the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) Retired members so employed are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between their retired pay and the active duty pay and allowances which they would receive if ordered to active duty, and one-half of that additional amount shall be paid to the institution concerned by the Secretary of the military department concerned from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(Added Pub. L. 88–647, title I, § 101(1), Oct. 13, 1964, 78 Stat. 1063, and amended Pub. L. 89–718, § 16, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, § 3(4), Sept. 11, 1967, 81 Stat. 220.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), means Oct. 13, 1964, the date of approval of Pub. L. 88–647.

AMENDMENTS

1967—Subsecs. (c), (d). Pub. L. 90–83 substituted "officers and noncommissioned officers" for "noncommissioned and commissioned officers" wherever appearing.

1966—Subsec. (d). Pub. L. 89–718 capitalized the first letter of the first word in clauses (1) and (2).

SHORT TITLE

Section 1 of Pub. L. 88-647 provided that Pub. L. 88-647, which enacted this chapter, and chapter 103 of this title, amended from section 802 of Title 5, sections 1475, 1478, 1481, 3201, 4348, 5404, 5504, 5652b, 6023, 6387, 6959, 8201, and 9348 of this title, and sections 205, 209, 415, 416 and 422 of Title 37, Pay and Allowances of the Uniformed Services, repealed sections 3355, 3540, 4381-4387, 6901-6906, 6908, 6910, 8355, 8540, and 9381-9387 of this title, and enacted provisions set out as notes under sections 2031, 2107 and former section 9385 of this title, may be cited as the "Reserve Officers' Training Corps Vitalization Act of 1964."

SAVINGS CLAUSE

Section 402 of Pub. L. 88-647 provided that: "If a part of this Act [see Short Title note under this section] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

ISSUANCE OF REGULATIONS

Section 102 of Pub. L. 88-647 provided that: "Regulations implementing section 2031(a) of title 10, United States Code [subsec. (a) of this section], shall be issued by the President and by the Secretary of each military department not later than January 1, 1966."

Chapter 103.—SENIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2101. Definitions.
2102. Establishment.
2103. Eligibility for membership.
2104. Advanced training; eligibility for.
2105. Advanced training; failure to complete or to accept commission.
2106. Advanced training; commission on completion.
2107. Financial assistance program for specially selected members.
2108. Advanced standing; interruption of training; delay in starting obligated service; release from program.
2109. Field training; practice cruises.
2110. Logistical support.
2111. Personnel: administrators and instructors.

AMENDMENTS

1964—Pub. L. 88-647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1064, added the chapter heading and items 2101-2111.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8140; title 26 sections 72, 101, 122, 2039, 2517, 6334.

§ 2101. Definitions.

In this chapter—

(1) "program" means the Senior Reserve Officers' Training Corps of an armed force;

(2) "member of the program" means a student who is enrolled in the Senior Reserve Officers' Training Corps of an armed force; and

(3) "advanced training" means the training and instruction offered in the Senior Reserve Officers' Training Corps to students in the third and fourth years of a four-year Senior Reserve Officers' Training Corps course, or the equivalent period of training in an approved two-year Senior Reserve Officers' Training Corps course.

(Added Pub. L. 88-647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1064.)

§ 2102. Establishment.

(a) For the purpose of preparing selected students for commissioned service in the Army, Navy, Air Force, or Marine Corps, the Secretary of each military department, under regulations prescribed by the President, may establish and maintain a Senior Reserve Officers' Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees, and at any school essentially military that does not confer baccalaureate degrees, upon the request of the authorities at that institution.

(b) No unit may be established or maintained at an institution unless—

(1) the senior commissioned officer of the armed force concerned who is assigned to the program at that institution is given the academic rank of professor;

(2) the institution fulfills the terms of its agreement with the Secretary of the military department concerned; and

(3) the institution adopts, as a part of its curriculum, a four-year course of military instruction or a two-year course of advanced training of military instruction, or both, which the Secretary of the military department concerned prescribes and conducts.

(c) At those institutions where a unit of the program is established membership of students in the program shall be elective or compulsory as provided by State law or the authorities of the institution concerned. (Added Pub. L. 88-647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065.)

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (a) of this section delegated to the Secretary of Defense, see section 1(10) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 2103. Eligibility for membership.

(a) To be eligible for membership in the program a person must be a student at an institution where a unit of the Senior Reserve Officers' Training Corps is established. However, a student at an institution that does not have a unit of the Corps is eligible, if otherwise qualified, to be a member of a unit at another institution.

(b) Persons from foreign countries may be enrolled as members of the program when their enrollment is approved by the Secretary of the military department concerned under criteria approved by the Secretary of State.

(c) A medical, dental, pharmacy, veterinary, or sciences allied to medicine, student may be admitted to a unit of the program for a course of training consisting of 90 hours of instruction a year for four academic years.

(d) Under such conditions as the Secretary of the military department concerned may prescribe, a medical, dental, pharmacy, veterinary, or sciences allied to medicine, student who is a commissioned officer of a reserve component of an armed force may be admitted to and trained in a unit of the program. (Added Pub. L. 88-647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065.)

LOYALTY OATH BY STUDENTS IN BASIC COURSES OF SENIOR DIVISION

Pub. L. 91-668, title VIII, § 823, Jan. 11, 1971, 84 Stat. 2034, provided that: "No part of the funds appropriated

herein [Department of Defense Appropriation Act, 1971] shall be expended for the support of any formally enrolled student in basic courses of the senior division. Reserve Officers' Training Corps, who has not executed a certificate of loyalty or loyalty oath in such form as shall be prescribed by the Secretary of Defense."

Similar provisions were contained in the following prior acts:

Dec. 29, 1969, Pub. L. 91–171, title VI, § 623, 83 Stat. 484.
Oct. 17, 1968, Pub. L. 90–580, title V, § 500, 82 Stat. 1133.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 622, 81 Stat. 246.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 622, 80 Stat. 995.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 622, 79 Stat. 877.
Aug. 19, 1964, Pub. L. 88–446, title VI, § 522, 78 Stat. 478.
Oct. 17, 1963, Pub. L. 88–149, title V, § 522, 77 Stat. 267.
Aug. 9, 1962, Pub. L. 87–577, title V, § 522, 76 Stat. 332.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 622, 75 Stat. 379.
July 7, 1960, Pub. L. 86–601, title V, § 522, 74 Stat. 353.
Aug. 18, 1959, Pub. L. 86–166, title V, § 622, 73 Stat. 382.
Aug. 22, 1958, Pub. L. 85–724, title VI, § 624, 72 Stat. 728.
Aug. 2, 1957, Pub. L. 85–117, title VI, § 625, 71 Stat. 327.
July 2, 1956, ch. 488, title VI, § 625, 70 Stat. 471.
July 13, 1955, ch. 358, title VI, § 629, 69 Stat. 320.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2104 of this title.

§ 2104. Advanced training; eligibility for.

(a) Advanced training shall be provided to eligible members of the program and, if the institution concerned so requests, to eligible applicants for membership in the program, who have two academic years remaining at such educational institution.

(b) To be eligible for continuation, or initial enrollment, in the program for advanced training, a person must—

(1) be a citizen of the United States;

(2) be selected for advanced training under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in a reserve component of an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that he will serve in the armed forces for the period prescribed by the Secretary; and

(6) complete successfully—

(A) the first two years of a four-year Senior Reserve Officers' Training Corps course; or

(B) field training or a practice cruise of not less than six weeks' duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course.

(c) A member of the program who is ineligible under subsection (b) for advanced training shall be released from the program.

(d) This section does not apply to cadets and midshipmen appointed under section 2107, or foreign students enrolled under section 2103(b), of this title. (Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1478, 2105, 2106, 2109 of this title; title 37 section 209.

§ 2105. Advanced training; failure to complete or to accept commission.

A member of the program who is selected for advanced training under section 2104 of this title, and who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than two years. (Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1066.)

§ 2106. Advanced training; commission on completion.

(a) Upon satisfactorily completing the academic and military requirements of the program of advanced training, a member of the program who was selected for advanced training under section 2104 of this title may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(b) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be, in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(c) In computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training. (Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1066.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5652b, 6387 of this title; title 37 sections 415, 416.

§ 2107. Financial assistance program for specially selected members.

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible member of the program who will be under 25 years of age on June 30 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy or as a second lieutenant in the Army, Air Force, or Marine Corps, as the case may be. However, a member whose enrollment in the Senior Reserve Officers' Training Corps program contemplates less than four years of participation in the program may not be appointed a cadet or midshipman under this section, or receive any financial assistance authorized by this section.

(b) To be eligible for appointment as a cadet or midshipman under this section a member must—

(1) be a citizen of the United States;

(2) be specially selected for the financial assistance program under procedures prescribed by

the Secretary of the military department concerned;

(3) enlist in the reserve component of the armed force in which he is appointed as a cadet or midshipman for the period prescribed by the Secretary of the military department concerned;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary; and

(6) agree in writing to serve on active duty for four or more years.

(c) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses.

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military [1] Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(f) A cadet or midshipman who does not complete the four-year course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service.

(h) Not more than the following numbers of cadets and midshipmen appointed under section 2107 of this title may be in the financial assistance programs at any one time:

Army program: 5,500.

Navy program: 5,500.

Air Force program: 5,500.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1066.)

[1] So in original.

EFFECTIVE DATE

Section 403 of Pub. L. 88–647 provided that: "Insofar as it relates to the Army program and the Air Force program, section 2107(h) of title 10, United States Code [subsec. (h) of this section], becomes effective on September 1, 1968. Until that date, not more than four thousand cadets may be in either of those programs at any one time. So far as it relates to the Navy program, section 2107(h) of title 10 becomes effective on September 1, 1965."

APPLICATION OF ROTC VITALIZATION ACT OF 1964 TO APPOINTEES IN NAVAL RESERVE BEFORE OCT. 13, 1964

Section 1 of Pub. L. 89–51, June 28, 1965, 79 Stat. 173, provided: "That all provisions of law except sections 2107 (b)(3) and (f) of title 10, United States Code [subsecs. (b)(3) and (f) of this section], that apply to midshipmen appointed under Public Law 88–647 [see short title note under section 2031 of this title], apply to midshipmen appointed in the Naval Reserve before October 13, 1964." Section 4 of Pub. L. 89–51, set out as Effective Date of 1965 Amendment note under section 2109 of this title, provided that section 1 of Pub. L. 89–51 was effective Oct. 13, 1964.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2106, 5504, 5652b, 6387 of this title; title 37 sections 209, 415, 416, 422.

§ 2108. Advanced standing; interruption of training; delay in starting obligated service; release from program.

(a) The Secretary of the military department concerned may give to any enlisted member of an armed force under his jurisdiction, or any person who has served on active duty in any armed force, such advanced standing in the program as may be justified by his education and training.

(b) In determining a member's eligibility for advanced training, the Secretary of the military department concerned may credit him with any military training that is substantially equivalent in kind to that prescribed for admission to advanced training and was received while he was taking a course of instruction in a program under the jurisdiction of another armed force or while he was on active duty in the armed forces.

(c) The Secretary of the military department concerned may excuse from a portion of the prescribed course of military instruction, including field training and practice cruises, any person found qualified on the basis of his previous education, military experience, or both.

(d) A person may become, remain, or be readmitted as, a member of the advanced training program after receiving a baccalaureate degree or completing pre-professional studies if he has not completed the course of military instruction or all field training or practice cruises prescribed by the Secretary of the military department concerned. If a member of the program has been accepted for resident graduate or professional study, the Secretary of the military department concerned may delay the commencement of that member's obligated period of active duty until the member has completed that study.

(e) The Secretary of the military department concerned may, when he determines that the interest of the service so requires, release any person from the program and discharge him from his armed force. (Added Pub. L. 88–647, title II, § 201 (1), Oct. 13, 1964, 78 Stat. 1068.)

§ 2109. Field training; practice cruises.

(a) For the further practical instruction of members of the program, the Secretary of the military department concerned may prescribe and conduct field training and practice cruises (other than field training and practice cruises prescribed under section 2104(b)(6)(B) of this title) which members must complete before they are commissioned.

(b) The Secretary of the military department concerned may—

(1) transport members of, and designated applicants for membership in, the program to and from the places designated for field training or practice cruises and furnish them subsistence while traveling to and from those places, or, instead of furnishing them transportation and subsistence, pay them a travel allowance at the rate prescribed for cadets and midshipmen at the United States Military, Naval, and Air Force Academies for travel by the shortest usually traveled route from the places from which they are authorized to proceed to the place designated for the training or cruise and return, and pay the allowance for the return trip in advance;

(2) furnish medical attendance and supplies to members of, and designated applicants for membership in, the program while attending field training and practice cruises, and admit them to military hospitals;

(3) furnish subsistence, uniform clothing, and equipment to members of, and designated applicants for membership in, the program while attending field training or practice cruises or, instead of furnishing uniform clothing, pay them allowances at such rates as he may prescribe; and

(4) use any member of, and designated applicants for membership in, an armed force, or any employee of the department, under his jurisdiction, and such property of the United States as he considers necessary, for the training and administration of members of, and designated applicants for membership in, the program at the places designated for training or practice cruises.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1068, and amended Pub. L. 89–51, § 2, June 28, 1965, 79 Stat. 173; Pub. L. 89–718, § 17, Nov. 2, 1966, 80 Stat. 1118.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–718 added "and" at the end of clause (3).

1965—Subsec. (b). Pub. L. 89–51 inserted ", and designated applicants for membership in," after "members of" in pars. (1)—(4).

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4 of Pub. L. 89–51 provided that: "The effective date of this Act [which amended subsec. (b) of this section and section 209 of Title 37, Pay and Allowances of the Uniformed Services, and enacted provisions set out as a note under section 2107 of this title] is October 13, 1964."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 209.

§ 2110. Logistical support.

(a) The Secretary of the military department concerned may issue to institutions having units of the program, or to the officers of the armed force concerned who are designated as accountable or responsible for such property—

(1) supplies, means of transportation including aircraft, arms and ammunition, and military textbooks and educational materials; and

(2) uniform clothing, except that he may pay monetary allowances for uniform clothing at such rate as he may prescribe.

(b) The Secretary of the military department concerned may provide, or contract with civilian flying or aviation schools or educational institutions to provide, the personnel, aircraft, supplies, facilities, services, and instruction necessary for flight instruction and orientation for properly designated members of the program. The Secretary of each military department shall report to Congress in January of each year on the progress of the flight instruction program.

(c) The Secretary of the military department concerned may transport members of, and designated applicants for membership in, the program to and from installations when it is necessary for them to undergo medical or other examinations or for the purposes of making visits of observation. He may also furnish them subsistence, quarters, and necessary medical care, including hospitalization, while they are at, or traveling to or from, such an installation.

(d) The Secretary of the military department concerned may authorize members of, and designated applicants for membership in, the program to participate in aerial flights in military aircraft and in indoctrination cruises in naval vessels.

(e) The Secretary of the military department concerned may authorize such expenditures as he considers necessary for the efficient maintenance of the program.

(f) The Secretary of the military department concerned shall require, from each institution to which property is issued under subsection (a), a bond or other indemnity in such amount as he considers adequate, but not less than $5,000, for the care and safekeeping of all property so issued except uniforms, expendable articles, and supplies expended in operation, maintenance, and instruction. The Secretary may accept a bond without surety if the institution to which the property is issued furnishes to him satisfactory evidence of its financial responsibility. (Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1069, and amended Pub. L. 89–718, § 18, Nov. 2, 1966, 80 Stat. 1118.)

AMENDMENTS

1966—Subsec. (a)(1). Pub. L. 89–718 substituted "educational" for "education".

§ 2111. Personnel: administrators and instructors.

The Secretary of the military department concerned may detail regular or reserve members of an armed force under his jurisdiction (including retired members and members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent) for instructional and administrative duties at educational institutions where units of the program are maintained. (Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1069.)

PART IV.—SERVICE, SUPPLY, AND PROCUREMENT

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CROSS REFERENCES

Particular provisions relating to—
Air Force, see section 9501 et seq. of this title.
Army, see section 4501 et seq. of this title.
National Guard, see section 701 et seq. of Title 32, National Guard.
Navy, see section 7521 et seq. of this title.

Chapter 131.—PLANNING AND COORDINATION

Sec.
2202. Obligation of funds: limitation.
2203. Budget estimates.
2204. Obligation of appropriations.
2205. Availability of reimbursements.
2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense.
2207. Expenditure of appropriations: limitation.
2208. Working-capital funds.
2209. Management funds.
2210. Proceeds of sales of supplies: credit to appropriations.
2211. Reimbursement for equipment, material, or services furnished members of the United Nations.

AMENDMENTS

1962—Pub. L. 87-651, title II, § 207(b), Sept. 7, 1962, 76 Stat. 523, added items 2203—2211.

1958—Pub. L. 85-599, § 3(c), Aug. 6, 1958, 72 Stat. 516, eliminated item 2201.

CROSS REFERENCES

Industrial mobilization—
Air Force, see sections 9501, 9502 of this title.
Army, see sections 4501, 4502 of this title.

§ 2201. Repealed. Pub. L. 85-599, § 3 (c), Aug. 6, 1958, 72 Stat. 516.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, prescribed the general functions of the Secretary of Defense.

§ 2202. Obligation of funds: limitation.

Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions. (Aug. 10, 1956, ch. 1041, 70A Stat. 120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2202	41: 162.	July 10, 1952, ch. 630, § 638, 66 Stat. 537.

The words "an officer or agency * * * may * * * only" are substituted for the words "no officer or agency * * * shall * * * except". The word "of", before the words "the Department", is substituted for the words "in or under". The words "under regulations prescribed" are substituted for the words "in accordance with regulations issued". The words "after the effective date of this section" and 41: 162 (b) are omitted as executed. The words "or equipment" are omitted as covered by the definition of "supplies" in section 101 (26) of this title.

§ 2203. Budget estimates.

To account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs, budget estimates of the Department of Defense shall be prepared, presented, and justified, where practicable, and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may prescribe. As far as practicable, budget estimates and authorized programs of the military departments shall be uniform and in readily comparable form. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

§ 2204. Obligation of appropriations.

To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

§ 2205. Availability of reimbursements.

Reimbursements made to appropriations of the Department of Defense or a department or agency therof under section 686 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense.

As far as authorized by the Secretary of Defense, a disbursing officer of a military department may, out of available advances, make disbursements to

cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing officer. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

§ 2207. Expenditure of appropriations: limitation.

Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

§ 2208. Working-capital funds.

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used; and

(2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section. (Added Pub. L. 87-651, title II § 207(a), Sept. 7, 1962, 76 Stat. 521.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2210, 4621, 9621 of this title.

§ 2209. Management funds.

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of $1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be

financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522.)

§ 2210. Proceeds of sales of supplies: credit to appropriations.

(a) Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies are not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the Director of the Bureau of the Budget, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522.)

OFFICE OF MANAGEMENT AND BUDGET

The Bureau of the Budget was designated as the Office of Management and Budget and the offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations.

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by section 2392(d) of title 22. (Added Pub. L. 87-651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522.)

Chapter 133.—FACILITIES FOR RESERVE COMPONENTS

Sec.
2231. Purpose.
2232. Definitions.
2233. Acquisition.
2233a. Limitation.
2234. Location and use.
2235. Administration; other use permitted by Secretary.
2236. Contributions to States; other use permitted by States.
2237. Supervision of construction: compliance with State law.
2238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.

AMENDMENTS

1958—Pub. L. 85-861, § 1(42), Sept. 2, 1958, 72 Stat. 1457, inserted ": compliance with State law" in item 2237.

Pub. L. 85-685, title VI, § 601(4), Aug. 20, 1958, 72 Stat. 665, added item 2233a.

§ 2231. Purpose.

The purpose of this chapter is to provide for—

(1) the acquisition, by purchase, lease, transfer, construction, expansion, rehabilitation, or conversion of facilities necessary for the proper development, training, operation, and maintenance of the reserve components of the armed forces, including troop housing and messing facilities;

(2) the joint use of those facilities by units of two or more of those reserve components, to the greatest practicable extent for efficiency and economy;

(3) the use of those facilities, in time of war or national emergency, by those units and other units of the armed forces, to the greatest practicable extent for efficiency and economy; and

(4) any other use of those facilities by the United States, in time of war or national emergency, to the greatest practicable extent for efficiency and economy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120; Aug. 29, 1957, Pub. L. 85-215, § 1, 71 Stat. 489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2231	50: 881.	Sept. 11, 1950, ch. 945, § 2, 64 Stat. 829.

In clause (1), the words "units of" are omitted as surplusage.

In clause (4), the words "United States" are substituted for the words "Federal Government".

AMENDMENTS

1957—Par. (1). Pub. L. 85-215 included troop housing and messing facilities.

§ 2232. Definitions.

In this chapter:

(1) "State" and "Territory" include political subdivisions and military units thereof and tax-supported agencies therein.

(2) "Facility" includes any (A) interest in land, (B) armory or other structure, and (C) storage or other facility normally needed for the administration and training of any unit of the reserve components of the armed forces.

(3) "Armory" means a structure that houses one or more units of a reserve component and is used for training and administering those units. It includes a structure that is appurtenant to such a structure and houses equipment used for that training and administration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121; Sept. 2, 1958, Pub. L. 85-861, § 1 (36), 72 Stat. 1456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2232	50: 886.	Sept. 11, 1950, ch. 945, § 7 64 Stat. 831.

Clause (1) is substituted for 50: 886 (b). The words "(2) Puerto Rico; and (3) the District of Columbia" are omitted, since they are specifically included, where applicable, in the revised chapter. The words "together with any improvement thereto" and "of the United States" are omitted as surplusage. 50: 886 (c) is omitted, since the reserve components of the armed forces are named in section 261 of this title. 50: 886 (d) is omitted, since its subject matter is covered by other relevant sections of the revised chapter.

AMENDMENTS

1958—Cl. (3). Pub. L. 85-861 added cl. (3) which defines "armory".

§ 2233. Acquisition.

(a) Subject to sections 2233a, 2234, 2235, 2236, and 2238 of this title and subsection (c) of this section, the Secretary of Defense may—

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as he determines to be necessary to carry out the purposes of this chapter;

(2) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it for use jointly by units of two or more reserve components of the armed forces;

(3) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned; and

(4) contribute to any State or Territory, Puerto Rico, or the District of Columbia such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States.

(b) Title to property acquired by the United States under subsection (a) (1) vests in the United States.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter to any department, agency, or officer of the Department of Defense.

(d) The expenses of leasing property under subsection (a) (1) may be paid from appropriations available for the payment of rent.

(e) The Secretary of Defense may procure advance planning, construction design, and architectural services in connection with facilities to be established or developed under this chapter which are not otherwise authorized by law.

(f) Facilities authorized by subsection (a) shall not be considered "military public works" under the provisions of the military construction authorization acts that repeal prior authorizations for military public works. (Aug. 10, 1956, ch. 1041, 70A Stat. 121; Aug. 20, 1958, Pub. L. 85-685, title VI, § 601 (1), (2), 72 Stat. 664; Sept. 2, 1958, Pub. L. 85-861, § 1 (37)—(39), 72 Stat. 1456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2233 (a)	50: 882.	Sept. 11, 1950, ch. 945, §§ 3, 4 (c) (1st sentence), 5, 64 Stat. 830, 831.
2233 (b)	50: 883 (c) (1st sentence).	
2233 (c)	50: 884.	

In subsection (a), the 16th through the 31st words are omitted as executed on July 1, 1955, the end of the 5-year period.

In subsection (a) (2), the words "to the extent required" are omitted as covered by the word "necessary". The words "use jointly by units of two or more of the reserve components of the armed forces" are substituted for the words "joint utilization of such facilities" to reflect 50: 886 (d).

In subsections (a) (2) and (3), the words "Territory, Puerto Rico, or the District of Columbia" are inserted to reflect 50: 886 (b).

In subsection (a) (3), the words "to be required" are substituted for the words "to have been made essential".

In subsection (b), the words "real or personal" are omitted as surplusage.

In subsection (c), the words "all or * * * part", "conferred", "imposed", "without relieving himself of the responsibility therefor", "or officers", and "as he may designate from time to time" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-685, § 601(1), inserted a reference to section 2233a of this title in the opening provisions, and eliminated therefrom provisions which required the Secretary of Defense to consult with the Committees on Armed Services of the Senate and House of Representatives.

Pub. L. 85-861, § 1(37), substituted "two or more reserve components" for "two or more of the reserve components" in cl. (2), added cl. (3), and renumbered former cl. (3) as (4).

Subsec. (b). Pub. L. 85-861, § 1(38), inserted "by the United States" following "property acquired".

Subsec. (d). Pub. L. 85-861, § 1(39), added subsec. (d).

Subsecs. (e) and (f). Pub. L. 85-685, § 601(2), added subsecs. (e) and (f).

OBLIGATION OF FUNDS BEFORE JULY 1, 1958

Section 16 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1558, provided that not more than $580,000,000 could be obligated for the purposes of this section before July 1, 1958, but with such limitation not applicable to the expenses for the leasing of property under subsec. (a) (1) of this section.

ACQUISITION AND CONSTRUCTION OF FACILITIES

Subsecs. (a) and (b) of former section 882 of Title 50, War and National Defense, [now covered by this section], were amended by acts Aug. 9, 1955, ch. 662, § 1 (a), (b), 69 Stat. 593; Aug. 3, 1956, ch. 939, title IV, § 414, 70 Stat. 1018; Aug. 29, 1957, Pub. L. 85-215, § 2, 71 Stat. 490, Aug. 20,

1958, Pub. L. 85–685, title VI, § 602, 72 Stat. 665, to provide that:

"Subject to the provisions of section 4 of this Act [see sections 2233—2236, 2238 of this title], the Secretary of Defense after consultation with the respective Armed Services Committees of the Congress—

"(a) acquire by purchase, lease, or transfer, construct, expand, rehabilitate, convert, and equip such facilities as he shall determine to be necessary to effectuate the purposes of this Act [see sections 2231—2238 of this title], except that expenditures for the leasing of property for such purposes may be made from appropriations otherwise available for the payment of rentals;

"(b) (1) contribute to any State such funds as he shall determine to be necessary to expand, rehabilitate or convert facilities owned by such State to the extent required for the joint utilization of such facilities; and

"(2) contribute to any State such funds as he shall determine to be necessary to expand, rehabilitate or convert facilities owned by such State to the extent made necessary, or to acquire, construct, expand, rehabilitate or convert such additional facilities as he shall determine to have been made essential, by any conversion, redesignation or reorganization of a unit or units of the National Guard of the United States or the Air National Guard of the United States requested or authorized by the Secretary of the Army or the Secretary of the Air Force, respectively."

See section 49 (a) of act Aug. 10, 1956, set out as a note preceding section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2233a, 2234, 2235, 2236, 2237 of this title.

§ 2233a. Limitation.

(1) No expenditure or contribution that is more than $50,000 may be made under section 2233 of this title for any facility until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility. This requirement does not apply to the following:

(a) Facilities acquired by lease.

(b) Facilities acquired, constructed, expanded, rehabilitated, converted, or equipped to restore or replace facilities damaged or destroyed, where the Senate and the House of Representatives have been notified of that action.

(2) Under such regulations as the Secretary of Defense may prescribe, any project authorized pursuant to section 2233(a) which does not cost more than $25,000 may be accomplished from appropriations available for maintenance and operations.

(Added Pub. L. 85–685, title VI, § 601(3), Aug. 20, 1958, 72 Stat. 665, and amended Pub. L. 87–554, title VII, § 701, July 27, 1962, 76 Stat. 243.)

AMENDMENTS

1962—Pub. L. 87–554 designated existing provisions as par. (1), substituted in such par. (1) "until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility" for "that has not been authorized by a law authorizing appropriations for specific facilities for reserve forces", and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2233 of this title.

§ 2234. Location and use.

No expenditure or contribution may be made for a facility under section 2233 of this title, unless the Secretary of Defense determines that—

(1) the number of units of the reserve components of the armed forces located or to be located in the area within which the facility is to be provided is not and will not be larger than the number that can reasonably be expected to be maintained at authorized strength, considering the number of persons living in the area who are qualified for membership in those reserve units; and

(2) the plan under which the facility is to be provided makes provision for the greatest practicable use of the facility jointly by units of two or more of those components.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2234	50: 883 (a).	Sept. 11, 1950, ch. 945, § 4 (a) 64 Stat. 830.

The word "community" is omitted as covered by the word "area". The word "program" is omitted as covered by the word "plan". The words "use * * * jointly by units of two or more of those components" are substituted for the words "joint utilization" to reflect 50: 886 (d). The words "is not and will not be larger than" are substituted for the words "does not exceed". The word "considering" is substituted for the words "taking into account".

CROSS REFERENCES

Authorized strength—

Air Force Reserve, see section 8222 of this title.

Army Reserve, see section 3222 of this title.

Coast Guard Reserve, see section 752a of Title 14, Coast Guard.

Definition, see section 101 (21) of this title.

Naval Reserve and Marine Corps Reserve, see section 5413 of this title.

Ready Reserve, see section 268 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2233 of this title.

§ 2235. Administration; other use permitted by Secretary.

(a) The Secretary of Defense, after consulting the Committees on Armed Services of the Senate and the House of Representatives on matters of policy, may—

(1) administer, operate, maintain, and equip facilities constructed, expanded, rehabilitated, or converted under section 2233 (a) (1) of this title or otherwise acquired and used for the purposes of this chapter;

(2) permit persons or organizations other than members and units of the armed forces to use those facilities under such leases or other agreements as he considers appropriate; and

(3) cover the payments received under those leases or agreements into the Treasury to the credit of the appropriation from which the cost of maintaining the facility, including its utilities and services, is paid.

(b) The Secretary may not permit any use or disposition to be made of a facility covered by subsection (a) that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2235 (a)	50: 883 (c) (less 1st sentence, and less last 70 words of last sentence).	Sept. 11, 1950, ch. 945, § 4 (c) (less 1st sentence), 64 Stat. 830.
2235 (b)	50: 883 (c) (last 70 words of last sentence).	

In subsection (a), the words "from time to time" and "or appropriations" are omitted as surplusage.

In subsection (b), the words "United States" are substituted for the words "Federal Government". The words "units of" are omitted as surplusage. The words "may not" are substituted for the words "shall at no time".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2233 of this title.

§ 2236. Contributions to States; other use permitted by States.

(a) Contributions under section 2233 of this title are subject to such terms as the Secretary of Defense, after consulting the Committees on Armed Services of the Senate and the House of Representatives, considers necessary for the purposes of this chapter. Except as otherwise agreed when the contribution is made, a facility provided by a contribution under section 2233 (a) (3) or (4) of this title may be used jointly by units of two or more reserve components of the armed forces only to the extent that the State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, considers practicable.

(b) A contribution made for an armory under section 2233 (a) (4) of this title may not be more than 75 percent of the cost of the construction to which it is applied. For the purpose of computing the cost of construction under this subsection, the amount contributed by the State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, may not include the cost or market value of any real property that it has contributed.

(c) If a State or Territory, Puerto Rico, or the District of Columbia acquires, constructs, expands, rehabilitates, or converts a facility with amounts contributed under section 2233 of this title, it may—

(1) permit persons or organizations other than members and units of the armed forces to use the facility under such leases or other agreements as it considers appropriate; and

(2) apply amounts received under those leases or agreements to the cost of maintaining the facility.

(d) Except as otherwise agreed when the contribution is made, and except as the agreement is later changed, a State or Territory, Puerto Rico, or the District of Columbia may not permit any use or disposition of the facility that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122; Sept. 2, 1958, Pub. L. 85-861, § 1 (40), 72 Stat. 1456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2236 (a)	50: 883 (d) (1st sentence).	Sept. 11, 1950, ch. 945, § 4 (d), (e), 64 Stat. 830.
2236 (b)	50: 883 (d) (less 1st sentence).	
2236 (c)	50: 883 (e) (less last 87 words).	
2236 (d)	50: 883 (e) (last 87 words).	

Appropriate references to the Territories, Puerto Rico, and the District of Columbia are inserted throughout the revised section to reflect 50: 886 (b).

In subsection (a), the words "and conditions" are omitted as covered by the word "terms". The words "considers necessary for" are substituted for the words "shall deem necessary to accomplish". The words "used jointly by units of two or more reserve components of the armed forces" are substituted for the words "joint utilization", to reflect 50: 886 (d).

In subsection (b), the words "the construction to which it is to be applied" are substituted for the words "the additional or improved facilities to be constructed", since, under section 2233 of this title, contributions may be made for other purposes as well as additions and improvements. The words "may not include" are substituted for the words "shall be exclusive of".

In subsection (c) (1), the words "from time to time" are omitted as surplusage.

In subsection (c) (2), the words "defray in whole or in part" are omitted as surplusage.

In subsection (d), the words "except as the agreement is later changed" are substituted for the words "by subsequent modifications of the agreement." The words "units of" and "at no time" are omitted as surplusage. The words "United States" are substituted for the words "Federal Government".

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 permitted joint use of facilities provided by contributions under section 2233(a)(4) of this title.

Subsec. (b). Pub. L. 85-861 substituted "A contribution made for an armory under section 2233(a)(4) of this title may not be more than 75 percent of the cost of the construction to which it is applied" for "No contribution made for a facility under section 2233(a)(3) of this title may be more than 75 percent of the cost of the construction to which it is to be applied".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2233 of this title.

§ 2237. Supervision of construction: compliance with State law.

(a) Any construction, expansion, rehabilitation, or conversion under any provision of this chapter except section 2233 (a) (2), (3), and (4) of this title may be performed under the supervision of the Chief of Engineers of the Army or the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate.

(b) The construction, expansion, rehabilitation, or conversion of facilities in a State or Territory, Puerto Rico, or the District of Columbia under section 2233 (a) (2), (3), or (4) of this title shall be done according to the laws of that jurisdiction and under the supervision of its officials, subject to the inspection and approval of the Secretary of Defense. (Aug. 10, 1956, ch. 1041, 70A Stat. 123; Sept. 2, 1958, Pub. L. 85-861, § 1 (41), 72 Stat. 1457; Nov. 2, 1966, Pub. L. 89-718, § 19, 80 Stat. 1118.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2237	50: 885.	Sept. 11, 1950, ch. 945, § 6, 64 Stat. 831.

The words "of facilities" are omitted as surplusage. The words "Chief of Engineers" are substituted for the words "Chief, Corps of Engineers" to conform to section 3036 (a) (1) of this title. The words "of the Army" and "of the Navy" are inserted for clarity.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate" for "the Chief of the Bureau of Yards and Docks of the Navy".

1958—Pub. L. 85-861 inserted ": compliance with State law" in the catchline.

Subsec. (a). Pub. L. 85-861 designated existing provisions as subsec. (a) and substituted "under any provision of this chapter except section 2233(a) (2), (3), and (4) of this title" for "under this chapter".

Subsec. (b). Pub. L. 85-861 added subsec. (b).

§ 2238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia, as the case may be. (Aug. 10, 1956, ch. 1041, 70A Stat. 123; Sept. 2, 1958, Pub. L. 85-861, § 1 (43), 72 Stat. 1457.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2238	50: 883 (b).	Sept. 11, 1950, ch. 945, § 4 (b), 64 Stat. 830.

The words "from any community or area" are omitted as surplusage. The word "relocated" is substituted for the words "location * * * be changed". The words "Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia" are inserted to reflect 50: 886 (b), since the source statute applied to the District of Columbia and there is no "governor" of the District of Columbia. The words "as the case may be" are substituted for the words "within which such unit is situated". The words "with regard to such withdrawal or change of location" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-861 required the consent of the governor, or the commanding general of the National Guard of the District of Columbia, prior to relocation or withdrawal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2233 of this title.

Chapter 135.—ENCOURAGEMENT OF AVIATION

Sec.
2271. Design competitions: advertisement; selection of winner.
2272. Design competitions: rejection or purchase of designs; contracts; conditions.
2273. Right of United States to design; right of designer to patent; right to sue United States.
2274. Procurement for experimental purposes.
2275. Contracts; review of decisions.
2276. Inspection and audit of plant and books of contractor; criminal provisions.
2277. Appropriations; availability.
2278. Purchase of sample aircraft.
2279. Aircraft: restrictions on alien employees of contractor.

§ 2271. Design competitions: advertisement; selection of winner.

(a) To encourage the development of aviation and to improve the efficiency of aeronautical war material for the Army, Navy, Air Force, and Marine Corps, the Secretary of each military department, before procuring new designs of aircraft, aircraft parts, or aeronautical accessories, shall invite the submission of new designs thereof in competition, as follows.

(b) An invitation for the submission of a design shall be made by advertisement in not less than three leading aeronautical journals for a period of 30 days, and in such other manner as the Secretary of the military department concerned considers advisable. Such an advertisement shall specify a time within which designs and prices may be submitted. This time may not be less than 60 days after the expiration of the 30-day advertising period. Each submission shall be sealed and shall contain the design submitted, a statement of the price for which the design or any part of it would be sold to the United States, and a graduated scale of prices for which the designer is willing to construct all or any part of a designed item. The submission shall be kept sealed until the expiration of the specified time. No design mailed after that time may be considered.

(c) Each advertisement under subsection (b) shall state in general terms the kind of aircraft, aircraft parts, or aeronautical accessories to be developed and the approximate quantity required. The department concerned shall furnish to each applicant identical detailed information as to the conditions of the competition and the features and characteristics to be developed in the design, listing specifically the measures of merit, expressed in percentages, that are to be applied in determining the merits of the design. These measures of merit apply throughout the competition.

(d) Each design submitted under subsection (b) shall be referred to a board appointed by the Secretary of the military department concerned. The board shall appraise each design as soon as practicable and report the winners to the Secretary. If the Secretary approves the board's report, he shall fix the time and place of a public announcement of the results and notify each competitor. If the Secretary does not approve it, the papers may be returned to the board for revision, or he may choose the winners, as he elects. The decision of the Secretary is final and conclusive. The announcement of the results of the competition shall state the percentages awarded to each feature or characteristic of each of the designs submitted and the price named for each design and each feature thereof, if separable.

(e) If, within 10 days after the announcement of the results of a competition under subsection (d), a competitor makes a reasonable showing in writing to the Secretary of the military department concerned that an error was made in determining the merits of designs submitted and that he was thereby deprived of an award, the Secretary shall at once refer the matter to a board of arbitration for determination. The board of arbitration shall be composed of three skilled aeronautical engineers, one of whom shall be selected by the Secretary, one by the claimant, and

the third by the other members. No person may be a member of a board of arbitration if he served on the board of appraisal that judged the competition out of which the arbitration arose. The findings of the board are conclusive if approved by the Secretary. In a competition, three competitors, or less, who have the highest figures of merit may be selected as winners. (Aug. 10, 1956, ch. 1041, 70A Stat. 123.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2271 (a)	10: 310 (a) (1st 46, 74th through 78th, and 82d through 91st, words).	July 2, 1926, ch. 721, § 10 (a), (b), (e) (less last 17 words), (h), (s), 44 Stat. 784—786. 788.
2271 (b)	10: 310 (a) (less 1st 46, 74th through 78th, and 82d through 91st, words); 10: 310 (b) (1st sentence); 10: 310 (e) (less last 17 words).	
2271 (c)	10: 310 (b) (2d sentence).	
2271 (d)	10: 310 (b) (less 1st and 2d sentences).	
2271 (e)	10: 310 (h), (s).	

In subsection (b), the words "sufficient", "carefully", "in the Department of the Army or the Navy Department, as the case may be", and "received or" are omitted as surplusage. The words "United States" are substituted for the word "Government". The last clause of the fourth sentence is substituted for 10: 310 (e) (less last 17 words).

In subsection (c), the words "aircraft", "aeronautical", and "in the design" are inserted for clarity. The words "number or", "specific", "and requirements", "various", and "respective" are omitted as surplusages. The word "apply" is substituted for the words "shall be adhered to".

In subsection (d), the words "for that purpose", "by each competitor", and "or winners" are omitted as surplusage. The word "may" is substituted for the words "shall * * * in his discretion". The words "submitted under subsection (b)" are substituted for the words "received up to the time specified for submitting them".

In subsection (e), the word "competitor" is substituted for the words "participant in the competition". The words "unjustly" and "on both parties" are omitted as surplusage. The third sentence is substituted for 10: 310h (last 17 words). The last sentence is substituted for 10: 310 (s).

CROSS REFERENCES

Contracts for procurement of items in quantity, subsections (a)—(d) as inapplicable, see section 2274 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2274 of this title.

§ 2272. Design competitions: rejection or purchase of designs; contracts; conditions.

(a) If the Secretary of the military department concerned determines that a winner of a design competition under section 2271 of this title is, or can become within a reasonable time, able and equipped to furnish or construct all or part of any designed item, he may contract with that winner for furnishing or constructing it at a reasonable price, but not more than the price submitted with the design, on terms that he considers most advantageous to the United States. However, if the Secretary determines that the winner will not be able to furnish all or part of any designed item, he may buy the design, or a separable part of it, at a fair and reasonable price, but not more than the price submitted with the design.

(b) If the Secretary of the military department concerned determines that none of the designs submitted in a competition is of sufficient merit to justify procurement of a designed item, he need not accept or pay for them.

(c) If the Secretary of the military department concerned determines that the designs submitted by two or more competitors are of equal merit, or that features in the designs of one competitor are superior to the corresponding features in the designs of another competitor and that the superior features of one design may be substituted for the inferior features of another, he may divide the contracts for furnishing the item equitably among those competitors that submitted designs of equal merit, or he may combine features of superior excellence of different designs in such manner as he determines to be in the best interest of the United States. Payment may be made accordingly to the several competitors at fair and reasonable prices and the contract for the item may be awarded to the competitor or competitors having the highest figures of merit in the competition.

(d) If the Secretary of the military department concerned cannot contract with a winner in a design competition for furnishing or constructing all or part of a designed item, or if he cannot agree with a winner for the purchase of a design at a reasonable price, he may retain the design and advertise according to law for proposals for furnishing or constructing the item. After all proposals are submitted the Secretary may contract with the lowest responsible bidder for furnishing the item, on terms that he considers in the best interest of the United States. However, the Secretary may reject all bids and advertise for other bids with the same or different specifications.

(e) Each seller of designs and each contractor furnishing or constructing aircraft, aircraft parts, or aeronautical accessories under this section shall, if the Secretary of the military department concerned requests it, release claims against the United States arising out of the sale or contract. The release shall be in the form, and shall contain the terms, prescribed by the Secretary.

(f) No contract may be awarded under this section—

(1) to an individual who is not a citizen of the United States;

(2) to a corporation unless 75 percent of its capital stock is owned by, and all its directors are, citizens of the United States; or

(3) to an individual or a corporation that does not have a manufacturing plant within the United States.

However, the Secretary of the military department concerned may contract with any domestic corporation whose stock is listed on a stock exchange, unless he knows that a majority of its stock is owned or controlled by aliens. (Aug. 10, 1956, ch. 1041, 70A Stat. 124.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2272 (a)	10: 310 (c); 10: 310 (e) (last 17 words).	July 2, 1926, ch. 721, § 10 (c), (e) (last 17 words), (f), (g), (j) (less last 57 words), (n), 44 Stat. 785—787.
2272 (b)	10: 310 (f) (1st sentence).	
2272 (c)	10: 310 (f) (less 1st sentence).	
2272 (d)	10: 310 (g).	
2272 (e)	10: 310 (n).	
2272 (f)	10: 310 (j) (less last 57 words).	

In subsection (a), the first sentence is substituted for 10: 310 (c).

In subsection (b), the words "in his judgment" are omitted as surplusage. The word "item" is substituted for the words "aircraft, aircraft parts, and aeronautical accessories".

In subsection (c), the word "may" is substituted for the words "shall in his discretion". The words "for the inferior features" are inserted for clarity. The words "the item" are substituted for the words "the aircraft, parts, or accessories required". The words "and manufacturing" and "select and" are omitted as surplusage.

In subsection (d), the words "cannot contract" are substituted for the words "shall be unable to make contract". The words "all or part of a designed item" are substituted for the words "aircraft, aircraft parts, or aeronautical accessories covered by the whole or part of the designs of such winner". The words "the item" are substituted for the words "aircraft, or parts or accessories in accordance with such designs or combinations thereof as aforesaid", and "the aircraft, parts, or accessories required". The words "in the competition", "in accordance with such designs or combinations thereof as aforesaid", "the bidder that he shall find to be", "and conditions", "as he may deem proper", and "with whom a contract may not be made, as aforesaid" are omitted as surplusage.

In subsection (f), the words "the continental limits of" are omitted, since section 101 (1) of this title defines the United States to include the States and the District of Columbia.

CROSS REFERENCES

Contracts for procurement of items in quantity, applicability of subsections (a), (f), see section 2274 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2271, 2273, 2274 of this title.

§ 2273. Right of United States to design; right of designer to patent; right to sue United States.

(a) Any executive or military department of the United States may construct or have constructed according to the winning design, and may use, any aircraft, aircraft part, or aeronautical accessory, after payment is completed under a contract made under section 2272 of this title, or after payment for or purchase of the winning design, or a separable part thereof, for that item under that section. An item so constructed may be sold according to law as condemned material. In neither case may any further compensation be paid to the winner of the competition. However, the winner may apply for a patent on any feature of the designed item that was originated by him, and, if the patent is granted, he has exclusive rights under it against all persons except the United States or its vendee under this subsection.

(b) Any person who believes that—

(1) a design developed by him after July 2, 1926, relating to aircraft or an aircraft component, is being used; or

(2) an article embodying a design developed by him after July 2, 1926, relating to aircraft or an aircraft component, is being used or manufactured;

by or for the United States without just compensation to him from the United States or any other source may, within four years from the date of that use or manufacture, sue in the Court of Claims to recover reasonable and entire compensation. (Aug. 10, 1956, ch. 1041, 70A Stat. 125.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2273 (a)	10: 310 (d).	July 2, 1926, ch. 721, § 10 (d), (i), 44 Stat. 785, 786.
2273 (b)	10: 310 (i).	

In subsection (a), the word "vendee" is substituted for the word "assignee", since the revised section relates only to sales. The words "made under section 2272 of this title" are substituted for the words "as authorized by any provision of this section, with a winner in such design competition for furnishing or constructing aircraft, aircraft parts, or aeronautical accessories in accordance with his designs". The words "winner * * * with whom a contract shall not have been made for furnishing or constructing aircraft, aircraft parts or aeronautical accessories, then in either case" are omitted as surplusage. The word "may", before the word "construct", is substituted for the words "shall have the right". The word "may", before the word "apply", is substituted for the words "shall, nevertheless, be at liberty to". The words "of the designed item" are inserted for clarity. The words "if the patent is granted, he has exclusive rights under it" are substituted for the words "shall be entitled to enjoy exclusive rights under such patent as he may obtain". The words "its vendee under this subsection" are substituted for the words "its assignee as aforesaid".

In subsection (b), the words "firm, or corporation" are omitted as covered by the definition of "person" in section 1 of title 1. The word "believes" is substituted for the words "shall complain". The words "after July 2, 1926" (the date of enactment of the source statute) are substituted for the word "hereafter".

CROSS REFERENCES

Application for patent, see section 111 of Title 35, Patents.

Court of Claims—

Jurisdiction in patent cases, see section 1498 of Title 28, Judiciary and Judical Procedure.

Procedure, see section 2501 et seq. of Title 28.

§ 2274. Procurement for experimental purposes.

(a) The Secretary of a military department may buy designs, aircraft, aircraft parts, and aeronautical accessories that he considers necessary for experimental purposes in the development of the best kinds of those items for the Army, Navy, Air Force, or Marine Corps, as the case may be. Purchases under this subsection may be made abroad or in the United States or the Territories, Commonwealths, and possessions, with or without competition and by contract or otherwise.

(b) If, as a result of a purchase under subsection (a), a new or suitable design considered to be the best kind for the Army, Navy, Air Force, or Marine Corps, as the case may be, is developed, the Secretary of the military department concerned may contract for procurement of the item in quantity. Contracts under this subsection are subject to sections 2272 (f) and 2279 of this title but are not subject to sections 2271 (a)—(d) and 2272 (a) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 126.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2274 (a)	10: 310 (k) (1st 75 words).	July 2, 1926, ch. 721, § 10 (k), 44 Stat. 787.
2274 (b)	10: 310 (k) (less 1st 75 words).	

In subsection (a), the words "at his discretion" are omitted as surplusage. The words "that he considers

necessary" are substituted for the words "as may be necessary in his judgment". The word "Commonwealths" is inserted to reflect the present status of Puerto Rico.

CROSS REFERENCES

Amount of fee on cost-plus-a-fixed-fee contract for experimental work, see section 2306 (d) of this title.

Contract requirements for aircraft, see section 2382 of this title.

Exception of purchase or contract from formal advertising requirement, see section 2304 (a) (11) of this title.

Procument generally, see section 2301 et seq. of this title.

§ 2275. Contracts; review of decisions.

The Secretary of a military department may award a contract for aircraft, aircraft parts, or aeronautical accessories under this chapter to the person whom he finds to be the lowest responsible bidder who can satisfactorily perform the work to the best advantage of the United States. Except for review by the President or a Federal court, or as otherwise provided by the contract, the decision of the Secretary is not reviewable as to—

(1) the award of the contract;

(2) the interpretation of the contract; or

(3) the application and administration of the contract.

(Aug. 10, 1956, ch. 1041, 70A Stat. 126.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2275	10: 310 (t).	July 2, 1926, ch. 721, § 10 (t), 44 Stat. 788.

The introductory clause and the words "or the service" and "any officer or tribunal of the United States" are omitted as surplusage. The words "United States" are substituted for the word "Government".

CROSS REFERENCES

Aircraft procurement, contract requirements, see section 2382 of this title.

§ 2276. Inspection and audit of plant and books of contractor; criminal provisions.

(a) The manufacturing plant and books of a contractor furnishing or constructing aircraft, aircraft parts, or aeronautical accessories for a military department under this chapter, or that part of the plant which is used for that purpose, are subject at all times to inspection and audit by a person designated by the head of any executive department.

(b) Any committee of Congress may inspect audits and reports of inspection made under subsection (a).

(c) Whoever, by collusion, understanding, or arrangement, deprives or attempts to deprive the United States of the benefit of a full and free competition under this chapter or of a full and free audit, so far as necessary to disclose the cost of executing the contract, of the books of a person carrying out a contract under this chapter shall be fined not more than $20,000 or imprisoned for not more than five years, or both. (Aug. 10, 1956, ch. 1041, 70A Stat. 126; Sept. 7, 1962, Pub. L. 87-651, title I, § 131, 76 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2276 (a)	10: 310 (*l*).	July 2, 1926, ch. 721, § 10 (*l*); (m), (p), 44 Stat. 787, 788, Aug. 7, 1946, ch. 770 (pars. 17, 33), 60 Stat. 867, 868.
2276 (b)	10: 310 (m).	
2276 (c)	10: 310 (p).	

In subsection (a), the words "which is used for that purpose" are substituted for the words "as may be so engaged".

In subsection (c), 10: 310 (p) is restated to conform to the style of Title 18. The words "exact" and "Government" are omitted as surplusage. The words "firm, or corporation" are omitted as covered by the definition of "person" in section 1 of title 1.

AMENDMENT

1962—Subsec. (b). Pub. L. 87-651 eliminated provisions which required the Secretary of the military department concerned to keep for 10 years all audits and records of inspection.

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

§ 2277. Appropriations; availability.

Any appropriation available to a military department for the procurement of aircraft, aircraft parts, or aeronautical accessories may be used by that department to buy designs and pay the costs of arbitration under this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 127.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2277	10: 310 (*o*).	July 2, 1926, ch. 721 § 10 (*o*), 44 Stat. 788.

The words "to buy" are substituted for the words "payment of the purchase price".

§ 2278. Purchase of sample aircraft.

The Secretary of the Army or the Secretary of the Air Force may buy a sample aircraft from an unsuccessful bidder in a competition held by his department and requiring the submission of sample aircraft. However, not more than one sample aircraft may be bought from each of the first, second, and third of those bidders in order of merit, at prices not more than 75, 60, and 50 percent, respectively, of the cost of developing and manufacturing the sample, as determined by the Secretary of the military department concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 127.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2278	10: 312.	Apr. 3, 1939, ch. 35, § 14 (last proviso), 53 Stat. 560.

10: 312 (1st 10 words) and the words "with bid" and "applicable" are omitted as surplusage. The word "may" is substituted for the words "is authorized, in his discretion". The words "unsuccessful bidder" are substituted for the words "competitors to whom an award is not

made". The words "as determined by the Secretary" are substituted for the words "in the opinion of the Secretary".

§ 2279. Aircraft: restrictions on alien employees of contractor.

Unless the Secretary of the military department concerned first consents in writing, an alien employed by a person who contracts under this chapter to furnish or construct aircraft, aircraft parts, or aeronautical accessories for the United States may not have access to the plans or specifications for the contracted items or to the work under construction, and may not participate in the trials under the contract. (Aug. 10, 1956, ch. 1041, 70A Stat. 127.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2279	10: 310 (j) (last 57 words).	July 2, 1926, ch. 721, § 10 (j) (last 57 words), 44 Stat. 787.

The words "person who contracts" are substituted for the word "contractor". The words "an * * * may not" are substituted for the words "no * * * shall be permitted to". The words "Unless * * * first consents in writing" are substituted for the words "without the written consent beforehand".

CROSS REFERENCES

Contracts for procurement of items in quantity, section as applicable, see section 2274 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2274 of this title.

Chapter 137.—PROCUREMENT GENERALLY

Sec.
2301. Declaration of policy.
2302. Definitions.
2303. Applicability of chapter.
2304. Purchases and contracts: advertising; exceptions.
2305. Formal advertisements for bids; time; opening; award; rejection.
2306. Kinds of contracts.
2307. Advance payments.
2308. Assignment and delegation of procurement functions and responsibilities.
2309. Allocation of appropriations.
2310. Determinations and decisions.
2311. Delegation.
2312. Remission of liquidated damages.
2313. Examination of books and records of contractor.
2314. Laws inapplicable to agencies named in section 2303 of this title.

CROSS REFERENCES

American material required for public use, see section 10a of Title 41, Public Contracts.

Cataloging and standardization of supplies, see section 2451 et seq. of this title.

Experimental purposes, procurement for; chapter as applicable, see sections 4504, 9504 of this title.

Miscellaneous procurement provisions, see section 2381 et seq. of this title.

Particular provisions relating to—

Air Force, see section 9531 et seq. of this title.
Army, see section 4531 et seq. of this title.
Navy, see section 7521 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4504 of this title.

§ 2301. Declaration of policy.

It is the policy of Congress that a fair proportion of the purchases and contracts made under this chapter be placed with small business concerns. (Aug. 10, 1956, ch. 1041, 70A Stat. 127.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2301	41: 151 (b) (1st sentence).	Feb. 19, 1948, ch. 65, § 2 (b) (1st sentence), 62 Stat. 21.

The words "under this chapter" are substituted for the words "for supplies and services for the Government". The words "declared" and "total" are omitted as surplusage.

§ 2302. Definitions.

In this chapter—

(1) "Head of an agency" means the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force; the Secretary of the Treasury; or the Administrator of the National Aeronautics and Space Administration.

(2) "Negotiate" means make without formal advertising.

(3) "Formal advertising" means advertising as prescribed by section 2305 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; July 29, 1958, Pub. L. 85-568, title III, § 301 (b), 72 Stat. 432; Sept. 2, 1958, Pub. L. 85-861, § 1 (43A), 72 Stat. 1457.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2302	41: 158 (less clause (b)).	Feb. 19, 1948, ch. 65, § 9 (less clause (b)), 62 Stat. 24.

In clause (1), the words "(if any)" are omitted as surplusage. The words "Secretary of the Treasury" are substituted for the words "Commandant, United States Coast Guard, Treasury Department", since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of those functions to the agencies and employees of the Department of the Treasury.

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

AMENDMENTS

1958—Pub. L. 85-861 substituted "section 2305 of this title" for "section 2305 (a) and (b) of this title", in cl (3).

Pub. L. 85-568 substituted "Administrator of the National Aeronautics and Space Administration" for "Executive Secretary of the National Advisory Committee for Aeronautics", in cl. (1).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 301 (e) of Pub. L. 85-568 provided that: "This section [amending this section and section 2303 (a) (5) of this title, former section 22-1 of Title 5, and sections 511-513 and 515 of Title 50, War and National Defense, and enacting note set out under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act."

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties,

relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

§ 2303. Applicability of chapter.

(a) This chapter applies to the purchase, and contract to purchase, by any of the following agencies, for its use or otherwise, of all property named in subsection (b), and all services, for which payment is to be made from appropriated funds:

(1) The Department of the Army.

(2) The Department of the Navy.

(3) The Department of the Air Force.

(4) The Coast Guard.

(5) The National Aeronautics and Space Administration.

(b) This chapter does not cover land. It covers all other property including—

(1) public works;

(2) buildings;

(3) facilities;

(4) vessels;

(5) floating equipment;

(6) aircraft;

(7) parts;

(8) accessories;

(9) equipment; and

(10) machine tools.

(c) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration. (Aug. 10, 1956, ch. 1041, 70A Stat. 128; July 29, 1958, Pub. L. 85-568, title III, § 301 (b), 72 Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2303 (a)	41: 151 (a).	Feb. 19, 1948, ch. 65, §§ 2 (a), 9 (clause (b)), 62 Stat. 21, 24.
2303 (b)	41: 158 (clause (b), less last 5 words).	
2303 (c)	41: 158 (last 5 words of clause (b)).	

In subsection (a), the words "all property named in subsection (b), and all services" are substituted for the words "for supplies or services". The words "(each being hereinafter called the agency)", are omitted, since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words "United States" before the words "Coast Guard" are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word "supplies". Throughout the revised chapter reference is made to "property or services covered by this chapter", instead of "supplies", since the word "supplies" is defined in section 101 (26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101 (26) of this title. The word "ships" and the words "of every character, type, and description", after the word "vessels", are omitted as covered by the definition of "vessel" in section 1 of title 1.

AMENDMENTS

1958—Subsec. (a)(5). Pub. L. 85-568 substituted "The National Aeronautics and Space Administration" for "The National Advisory Committee for Aeronautics".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90-500, title IV, § 404, Sept. 20, 1968, 82 Stat. 851, provided that: "No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interest of the United States."

CROSS REFERENCES

Facilitation of procurement procedures, see section 252 (a) (2) of Title 41, Public Contracts.

Laws inapplicable to agencies named in this section, see section 2314 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2308, 2309, 2313, 2314 of this title.

§ 2304. Purchases and contracts: formal advertising; exceptions.[1]

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings in section 2310, may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than $2,500;

(4) the purchase or contract is for personal or professional services;

(5) the purchase or contract is for any service by a university, college, or other educational institution;

(6) the purchase or contract is for property or services to be procured and used outside the United States and the Territories, Commonwealths, and possessions;

(7) the purchase or contract is for medicine or medical supplies;

(8) the purchase or contract is for property for authorized resale;

(9) the purchase or contract is for perishable or nonperishable subsistence supplies;

[1] Section catchline does not conform to catchline in scheme.

(10) the purchase or contract is for property or services for which it is impracticable to obtain competition;

(11) the purchase or contract is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

(12) the purchase or contract is for property or services whose procurement he determines should not be publicly disclosed because of their character, ingredients, or components;

(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) The purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;

(15) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

(b) The data respecting the negotiation of each purchase or contract under clauses (1) and (7)—(17) of subsection (a) shall be kept by the contracting agency or six years after the date of final payment on the contract.

(c) This section does not authorize—

(1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—

(A) it is made under clauses (1)—(3), (10)—(12), or (15) of subsection (a); or

(B) it is to be performed outside the United States; or

(2) the erection, repair, or furnishing of any public building or public improvement.

(d) Whenever the head of the agency determines it to be practicable, such advance publicity as he considers suitable with regard to the property involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for property, or a service, under clause (7) or (8) of subsection (a) involving more than $10,000.

(e) A report shall be made to Congress, on May 19 and November 19 of each year, of the purchases and contracts made under clauses (11) and (16) of subsection (a) during the period since the date of the last report. The report shall—

(1) name each contractor;

(2) state the amount of each contract; and

(3) describe, with consideration of the national security, the property and services covered by each contract.

(f) For the purposes of the following laws, purchases or contracts negotiated under this section shall be treated as if they were made with formal advertising:

(1) Sections 35—45 of title 41.

(2) Sections 276a—276a-5 of title 40.

(3) Sections 324 and 325a of title 40.

(g) In all negotiated procurements in excess of $2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered: *Provided, however,* That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

(h) Except in a case where the Secretary of Defense determines that military requirements necessitate specification of container sizes, no contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width. (Aug. 10, 1956, ch. 1041, 70A Stat. 128; Aug. 28, 1958, Pub. L. 85-800, § 8, 72 Stat. 967; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(12), 72 Stat. 1565; Sept. 10, 1962, Pub. L. 87-653, § 1(a)-(c), 76 Stat. 528; Mar. 16, 1968, Pub. L. 90-286, § 5, 82 Stat. 50; Sept. 20, 1968, Pub. L. 90-500, title IV, § 405, 82 Stat. 851.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2304 (a)	41: 151 (c) (less proviso of clause (11) and proviso of clause (16)).	Feb. 19, 1948, ch. 65, §§ 2 (b) (less 1st sentence), (c), (e), 7 (d), 8, 62 Stat. 21, 22, 24.
2304 (b)	41: 156 (d).	
2304 (c)	41: 151 (e).	
2304 (d)	41: 151 (b) (less 1st sentence).	
2304 (e)	41: 151 (c) (proviso of clause (11) and proviso of clause (16)).	
2304 (f)	41: 157.	

In subsection (a) (1), the words "the period of" are omitted as surplusage.

In subsections (a) (4)—(10), and (12)—(15), the words "the purchase or contract is" are inserted for clarity.

In subsection (a) (5), the words "to be rendered" are omitted as surplusage.

In subsection (a) (6), the words "its Territories" are inserted for clarity. The words "the limits of" are omitted as surplusage.

In subsection (a) (14), the words "and for which" are substituted for the word "when".

In subsection (a) (15), the words "and for which" are substituted for 41: 151 (c) (15) (1st 22 words of proviso).

In subsection (a) (16), the words "to have" are substituted for the words "be made or kept".

In subsection (a) (17), the first 7 words are inserted for clarity.

In subsection (b), the words "shall be kept" are substituted for the words "shall be preserved in the files". The words "six years after the date" are substituted for the words "a period of six years following".

In subsection (c), the words "but such authorization shall be required in the same manner as heretofore" and "continental", in 41: 151 (e), are omitted as surplusage.

In subsection (d), the words "before making" are substituted for the words "Whenever it is proposed to make".

In subsection (d), the words "before making" are subafter the effective date of this chapter" are omitted as executed. The words "on May 19 and November 19 of each year" are substituted for the words "and at the end of each six-month period thereafter", since the effective date of the source statute was May 19, 1948, and the first report was made on November 19, 1948. The words "property and services covered by each contract" are substituted for the words "work required to be performed thereunder".

REFERENCES IN TEXT

Sections 324 and 325a of title 40, referred to in subsec. (f) (3), were repealed by Pub. L. 87–581, title II, § 203, Aug. 13, 1962, 76 Stat. 360. See sections 328 and 330 of Title 40, Public Buildings, Property and Works.

AMENDMENTS

1968—Subsec. (g). Pub. L. 90–500 required that the proposals solicited from the maximum number of qualified sources, consistent with the nature and requirements of the supplies or services to be procured, include price.

Subsec. (h). Pub. L. 90–268 added subsec. (h).

1962—Subsec. (a). Pub. L. 87–653, § 1 (a), (b), provided that formal advertising be used where feasible and practicable under existing conditions and circumstances, subjected the agency head to the requirements of section 2310 of this title before negotiating a contract where formal advertising is not feasible and practicable and, in par. (14), substituted "would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;" for "and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or."

Subsec. (g). Pub. L. 87–653, § 1(c), added subsec. (g).

1958—Subsec. (a). Pub. L. 85–861 included Commonwealths in cl. (6).

Pub. L. 85–800 substituted "$2,500" for "$1,000" in clause (3) and inserted "or nonperishable" in clause (9).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(h) of Pub. L. 87–653 provided that: "The amendments made by this Act [to this section, and sections 2306, 2310, and 2311 of this title] shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act [Sept. 10, 1962]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

ANNOUNCEMENTS OF AWARD OF CONTRACTS BY DEPARTMENT OF DEFENSE; DISCLOSURE OF IDENTITY OF CONTRACTOR PRIOR TO ANNOUNCEMENT PROHIBITED

Pub. L. 91–441, title V, § 507, Oct. 7, 1970, 84 Stat. 913, provided that:

"(a) No information concerning the identity or location of the person, company, or corporation to whom any contract has been awarded by the Department of Defense shall be given to any individual, including any Member of Congress, in advance of a public announcement by the Secretary of Defense of the identity of the person, company, or corporation to whom such contract has been awarded.

"(b) On and after the date of enactment of this Act [Oct. 7, 1970], whenever the identity of the person, company, or corporation to whom any defense contract has been awarded is to be made public, the Secretary of Defense shall publicly announce that such contract has been awarded and to whom it was awarded."

AWARD OF CONTRACTS THROUGH FORMAL ADVERTISING AND COMPETITIVE BIDDING WHERE PRACTICABLE

Pub. L. 90–5, title III, § 304, Mar. 16, 1967, 81 Stat. 6, provided that: "The Secretary of Defense is hereby directed that insofar as practicable all contracts shall be formally advertised and awarded on a competitive bid basis to the lowest responsible bidders."

CROSS REFERENCES

Aviation experimental purposes, procurement for, see section 2274 of this title.

Delegation of powers, see section 2311 of this title.

Determinations or decisions based on written findings, see section 2310 (b) of this title.

National defense contract provisions as not authorizing increase in price of subsec. (a) (15) contracts to amount higher than lowest rejected bid of responsible bidder, see section 1432 of Title 50, War and National Defense.

Purchases of gauges, dies, and tools to be used for manufacture of arms need not be governed by laws prescribing competition in the procurement of supplies by purchase, see sections 4505, 9505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2305, 2306, 2310, 2311 of this title.

§ 2305. Formal advertisements for bids; time; opening; award; rejection.

(a) Whenever formal advertising is required under section 2304 of this title, the advertisement shall be made a sufficient time before the purchase or contract. The specifications and invitations for bids shall permit such free and full competition as is consistent with the procurement of the property and services needed by the agency concerned. Except in a case where the Secretary of Defense determines that military requirements necessitate specification of container sizes, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

(b) The specifications in invitations for bids must contain the necessary language and attachments,

and must be sufficiently descriptive in language and attachments, to permit full and free competition. If the specifications in an invitation for bids do not carry the necessary descriptive language and attachments, or if those attachments are not accessible to all competent and reliable bidders, the invitation is invalid and no award may be made.

(c) Bids shall be opened publicly at the time and place stated in the advertisement. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the United States, price and other factors considered. However, all bids may be rejected if the head of the agency determines that rejection is in the public interest.

(d) If the head of the agency considers that any bid received after formal advertising evidences a violation of the antitrust laws, he shall refer the bid to the Attorney General for appropriate action. (Aug. 10, 1956, ch. 1041, 70A Stat. 130; Sept. 2, 1958, Pub. L. 85–861, § 1 (44), 72 Stat. 1457; Mar. 16, 1968, Pub. L. 90–268, § 3, 82 Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2305 (a)	41: 152 (less clause (b)).	Feb. 19, 1948, ch. 65, §§ 2 (d), 3, 62 Stat. 22.
2305 (b)	41: 152 (clause (b)).	
2305 (c)	41: 151 (d).	

In subsection (a), the word "needed" is substituted for the words "necessary to meet the requirements".

In subsection (b), the words "United States" are substituted for the word "Government".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–268 added provision that, except in cases where the Secretary of Defense determines that military requirements necessitate such specification, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1958—Subsec. (b). Pub. L. 85–861, § 1 (44) (B), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsecs. (c) and (d). Pub. L. 85–861, § 1 (44) (A), redesignated former subsecs. (b) and (c) as (c) and (d).

CROSS REFERENCES

Antitrust laws, see Title 15, Commerce and Trade.

Regulations for bids for contracts, see section 2381 of this title.

Research and development contracts, negotiation without advertising, see section 2356 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302, 2356 of this title.

§ 2306. Kinds of contracts.

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to this limitation and subject to subsections (b)—(f), the head of an agency may, in negotiating contracts under section 2304 of this title, make any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract negotiated under section 2304 of this title shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration.

(c) No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under section 2304 of this title, unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e) Each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(1) a cost-plus-a-fixed-fee subcontract; or

(2) a fixed-price subcontract or purchase order involving more than $25,000 or 5 percent of the estimated cost of the prime contract.

(f) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of his knowledge and belief, the cost or pricing data he submitted was accurate, complete and current—

(1) Prior to the award of any negotiated prime contract under this title where the price is expected to exceed $100,000;

(2) Prior to the pricing of any contract change or modification for which the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency;

(3) Prior to the award of a subcontract at any tier, where the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed $100,000; or

(4) Prior to the pricing of any contract change or modification to a subcontract covered by (3) above, for which the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency.

Any prime contract or change or modification thereto under which such certificate is required shall contain a provision that the price to the Govern-

ment, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the head of the agency that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the negotiated price as is practicable), was inaccurate, incomplete, or noncurrent: *Provided,* That the requirements of this subsection need not be applied to contracts or subcontracts where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation or, in exceptional cases where the head of the agency determines that the requirements of this subsection may be waived and states in writing his reasons for such determination.

For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this subsection, any authorized representative of the head of the agency who is an employee of the United States Government shall have the right, until the expiration of three years after final payment under the contract or subcontract, to examine all books, records, documents, and other data of the contractor or subcontractor related to the negotiation, pricing, or performance of the contract or subcontract.

(g) (1) The head of an agency may enter into contracts for periods of not more than five years for the following types of services (and items of supply related to such services) to be performed outside the forty-eight contiguous States and the District of Columbia for which funds would otherwise be available for obligation only within the fiscal year for which appropriated—

(A) operation, maintenance, and support of facilities and installations;

(B) maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

(D) base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal);

whenever he finds that:

(i) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(ii) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(2) In entering into such contracts, the head of the agency shall be guided by the following principles:

(A) the portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(B) consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(C) consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(3) In the event funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from:

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Sept. 10, 1962, Pub. L. 87–653, § 1 (d), (e), 76 Stat. 528; July 5, 1968, Pub. L. 90–378, § 1, 82 Stat. 289; Sept. 25, 1968, Pub. L. 90–512, 82 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2306 (a)	41: 153 (a) (1st sentence); 41: 153 (b) (1st 14 words of 1st sentence).	Feb. 19, 1948, ch. 65, § 4 (less words after semicolon of last sentence of (b), and less (c)), 62 Stat. 23.
2306 (b)	41: 153 (a) (less 1st sentence).	
2306 (c)	41: 153 (b) (2d sentence).	
2306 (d)	41: 153 (b) (1st sentence, less 1st 14 words).	
2306 (e)	41: 153 (b) (less 1st and 2d sentences; and less words after semicolon of last sentence).	

In subsection (a), the words "subject to subsections (b)—(e)" are substituted for the words "Except as provided in subsection (b) of this section". The words "United States" are substituted for the word "Government".

In subsection (b), the words "under section 2304 of this title" are substituted for the words "pursuant to section 151 (c) of this title". The words "full amount of such" and "violation" are omitted as surplusage.

In subsection (c), the words "under section 2304 of this title" are inserted for clarity.

AMENDMENTS

1968—Subsec. (f). Pub. L. 90–512 added last paragraph to subsec. (f).

Subsec. (g). Pub. L. 90–378 added subsec. (g).

1962—Subsec. (a). Pub. L. 87–653, § 1(d), substituted "subsections (b)—(f)" for "subsections (b)—(e)."

Subsec. (f). Pub. L. 87–653, § 1(e), added subsec. (f).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-653 effective on the first day of the third calendar month which begins after Sept. 10, 1962, see section 1(h) of Pub. L. 87-653, set out as a note under section 2304 of this title.

CROSS REFERENCES

Cost-type research and development contracts with educational institutions, see section 254a of Title 41, Public Contracts.

Determinations or decisions based on written findings, see section 2310 (b) of this title.

Procurement for aviation experimental purposes, see section 2274 of this title.

Research and development, see section 2352 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2310 of this title.

§ 2307. Advance payments.

(a) The head of any agency may—

(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(2) insert in bid solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) Payments made under subsection (a) may not exceed the unpaid contract price.

(c) Advance payments made under subsection (a) may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens. (Aug. 10, 1956, ch. 1041, 70A Stat. 131; Aug. 28, 1958, Pub. L. 85-800, § 9, 72 Stat. 967.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2307 (a)	41: 154 (a).	Feb. 19, 1948, ch. 65, § 5, 62 Stat. 23.
2307 (b)	41: 154 (less (a)).	

In subsection (a), the words "and appropriate" are omitted as surplusage. The words "whether or not the contract previously provided for such payments" are substituted for the words "heretofore or hereafter executed".

In subsection (b), the words "under subsection (a)" are inserted for clarity. The words "provide for" are substituted for the words "include as security provision for". The words "United States" are substituted for the word "Government".

AMENDMENTS

1958—Pub. L. 85-800 authorized advance or other payments under contracts for property or services by agency, authorized insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) to unpaid contract price, and rewarded generally conditions for making advance payments.

CROSS REFERENCES

Civilian agencies, advance payments, see section 255 of Title 41, Public Contracts.

Delegation of power, see section 2311 of this title.

Determinations or decisions based on written findings, see section 2310 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2311 of this title.

§ 2308. Assignment and delegation of procurement functions and responsibilities.

Subject to section 2311 of this title, to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may, within his agency, delegate functions and assign responsibilities relating to procurement;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 131.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2308	41: 159 (1st sentence).	Feb. 19, 1948, ch. 65, § 10 (1st sentence), 62 Stat. 25.

The words "covered by this chapter" are inserted for clarity. The words "section 2311 of this title" are substituted for the words "the limitations contained in section 156 of this title". The words "In order", "mutual", and "as he [they] may deem necessary or desirable" are omitted as surplusage.

§ 2309. Allocation of appropriations.

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing officer of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency. (Aug. 10, 1956, ch. 1041, 70A Stat. 132.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2309 (a)	41: 159 (2d sentence).	Feb. 19, 1948, ch. 65, § 10 (less 1st sentence), 62 Stat. 25.
2309 (b)	41: 159 (less 1st and 2d sentences).	

In subsection (a), the words "an agency named in section 2303 of this title" are substituted for the words "any such agency".

In subsection (b), the words "an allotment under subsection (a)" are substituted for the words "such allotments".

§ 2310. Determinations and decisions.

(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract

or for a class of purchases or contracts. Such a determination or decision is final.

(b) Each determination or decision under clauses (11)—(16) of section 2304(a), section 2306(c), section 2306(g)(1), section 2307(c), or section 2313(c) of this title and a decision to negotiate contracts under clauses (2), (7), (8), (10), (12), or for property or supplies under clause (11) of section 2304(a), shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that (1) are clearly illustrative of the conditions described in clauses (11)—(16) of section 2304(a), (2) clearly indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract kind or quality required except under such a contract, (3) support the findings required by section 2306(g)(1), (4) clearly indicate why advance payments under section 2307(c) would be in the public interest, (5) clearly indicate why the application of section 2313(b) to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest, or (6) clearly and convincingly establish with respect to the use of clauses (2), (7), (8), (10), (12), and for property or supplies under clause (11) of section 2304(a), that formal advertising would not have been feasible and practicable. Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies. (Aug. 10, 1956, ch. 1041, 70A Stat. 132; Aug. 28, 1958, Pub. L. 85–800, § 10, 72 Stat. 967; Sept. 10, 1962, Pub. L. 87–653, § 1(f), 76 Stat. 529; Sept. 27, 1966, Pub. L. 89–607, § 1(1), 80 Stat. 850; July 5, 1968, Pub. L. 90–378, § 2, 82 Stat. 290.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2310 (a) 2310 (b)	41: 156 (a) (1st sentence). 41: 156 (c).	Feb. 19, 1948, ch. 65, § 7 (a) (1st sentence), (c), 62 Stat. 24.

In subsection (a), the words "required * * * under" are substituted for the words "provided in".

In subsection (b), the word "person" is substituted for the word "official". The words "to which it applies" are inserted for clarity.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–378 added "section 2306 (g)(1)," following "clauses (11)—(16) of section 2304(a), section 2306(c),", and "(3) support the findings required by section 2306(g)(1)," following "kind or quality required except under such a contract,", and redesignated former clauses (3)—(5) as (4)—(6).

1966—Subsec. (b). Pub. L. 89–607 included reference to section 2313(c), added clause (4) and redesignated former clause (4) as (5).

1962—Subsec. (b). Pub. L. 87–653 substituted "section 2306(c)" for "section 2306", required decisions to negotiate contracts under section 2304(a) (2), (7), (8), (10)—(12) of this title to be based on a written finding by the person making the decision, which findings shall set out facts and circumstances illustrative of conditions described in section 2304(a) (11)—(16), indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other or that its impracticable to obtain the required property or services except under such contract, indicate why advance payments under section 2307(c) would be in the public interest, or establish with respect to section 2304(a), (2), (7), (8), (10)—(12) that formal advertising would not have been feasible and practicable.

1958—Subsec. (b) amended by Pub. L. 85–800, which substituted "2307 (c)" for "2307 (a)".

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–653 effective on the first day of the third calendar month which begins after Sept. 10, 1962, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2304 of this title.

§ 2311. Delegation.

The head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter except the power to make determinations and decisions (1) under clauses (11)—(16) of section 2304(a) of this title, and (2) authorizing contracts in excess of three years under section 2306(g) of this title. However, the power to make a determination or decision under section 2304(a)(11) of this title may be delegated to any other officer or official of that agency who is responsible for procurement, and only for contracts requiring the expenditure of not more than $100,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 132; Aug. 28, 1958, Pub. L. 85–800, § 11, 72 Stat. 967; Sept. 10, 1962, Pub. L. 87–653, § 1(g), 76 Stat. 529; July 5, 1968, Pub. L. 90–378, § 3, 82 Stat. 290.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2311	41: 156 (a) (less 1st sentence); 41: 156 (b).	Feb. 19, 1948, ch. 65, § 7 (2) (less 1st sentence), (b), a6 Stat. 24.

The words "in his discretion and" and "including the making of such determinations and decisions" are omitted as surplusage. The words "except the power to make determinations and decisions" are substituted for the words "Except as provided in subsection (b) of this section" and "The power of the agency head to make the determinations or decisions specified in paragraphs (12)—(16) of section 151 (c) of this title and in section 154 (a) of this title shall not be delegable".

AMENDMENTS

1968—Pub. L. 90–378 designated provisions following "the power to make determinations and decisions" as clause (1), and added clause (2).

1962—Pub. L. 87–653 substituted "delegated to any other officer" for "delegated only to a chief officer" and "$100,000" for "$25,000."

1958—Pub. L. 85–800 amended section by eliminating ", or section 2307 (a)" following "of section 2304 (a)" in first sentence.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–653 effective on the first day of the third calendar month which begins after Sept. 10, 1962, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

CROSS REFERENCES

Research and development contracts, delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2310 of this title.

§ 2312. Remission of liquidated damages.

Upon the recommendation of the head of an agency, the Comptroller General may remit all or

part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages. (Aug. 10, 1956, ch. 1041, 70A Stat. 132.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2312	41: 155.	Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24.

The words "a contract, made by that agency, that provides for" are substituted for the words "any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision".

§ 2313. Examination of books and records of contractor.

(a) An agency named in section 2303 of this title is entitled, through an authorized representative, to inspect the plant and audit the books and records of—

(1) a contractor performing a cost or cost-plus-a-fixed-fee contract made by that agency under this chapter; and

(2) a subcontractor performing any subcontract under a cost or cost-plus-a-fixed-fee contract made by that agency under this chapter.

(b) Except as provided in subsection (c), each contract negotiated under this chapter shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any books, documents, papers, or records of the contractor, or any of his subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

(c) Subsection (b) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency determines, with the concurrence of the Comptroller General or his designee, that the application of that subsection to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

(1) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination; and

(2) where the head of the agency determines, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served by not applying subsection (b).

If subsection (b) is not applied to a contract or subcontract based on a determination under clause (2), a written report shall be furnished to the Congress. (Aug. 10, 1956, ch. 1041, 70A Stat. 132; Sept. 27, 1966, Pub. L. 89-607, § 1(2), 80 Stat. 850.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2313 (a)	41: 153 (b) (words after semicolon of last sentence).	Feb. 19, 1948, ch. 65, § 4 (b) (words after semicolon of last sentence), 62 Stat. 23.
2313 (b)	41: 153 (c).	Feb. 19, 1948, ch. 65, § 4 (c): added Oct. 31, 1951, ch. 652 (as applicable to § 4 (c) of the Act of Feb. 19, 1948, ch. 65), 65 Stat. 700.

In subsection (a), the words "An agency named in section 2303 of this title" are substituted for the words "a procuring agency". The words "made by that agency under this chapter" are inserted for clarity.

In subsection (b), the word "under" is substituted for the words "pursuant to authority contained in". The word "provide" is substituted for the words "include a clause to the effect". The words "are entitled" are substituted for the words "shall * * * have * * * the right". The words "of the United States", "duly authorized", "have access to and", and "engaged in the performance of" are omitted as surplusage.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-607, § 1(2)(A), inserted the introductory words "Except as provided in subsection (c)".

Subsec. (c). Pub. L. 89-607, § 1(2)(B), added subsec. (c).

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2310 of this title.

§ 2314. Laws inapplicable to agencies named in section 2303 of this title.

Sections 5, 6, 6a, and 13 of title 41 do not apply to the procurement of property or services by the agencies named in section 2303 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 133.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2314	41: 160.	Feb. 19, 1948, ch. 65, § 11 (b), 62 Stat. 25.

REFERENCES IN TEXT

Section 6 of title 41, referred to in text, was repealed by act Oct. 31, 1951, ch. 654, § 1(98)-(105), 64 Stat. 705.

CROSS REFERENCES

Laws inapplicable to procurement by General Services Administration, see section 260 of Title 41, Public Contracts.

Chapter 139.—RESEARCH AND DEVELOPMENT

Sec.
2352. Contracts: limited to five-year terms.
2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.
2354. Contracts: indemnification provisions.
2355. Contracts: vouchering procedures.
2356. Contracts: delegations.
2357. Contracts: reports to Congress.
2358. Research projects.

AMENDMENTS

1962—Pub. L. 87-651, title II, § 208(b), Sept. 7, 1962, 76 Stat. 523, added item 2358.

1958—Pub. L. 85-599, § 3 (d), Aug. 6, 1958, 72 Stat. 516, deleted item 2351.

CROSS REFERENCES

Amount of fee on cost-plus-a-fixed-fee contract for developmental or research work, see section 2306 (d) of this title.

Employment of non-citizens, laws relating to not applicable to research and development activities, see section 1584 of this title.

Naval contracts for research, see section 7522 of this title.

Research and development programs—

Air Force, see section 9503 of this title.

Army, see section 4503 of this title.

§ 2351. Repealed. Pub. L. 85-599, § 3 (d), Aug. 6, 1958, 72 Stat. 516.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 133, related to policy, plans, and coordination relative to research and development on scientific problems relating to the national security.

§ 2352. Contracts: limited to five-year terms.

Subject to availability of appropriations, contracts of a military department for services and the use of facilities for research or development, or both, may be for a term of not more than five years, and may be extended for not more than five additional years. (Aug. 10, 1956, ch. 1041, 70A Stat. 133.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2352	5: 235d; 5: 475i; 5: 628d.	July 16, 1952, ch. 882, § 3, 66 Stat. 725.

The words "or both" are inserted to conform to sections 2353, 2354, 2355, and 2356 of this title.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor. (Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2353 (a)	5: 235e (1st sentence; and 2d sentence, less 2d and last provisos); 5: 475j (1st sentence; and 2d sentence, less 2d and last provisos); 5: 628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353 (b)	5: 235e (2d proviso of 2d sentence); 5: 475j (2d proviso of 2d sentence); 5: 628e (2d proviso of 2d sentence).	
2353 (c)	5: 235e (last proviso of 2d sentence); 5: 475j (last proviso of 2d sentence); 5: 628e (last proviso of 2d sentence).	

In subsection (a), the words "furnished to" and "for the use thereof" are omitted as surplusage.

In subsections (a) and (b), the words "United States" are substituted for the word "Government".

In subsection (b), the introductory clause is substituted for 5: 235e (words of 2d proviso before clause (1)), 475j, and 628e. The words "that * * * considers" are substituted for the words "as will in the opinion". The words "an alternative" are substituted for the words "such other".

In subsection (c), the words "Proceeds of" are substituted for the words "That all moneys arising from".

CROSS REFERENCES

Delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2356 of this title; title 42 sections 241, 1857b-1, 3253.

§ 2354. Contracts: indemnification provisions.

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2354 (a)	5: 235f (1st sentence, less provisos); 5: 475k (1st sentence, less provisos); 5: 628f (1st sentence, less provisos).	July 16, 1952, ch. 882, § 5, 66 Stat. 726.
2354 (b)	5: 235f (1st proviso of 1st sentence); 5: 475k (1st proviso of 1st sentence); 5: 628f (1st proviso of 1st sentence).	
2354 (c)	5: 235f (last proviso of 1st sentence); 5: 475k (last proviso of 1st sentence); 5: 628f (last proviso of 1st sentence).	
2354 (d)	5: 235f (less 1st sentence); 5: 475k (less 1st sentence); 5: 628f (less 1st sentence).	

In subsection (a), the words "Liability on account of", and "of such claims" are omitted as surplusage. In clauses (1) and (2), the word "from" is substituted for the words "arising as a result of".

In subsections (a) and (b), the words "United States" are substituted for the word "Government".

In subsection (b), the words "made under subsection (a), that provides for indemnification" are substituted for the words "so providing * * * with respect to any alleged liability for such death". The words "appropriate" and "or actions filed * * * or made" are omitted as surplusage.

In subsection (c), the words "by the Government", "authority of", and "for such purpose" are omitted as surplusage.

In subsection (d), the words "by the Congress" and "the making of" are omitted as surplusage. The words "or both" are inserted to conform to subsection (a).

CROSS REFERENCES

Delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2356 of this title; title 42 section 241.

§ 2355. Contracts: vouchering procedures.

Notwithstanding any law relating to the expenditure of and accounting for public funds, the Secretary of each military department may, with the approval of the Secretary of Defense and the Comptroller General, prescribe by regulation the extent to which vouchers for funds spent under a contract of his department for research or development, or both, must be itemized, substantiated, or certified before payment. (Aug. 10, 1956, ch. 1041, 70A Stat. 135.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2355	5: 235g; 5: 475i; 5: 628g.	July 16, 1952, ch. 882, § 6, 66 Stat. 726.

The words "Notwithstanding any law" are substituted for the words "without regard to the limitations of other laws". The words "of his department" are inserted for clarity. The words "must be itemized, substantiated, or certified" are substituted for the words "shall be subject to itemization, substantiation, or certification".

CROSS REFERENCES

Delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2356 of this title.

§ 2356. Contracts: delegations.

(a) The Secretary of a military department may delegate any authority under section 1584, 2353, 2354, or 2355 of this title to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department; or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

However, the authority of the Secretary under section 2353 (b) (3) of this title may not be delegated to a person described in clause (3) of this subsection.

(b) Subject to other provisions of law, the power to negotiate and administer contracts for research or development, or both, may be further delegated. In this section "negotiate" means make without the formal advertising prescribed by section 2305 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 135; Sept. 2, 1958, Pub. L. 85-861, § 1 (43A), 72 Stat. 1457.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2356 (a)	5: 235h (less last sentence, and less applicability to 5: 235b); 5: 475m (less last sentence, and less applicability to 5: 475g); 5: 628h (less last sentence, and less applicability to 5: 628b).	July 16, 1952, ch. 882, § 7 (less applicability to §1), 66 Stat. 726.
2356 (b)	5: 235h (last sentence, less applicability to 5: 235b); 5: 475m (last sentence, less applicability to 5: 475g); 5: 628h (last sentence, less applicability to 5: 628b).	

In subsection (b), the last sentence is inserted to conform to section 2302 of this title.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "section 2305 of this title" for "section 2305 (a) and (b) of this title".

CROSS REFERENCES

Procurement generally, delegation of powers, see section 2311 of this title.

§ 2357. Contracts: reports to Congress.

The Secretary of each military department shall report to Congress on contracts for research or development, or both, made during each six-month period ending on January 16 or July 16. The report shall—

(1) list each of those contracts in which the cost to the United States will be more than $50,000; and

(2) contain specific information on each contract described in clause (1), but may omit any information if the Secretary considers that its disclosure would be detrimental to the national security.

(Aug. 10, 1956, ch. 1041, 70A Stat. 135.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2357	5: 235e (3d and last sentences); 5: 475j (3d and last sentences); 5: 628e (3d and last sentences).	July 16, 1952, ch. 882, § 4 (3d and last sentences), 66 Stat. 726.

The words "report to Congress" are substituted for the words "transmit to the Congress reports". The words "each six-month period ending on January 16 or July 16" are substituted for the words "covering * * * each six months following July 16, 1952". The words "or both" are inserted to conform to sections 2353, 2354, 2355, and 2356 of this title. The words "for research or development", in clause (1) of the last sentence of 5: 235e, 475j, and 628e, are omitted as surplusage. The words "but may omit any information if the Secretary considers that its disclosure would be detrimental to the national security" are substituted for the words "except that specific information the disclosure of which he deems incompatible with the security of the United States may be excluded from such report", to conform to section 1582 of this title.

§ 2358. Research projects.

Subject to approval by the President, the Secretary of Defense or his designee may engage in basic and applied research projects that are necessary to the responsibilities of the Department of Defense in the field of basic and applied research and development and that relate to weapons systems and other military needs. Subject to approval by the President, the Secretary or his designee may perform assigned research and development projects—

(1) by contract with educational or research institutions, private businesses, or other agencies of the United States;

(2) through one or more of the military departments; or

(3) by using employees and consultants of the Department of Defense.

(Added Pub. L. 87-651, title II, § 208(a), Sept. 7, 1962, 76 Stat. 523.)

INDEPENDENT RESEARCH AND DEVELOPMENT; BID AND PROPOSAL COSTS; NEGOTIATION OF ADVANCE AGREEMENTS WITH CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 91-441, title II, § 203(a)-(d), Oct. 7, 1970, 84 Stat. 906, provided that:

"(a) Funds authorized for appropriation to the Department of Defense under the provisions of this or any other Act shall not be available after December 31, 1970, for payment of independent research and development or bid and proposal costs unless the work for which payment is made has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation and unless the following conditions are met—

"(1) the Secretary of Defense, prior to or during each fiscal year, negotiates advance agreements establishing a dollar ceiling on such costs with all companies which during their last preceding fiscal year received more than $2,000,000 of independent research and development or bid and proposal payments from the Department of Defense, the advance agreements thus negotiated (A) to cover the first fiscal year of each such contractor beginning on or after the beginning of each fiscal year of the Federal Government, and (B) to be concluded either directly with each such company or with those product divisions of each such company which contract directly with the Department of Defense and themselves received more than $250,000 of such payments during their company's last preceding fiscal year;

"(2) the independent research and development portions of the advance agreements thus negotiated are based on company submitted plans on each of which a technical evaluation is performed by the Department of Defense prior to or during the fiscal year covered by such advance agreement; and

"(3) no payments for independent research and development or bid and proposal costs are made by the Department of Defense to any company or product division with which an advance agreement is required by subsection (a)(1) of this section, except pursuant to the terms of that agreement.

"(b) In the event negotiations are held with any company or product division with which they are required under subsection (a)(1) of this section, but no agreement is reached with any such company or product division, no payments for independent research and development or bid and proposal costs shall be made to any such company or product division during the fiscal year for which agreement was not reached, except in an amount substantially less than the amount which, in the opinion of the Department of Defense, such company or product division would otherwise have been entitled to receive, subject to appeal by such company or product division under regulations to be prescribed by the Secretary of Defense.

"(c) The Secretary of Defense shall submit an annual report to the Congress on or before March 15, 1971, and on or before March 15 of each succeeding year, setting forth—

"(1) those companies with which negotiations were held pursuant to subsection (a)(1) of this section prior to or during the preceding fiscal year of the Federal Government, together with the results of those negotiations;

"(2) the latest available Defense Contract Audit Agency statistics, estimated to the extent necessary on the independent research and development or bid and proposal payments made to major defense contractors, whether or not covered by subsection (a)(1) of this section during the preceding calendar year; and

"(3) the manner of his compliance with the provisions of this section, and any major policy changes proposed to be made by the Department of Defense in the administration of its contractors' independent research and development and bid and proposal programs.

"(d) The provisions of this section shall apply only to contracts for which the submission and certification of cost or pricing data are required in accordance with section 2306(f) of title 10, United States Code [section 2306 (f) of this title]."

"(d) The provisions of this section shall apply only to

MILITARY FUNCTION OR OPERATION

Pub. L. 91-441, title II, § 204, Oct. 7, 1970. 84 Stat. 908, provided that: "None of the funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation."

HERBICIDES AND DEFOLIATION PROGRAM; COMPREHENSIVE STUDY AND INVESTIGATION; REPORT BY JAN. 31, 1972; TRANSMITTAL TO PRESIDENT AND CONGRESS BY MAR. 1, 1972

Pub. L. 91-441, title V, § 506(c), Oct. 7, 1970, 84 Stat. 913, provided that:

"(1) The Secretary of Defense shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) the ecological and physiological dangers inherent in the use of herbicides, and (B) the ecological and physiological effects of the defoliation program carried out by the Department of Defense in South Vietnam.

"(2) Of the funds authorized by this Act for research, development, testing, and evaluation of chemical warfare agents and for defense against biological warfare agents, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

"(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Secretary of Defense shall request that the National Academy of Sciences submit a final report containing the results of its study and investigation to the Secretary not later than January 31, 1972. The Secretary shall transmit copies of such report to the President and the Congress, together with such comments and recommendations as he deems appropriate, not later than March 1, 1972."

CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE.

Pub. L. 91–441, title V, § 510, Oct. 7, 1970, 84 Stat. 914, provided in part that: "The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Oct. 7, 1970] and each January 31st and June 30th thereafter the names of any institutions of higher learning which the Secretaries determine on such dates are barring such recruiting personnel from the campus of the institution."

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS' COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91–121, title IV, § 407, Nov. 19, 1969, 83 Stat. 208, provided that:

"(a) After December 31, 1969, none of the funds authorized for appropriation by this or any other Act for the use of the Armed Forces shall be used for payments out of such funds under contracts or agreements with Federal contract research centers if the annual compensation of any officer or employee of such center paid out of and Federal funds exceeds $45,000 except with the approval of the Secretary of Defense under regulations prescribed by the President.

"(b) The Secretary of Defense shall notify the President of the Senate and the Speaker of the House of Representatives promptly of any approvals authorized under subsection (a), together with a detailed statement of the reasons therefor."

Chapter 141.—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2381. Contracts: regulations for bids.
2382. Aircraft: contract requirements.
2383.[1] Emergency purchases: war material abroad.
2384. Supplies: marking with name of contractor.
2385. Arms and ammunition: immunity from taxation.
2386. Copyrights, patents, designs, etc.; acquisition.
2387. Procurement of table and kitchen equipment for officers' quarters: limitation on.
2388. Liquid fuels: contracts for storage, handling, and distribution.
2389. Contracts for the procurement of milk; price adjustment.

AMENDMENTS

1966—Pub. L. 89–696, § 1(2), Oct. 19, 1966, 80 Stat. 1057, added item 2389.

1958—Pub. L. 85–861, § 1 (47), Sept. 2, 1958, 72 Stat. 1458, added items 2387 and 2388.

CROSS REFERENCES

Procurement—
Generally, see section 2301 et seq. of this title.
Air Force, see section 9531 et seq. of this title.
Army, see section 4531 et seq. of this title.
Navy, see section 7521 et seq. of this title.

§ 2381. Contracts: regulations for bids.

(a) The Secretary of a military department may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a) (2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 486 of title 40, unless exempted therefrom under section 481 (a) of that title. (Aug. 10, 1956, ch. 1041, 70A Stat. 136.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2381 (a)	5: 218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487; Oct. 31, 1951, ch. 654, § 2 (4), 65 Stat. 706.
2381 (b)	5: 218 (less 1st and 2d sentences).	
2381 (c)	5: 218 (1st 16 words of 1st sentence) [applicability of 5: 218 extended to Navy by 5: 412b and 41: 161 (1st sentence)].	Feb. 19, 1948, ch. 65, § 12 (1st sentence), 62 Stat. 26.

In subsection (a) (1), the word "may" is substituted for the words "is authorized to". The words "rules and * * * to be observed" are omitted as surplusage.

In subsection (a) (2), the word "undertaking" is substituted for the words "to the effect that he or they undertake". The words "make a contract" are inserted for clarity. The words "in the premises" are omitted as surplusage. The words "for the performance of the contract" are substituted for the words "to furnish the supplies proposed or to perform the service required".

In subsection (b), the word "duly" is omitted as surplusage. The words "with good and sufficient security for the proper fulfillment of its terms" are omitted as covered by subsection (a) (2). The words "the prescribed" are inserted before the word "bond".

Subsection (b) (1) is substituted for the words "proceed to contract with some other person to furnish the supplies or perform the services required".

In subsection (b) (2) the word "charge" is substituted for the words "forthwith cause * * * to be charged". The words "a contract is made with the other person" are substituted for the words "he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal". The words "guarantor or" are omitted as surplusage. The words "this difference being" are substituted for the words "and the sum may be". The words "of debt" are omitted, since that action no longer exists. The words "the bidder and his guarantors, jointly or severally" are substituted for the words "either or all of such persons".

In subsection (c), the words "Proceedings under this section are" are inserted for clarity. The words "unless exempted therefrom under section 481 (a) of that title" are inserted to preserve the possibility of exemption of proceedings under the revised section from the pro-

[1] Section 2383 repealed and analysis was not amended to reflect such repeal.

visions of the Federal Property and Administrative Services Act of 1949, as amended.

CROSS REFERENCES

Procurement procedures, see section 251 et seq. of Title 41, Public Contracts.

Purchases of gauges, dies, and tools to be used for manufacture of arms not required to be governed by laws prescribing competition in the procurement of supplies by purchase, see sections 4505, 9505 of this title.

§ 2382. Aircraft: contract requirements.

(a) The Secretary of a military department may not contract for the manufacture of all or part of any complete aircraft, unless the contractor agrees—

(1) to report under oath to the Secretary, when the contract is completed, as prescribed in subsection (b);

(2) to pay any excess profit into the Treasury;

(3) to make no division of any contract or subcontract for the same article for the purpose of evading this section;

(4) that the books and manufacturing spaces of its plant, affiliates, and divisions may at any time be audited and inspected, respectively, by any person designated by the Secretary of the military department concerned, the Secretary of the Treasury, or an authorized committee of Congress; and

(5) to make no subcontract unless the subcontractor agrees to the conditions set forth in this subsection.

(b) The report required under subsection (a) (1) shall be in the form prescribed by the Secretary of the military department concerned. It shall state the total contract price, the cost of performing the contract, the net profit or loss, and the percentage of the contract price that is net profit or loss. A copy shall be sent to the Secretary of the Treasury to be considered with the Federal income tax returns of the contractor.

(c) For the purposes of this section, "excess profit" means so much of the profits as the Secretary of the Treasury determines to be greater than 12 percent of the total contract price for contracts covered by this section and completed by a contractor or subcontractor within the taxable year. The method of computing excess profits shall be determined by the Secretary of the Treasury in agreement with the Secretary of the military department concerned. It shall be made available to the public.

(d) When an excess profit is found owing, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or to be paid on the excess profit. If a contractor or subcontractor has a net loss, or a net profit of less than 12 percent, on the aggregate of contracts or subcontracts covered by this section and completed in a taxable year, the deficiency shall be allowed as a credit against any excess profit for the next succeeding four taxable years.

(e) When paid into the Treasury, an excess profit becomes the property of the United States. The surety under the contract is not liable for its payment.

(f) This section applies to any division of a contract or subcontract covered by this section.

(g) This section does not apply to—

(1) a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control if the Secretary of the military department concerned designates the contract or subcontract for exemption; or

(2) a contract or subcontract, or division thereof, if the amount involved is $10,000 or less.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2382 (a)	34: 496 (1st sentence, less last 97 words of 1st proviso, less 2d and 5th provisos, and less 32d through 54th words of clause (c); as applicable to aircraft).	Mar. 27, 1934, ch. 95, § 3 (as applicable to aircraft), 48 Stat. 505; June 25, 1936, ch. 812 (as applicable to aircraft), 49 Stat. 1926; Apr. 3, 1939, ch. 35, § 14 (less last proviso, as applicable to aircraft), 53 Stat. 560; Aug. 7, 1946, ch. 770 (par. 18, as applicable to aircraft), 60 Stat. 867.
2382 (b)	34: 496 (2d and 3d sentences, as applicable to aircraft).	
2382 (c)	34: 496 (19th through 88th words of 1st proviso of 1st sentence, 4th sentence, and 5th sentence, less proviso; as applicable to aircraft).	
2382 (d)	34: 496 (2d proviso of 1st sentence, and proviso of 5th sentence; as applicable to aircraft).	
2382 (e)	34: 496 (89th through 97th words of 1st proviso of 1st sentence, as applicable to aircraft).	
2382 (f)	34: 496 (32d through 39th words, and 47th through 54th words, of clause (c) of 1st sentence; as applicable to aircraft).	
2382 (g)	34: 496 (5th proviso and 40th through 46th words of clause (c), of 1st sentence, and last sentence; as applicable to aircraft) (34: 496, as applicable to aircraft, is made applicable to the Army and Air Force by 10: 311).	

In subsection (a), 34: 496 (1st 27 words, last 23 words of 2d proviso, and 6th proviso: of 1st sentence) is omitted as executed. The matter of budget estimates is now covered by Title IV of the National Security Act of 1947, as amended (5: 172—172j). The words "herein, heretofore, or hereafter authorized" are omitted as surplusage. 34: 496 (3d and 4th provisos of 1st sentence) is omitted as superseded by section 1471 of the Internal Revenue Code (26 U. S. C. 1471).

In subsection (a) (2), the word "excess" is inserted for clarity.

In subsection (a) (3), the words "this section" are substituted for the words "the provisions of sections 494, 495, 496, 497 of this title", since the revised section contains all the effective law that applies to aircraft construction contracts.

In subsection (b), the words "net profit or loss" are substituted for the words "net income", in the two places where the latter appear, to make clear that a loss as well as a profit is covered by the source law. The words "for the taxable year or years concerned" are omitted as surplusage.

In subsection (c), the words "Secretary of the Treasury" are substituted for the words "Treasury Department". The words "contracts covered by this section and completed by a contractor or subcontractor within the taxable year" are substituted for the words "the construction and/or manufacture of any complete aircraft or portion thereof of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year". The words "to be paid into the Treasury" are omitted as surplusage. The words "The method initially fixed upon shall be so determined on or before June 30, 1934" are omitted as executed.

In subsection (d), the words "particular", "That in any case", and "to the United States in consequence hereof" are omitted as surplusage. The words "on the aggregate of contracts or subcontracts covered by this section" are

substituted for the words "as aforesaid on all such contracts or subcontracts for the construction and/or manufacture of any complete aircraft or portion thereof" for clarity and brevity.

In subsection (f), the words "covered by this section" are inserted for clarity.

Subsection (g) (2) is substituted for 34: 496 (40th through 46th words of clause (c) of 1st sentence, and last sentence).

CROSS REFERENCES

Encouragement of aviation, see section 2271 et seq. of this title.

National defense contracts, see chapter 29 of Title 50, War and National Defense.

Naval vessels, requirements of construction contracts, see section 7300 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7343 of this title.

§ 2383. Repealed. Pub. L. 87-456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 137, permitted the Secretary of a military department to make emergency purchases of war material abroad, and provided that such material may be admitted free of duty. See Revised Tariff Schedules set out in section 1202 of Title 19, Customs Duties.

§ 2384. Supplies: marking with name of contractor.

Each contractor furnishing supplies to a military department shall mark them with his name in the manner directed by the Secretary of that department. No supplies may be received unless so marked. (Aug. 10, 1956, ch. 1041, 70A Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2384	10: 1207; 34: 583.	R. S. 3731.

The words "Each contractor" are substituted for the words "Every person". The word "his" is substituted for the words "the name of the contractor furnishing such supplies". The words "of any kind" and "and distinguish [distinguished]" are omitted as surplusage. The word "may" is substituted for the word "shall".

§ 2385. Arms and ammunition: immunity from taxation.

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department. (Aug. 10, 1956, ch. 1041, 70A Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2385	5: 171w.	Jan. 6, 1951, ch. 1213, subch. VII, § 706, 64 Stat. 1236.

The words "No * * * may be" are substituted for the words "None * * * shall be subject to any". The words "by any Act" are omitted as surplusage.

CROSS REFERENCES

Machine guns and other firearms, exemptions from taxes, see section 5851 et seq. of Title 26, Internal Revenue.

Sales to Defense Department of firearms, ammunition, etc., as exempt from taxation, see section 4182(b) of Title 26.

§ 2386. Copyrights, patents, designs, etc.; acquisition.

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Designs, processes, and manufacturing data.

(4) Releases, before suit is brought, for past infringement of patents or copyrights.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Sept. 8, 1960, Pub. L. 86-726, § 3, 74 Stat. 855.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2386	31: 649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words "equipment, and materials" are omitted as covered by the word "supplies". The word "hereafter" is omitted as executed. The words "may be used" are substituted for the words "shall * * * be available". The words "if the acquisition relates to" are substituted for 31: 649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word "patents" is substituted for the words "letters patent".

AMENDMENTS

1960—Pub. L. 86-726 inserted "or copyrights" following "patents", in cl. (4).

CROSS REFERENCES

Secretary of the Navy, purchase of patents, patent applications, and licenses, see section 7210 of this title.

§ 2387. Procurement of table and kitchen equipment for officers' quarters: limitation on.

(a) Except under regulations approved by the Secretary of Defense and providing for uniform practices among the armed forces under his jurisdiction, no part of any appropriation of the Department of Defense may be used to supply or replace table linen, dishes, glassware, silver, and kitchen utensils for use in the residences on shore, or quarters on shore, of officers of those armed forces.

(b) This section does not apply to—

(1) field messes;

(2) messes temporarily set up on shore for bachelor officers and officers attached to seagoing or district defense vessels;

(3) aviation units based on seagoing vessels;

(4) fleet air bases;

(5) submarine bases; and

(6) landing forces and expeditions.

(Added Pub. L. 85-861, § 1 (45), Sept. 2, 1958, 72 Stat. 1458.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2387 (a)	5: 174e (less words within parentheses).	July 13, 1955, ch. 358, § 614, 69 Stat. 317.
2387 (b)	5: 174e (words within parentheses).	

In subsection (a), the words "may be used" are substituted for the words "shall be available". The words "on account of" are omitted as surplusage. The words "under his jurisdiction" are inserted for clarity, since the Secretary of Defense has no jurisdiction over the Coast Guard when it is not operating as a service in the Navy.

§ 2388. Liquid fuels: contracts for storage, handling, and distribution.

(a) The Secretary of a military department may contract for the storage, handling, and distribution of liquid fuels for periods of not more than five years, with options to renew for additional periods of not more than five years each, but not for more than a total of 20 years.

(b) This section applies only to facilities that conform to standards prescribed by the Secretary of Defense for protection, including dispersal, and that are in a program approved by the Secretary of Defense for the protection of petroleum facilities.

(c) A contract under this section may contain an option for the purchase by the United States of the facility covered by the contract at the expiration or termination of the contract, without regard to section 4774 (d) or 9774 (d) of this title, section 529 of title 31, or section 259 or 267 of title 40, and before approval of title to the underlying land by the Attorney General.

(d) The Secretary concerned shall report to the Committees on Armed Services of the Senate and the House of Representatives the terms of the contracts made under this section and the names of the contractors. The reports shall be made at such times and in such form as may be agreed upon by the Secretary and those Committees. (Added Pub. L. 85–861, § 1 (46), Sept. 2, 1958, 72 Stat. 1458.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2388 (a)	50: 98i (1st sentence).	Aug. 3, 1956, ch. 939, § 416, 70 Stat. 1018.
2388 (b)	50: 98i (2d sentence).	
2388 (c)	50: 98i (less 1st and 2d sentences and proviso of last sentence).	
2388 (d)	50: 98i (proviso of last sentence).	

In subsection (b), the words "section applies only" are substituted for the words "authority is limited". The word "standards" is substituted for the word "criteria".

In subsection (c), the words "A contract under this section" are substituted for the words "Such contracts". The last 33 words are substituted for 50: 98i (28 words before proviso of last sentence).

REFERENCES IN TEXT

Sections 259 and 267 of title 40, referred to in subsec. (c), were repealed by Pub. L. 86–249, § 17(12), Sept. 9, 1959, 73 Stat. 484.

§ 2389. Contracts for the procurement of milk; price adjustment.

Under regulations prescribed by the Secretary of Defense, any contract for the procurement of fluid milk for beverage purposes which was being performed on or after March 1, 1966, may be amended to provide a price adjustment for losses incurred by a contractor because of increased prices paid to the producers for such milk as a result of action by the Secretary of Agriculture on or after March 1, 1966, increasing the price of milk. A price adjustment shall not be made unless it has been determined by the Department that—

(1) such amount is not included in the contract price;

(2) the contract does not otherwise contain a provision providing for an adjustment in price; and

(3) the contractor will suffer a loss, not merely a diminution of anticipated profit, under the contract because of such increases in producer prices.

(Added Pub. L. 89–696, § 1(1), Oct. 19, 1966, 80 Stat. 1056.)

Chapter 143.—PRODUCTION BY MILITARY AGENCIES

Sec.
2421. Plantations and farms: operation, maintenance and improvement.

§ 2421. Plantations and farms: operation, maintenance, and improvement.

(a) Appropriations for the subsistence of members of the Army, Navy, Air Force, or Marine Corps are available for expenditures necessary in the operation, maintenance, and improvement of any plantation or farm, outside the United States and under the jurisdiction of the Army, Navy, Air Force, or Marine Corps, as the case may be, for furnishing fresh fruits and vegetables to the armed forces. However, no land may be acquired under this subsection.

(b) Fruits and vegetables produced under subsection (a) that are over the amount furnished or sold to the armed forces or to civilians serving with the armed forces may be sold only outside the United States.

(c) Of the persons employed by the United States under subsection (a), only nationals of the United States are entitled to the benefits provided by laws relating to the employment, work, compensation, or other benefits of civilian employees of the United States.

(d) A plantation or farm covered by subsection (a) shall be operated, maintained, and improved by a private contractor or lessee, so far as practicable. Before using members of the Army, Navy, Air Force, or Marine Corps, as the case may be, the Secretary concerned must make a reasonable effort to make a contract or lease with a person in civil life for his services for that operation, maintenance, or improvement, on terms advantageous to the United States. A determination by the Secretary as to the reasonableness of effort to make a contract or lease, and as to the advantageous nature of its terms, is final. (Aug. 10, 1956, ch. 1041, 70A Stat. 138.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2421 (a)	10: 1213 (less 1st and 2d provisos); 34: 555a (less 1st and 2d provisos).	June 28, 1944, ch. 306; restated July 1, 1947, ch. 188, 61 Stat. 234; Oct. 31, 1951, ch. 654, § 3 (2), 65 Stat. 708
2421 (b)	10: 1213 (2d proviso); 34: 555a (2d proviso).	
2421 (c)	10: 1213 (1st proviso); 35: 555a (1st proviso).	
2421 (d)	10: 1214; 34: 555b.	

In subsection (a), the word "management", in 10: 1213 and 34: 555a, is omitted as covered by the word "operation". The word "members" is substituted for the word "personnel". The word "may" is substituted for the word "shall". The words "any and all" and "the purpose of" are omitted as surplusage.

In subsections (a) and (b), the word "continental" is omitted, since section 101 (1) of this title defines the United States to include the States and the District of Columbia.

In subsection (b), the words "of the United States" are omitted as surplusage. The words "Fruits and vegetables produced under subsection (a)" are substituted for the words "That surplus production".

In subsection (c), the words "nationals of the United States" are substituted for the words "American nationals". The words "civil-service laws and other * * * of the United States" and "rights * * * or obligations" are omitted as surplusage.

In subsection (d), the words "after the termination of the present war" are omitted as executed. The word "by" is substituted for the words "through the instrumentality of". The words "partnership, association" are omitted as covered by the definition of "person" in section 1 of title I. The words "United States" are substituted for the word "Government". The words "management", "for that purpose", and "or agreement" are omitted as surplusage.

Chapter 145.—CATALOGING AND STANDARDIZATION

Sec.
2451. Defense supply management.
2452. Duties of Secretary of Defense.
2453. Supply catalog: distribution and use.
2454. Supply catalog: new or obsolete items.
2455. Reports to Congress.
2456. Coordination with General Services Administration.

CROSS REFERENCES

Procurement generally, see section 2301 et seq. of this title.

Property records, basis and reports, see section 2701 of this title.

§ 2451. Defense supply management.

(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

(2) standardize the methods of packing, packaging, and preserving such items; and

(3) make efficient use of the services and facilities for inspecting, testing, and accepting such items.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (13), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2451 (a)	5: 173.	July 1, 1952, ch. 539, §§ 2, 4, 66 Stat. 318, 319; 1953 Reorg. Plan No. 6, § 1 (a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2451 (b)	5: 173b (a).	
2451 (c)	5: 173b (b).	

In subsection (a), the words "for the Department of Defense" are inserted for clarity. 5: 173 (1st sentence) is omitted as impliedly repealed by section 2 of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638.

In subsection (b), the words "or any of the departments thereof", "in such manner", "original", and "necessary or" are omitted as surplusage. The words "throughout the Department of Defense" are substituted for the words "either within a bureau of service, between bureaus or services, or between the departments". The word "recurrently" is substituted for the word "repetitively". The words "Only one identification may" are substituted for the words "The single item identification shall".

In subsection (c), the words "the most" are omitted as surplusage. The words "to the highest degree practicable" are substituted for the words "achieve the highest practicable degree possible" and "The greatest practicable degree of standardization * * * shall be achieved".

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-861 substituted "such" for "standardized" in cl. (2), and "such" for "those" in cl. (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2452, 2453 of this title.

§ 2452. Duties of Secretary of Defense.

The Secretary of Defense shall—

(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

(2) direct and coordinate progressive use of the supply catalog in all supply functions within the Department of Defense from the determination of requirements through final disposal;

(3) direct, review, and approve—

(A) the naming, description, and pattern of description of all items;

(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

(C) the publication and distribution of the supply catalog;

(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products,

and resolve differences between the military departments, bureaus, and services with respect to them;

(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

(7) establish time schedules for assignments made under clause (6); and

(8) make final decisions in all matters concerned with the cataloging and standardization programs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2452	5: 173c.	July 1, 1952, ch. 539, § 5, 66 Stat. 319; 1953 Reorg. Plan No. 6, § 1 (a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

In clause (1), the word "establish" is omitted as surplusage.

In clause (2), the words "provided for herein" and "its departments, bureaus, and services" are omitted as surplusage.

In clauses (2) and (3), the words "provide for" are omitted as surplusage.

In clause (4), the words "establish and" and "established by sections 173—173i of this title" are omitted as surplusage.

In clause (5), the words "amend" and "promulgate" are omitted as surplusage.

In clause (6), the words "established by sections 173—173i of this title" are omitted as surplusage.

Clause (7) is substituted for 5: 173c (f) (last 11 words).

In clause (8), the word "programs" is substituted for the words "authority established in sections 173—173i of this title". The words "subject to review and modification by the Secretary of Defense" are omitted as surplusage.

§ 2453. Supply catalog: distribution and use.

The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog. (Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2453	5: 173d.	July 1, 1952, ch. 539, § 6, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1 (a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

The words "and ready for use" and "all departments, bureaus, and services" are omitted as surplusage. The words "After replacement" are substituted for the word "Thereafter". The words "with respect to the kinds of items covered by that part" are inserted for clarity.

§ 2454. Supply catalog: new or obsolete items.

(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

(b) Obsolete items may be deleted from the catalog at any time. (Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2454 (a)	5: 173e (less last 5 words of 1st proviso).	July 1, 1952, ch. 539, § 7, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1 (a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2454 (b)	5: 173e (last 5 words of 1st proviso).	

In subsection (a), the words "After any part * * * is distributed" are substituted for the words "Following the publication and promulgation * * * or portions thereof". The words "and with respect to the kinds of items covered by that part" are inserted for clarity. The word "recurrent' is substituted for the word "repetitive". The words "the departments, bureaus, and services of" are omitted as surplusage. The second sentence of the revised subsection is substituted for 5: 173e (1st proviso, less last 5 words; and 2d proviso).

In subsection (b), the words "at any time" are inserted for clarity.

§ 2455. Reports to Congress.

(a) The Secretary of Defense shall send to the Committees on Armed Services of the Senate and the House of Representatives, on January 31 and July 31 of each year, a progress report on cataloging under this chapter from each military department. Each report shall cover the six-month period ending with the preceding June 30 or December 31, whichever was later. The report shall contain—

(1) the number of sections or parts of the supply catalog that have been published, and their titles;

(2) the number of item identification numbers in the catalog that have replaced, for all supply purposes, former item identifications or stock or catalog numbers;

(3) the reduction in the number of separate item identifications; and

(4) any other information that the Secretary considers will best inform Congress of the status of the cataloging program.

(b) The Secretary shall report to the Committees on Armed Services of the Senate and the House of Representatives, on January 31 and July 31 of each year, on the progress of the standardization program within the military departments. Each report shall cover the six-month period ending with the preceding June 30 or December 31, whichever was later. The report shall contain—

(1) the number of separate specifications that have been consolidated into single specifications for use throughout the Department of Defense;

(2) the reduction in the number of sizes or kinds of items that are generally similar;

(3) the duplications eliminated in services, space, and facilities; and

(4) any other information that the Secretary considers will best inform Congress of the progress of the standardization program.

(c) The Secretary may combine the reports required by subsections (a) and (b). (Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2455 (a)	5: 173g.	July 1, 1952, ch. 539, §§ 8, 9, 10, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1 (a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2455 (b)	5: 173h.	
2455 (c)	5: 173f.	

In subsections (a) and (b), the word "achieved" is omitted as surplusage.

In subsection (a), the words "within the Department of Defense" and "and progress" are omitted as surplusage. The second sentence of the revised subsection is substituted for the words "for the previous six months between July 1 and December 31 and January 1 and June 30, respectively".

In subsection (b), the words "in the Department of Defense" are omitted as surplusage. The second sentence of the revised subsection is substituted for the words "for the previous six months between July 1 and December 31 and January 1 and June 30 respectively". The words "throughout the Department of Defense" are substituted for the words "all of the military departments, bureaus and services".

§ 2456. Coordination with General Services Administration.

To avoid unnecessary duplication, the Administrator of General Services and the Secretary of Defense shall coordinate the cataloging and standardization activities of the General Services Administration and the Department of Defense. (Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2456	5: 173i.	July 1, 1952, ch. 539, § 11, 66 Stat. 320.

CROSS REFERENCES

Cataloging and standardization activities, coordination of Administrator of General Services with Secretary of Defense, see section 487 (a) of Title 40, Public Buildings, Property, and Works.

Chapter 147.—UTILITIES AND SERVICES

Sec.
2481. Utilities and services: sale; expansion and extension of systems and facilities.
2482. Commissary stores: private operation.

CROSS REFERENCES

Particular provisions relating to—

Air Force, see section 9591 et seq. of this title.

Army, see section 4591 et seq. of this title.

Property records, basis and reports, see section 2701 of this title.

§ 2481. Utilities and services: sale; expansion and extension of systems and facilities.

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

(1) Electric power.

(2) Steam.

(3) Compressed air.

(4) Water.

(5) Sewage and garbage disposal.

(6) Natural, manufactured, or mixed gas.

(7) Ice.

(8) Mechanical refrigeration.

(9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 141; Aug. 14, 1959, Pub. L. 86–156, § 1, 73 Stat. 338.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2481 (a)	5: 526s; 5: 626s-1 (less words between semicolon and colon); 10: 1269; 10: 1269a (less words between semicolon and colon); 34: 553a; 34: 553b (less words between semicolon and colon).	July 30, 1947, ch. 394, 61 Stat. 675; Aug. 8, 1949, ch. 403, § 5, 63 Stat. 576.
2481 (b)	5: 626s-1 (words between semicolon and colon); 10: 1269a (words between semicolon and colon); 34: 553b (words between semicolon and colon).	
2481 (c)	5: 626s-2; 10: 1269b; 34: 553c.	

In subsection (a), the words "within his establishment", "of time", and the opening clauses of 5: 626s-1, 10: 1269a, and 34: 553b, are omitted as surplusage. The words "not available from another local source" are substituted for the words "not otherwise available from local private or public sources".

In subsection (b), the words "of sales under subsection (a)" are substituted for the words "received for any such utilities and related services sold pursuant to the authority of said sections". The words "or appropriations" are omitted as surplusage.

AMENDMENTS

1959—Subsec. (a). Pub. L. 86–156, § 1(1), substituted "concerned" for "of a military department" and added "or Coast Guard," following "Marine Corps,".

Subsec. (c). Pub. L. 86–156, § 1(2), deleted "of the military department" following "Secretary".

CROSS REFERENCES

Extension telephones in naval quarters, see section 7576 of this title.

Young Men's Christian Association buildings, heat and light furnished by Secretary of the Navy, see section 7580 of this title.

§ 2482. Commissary stores: private operation.

Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. (Aug. 10, 1956, ch. 1041, 70A Stat. 141.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2482	Uncodified.	Aug. 1, 1953, ch. 305, § 624 (last proviso), 67 Stat. 353.

This section is codified as permanent law on the basis of an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, dated September 28, 1954. The words "and privately owned organizations" are omitted as surplusage since under 1 U. S. C. 1 "person" includes such an organization.

CROSS REFERENCES

Naval commissary stores, see section 7601 et seq. of this title.

Chapter 149.—ISSUE TO ARMED FORCES

Sec.
2511. Reserve components: supplies, services, and facilities.

CROSS REFERENCES

Issue of serviceable material to—
Air Force, see section 9561 et seq. of this title.
Army, see section 4561 et seq. of this title.
Property records, basis and reports, see section 2701 of this title.

§ 2511. Reserve components: supplies, services, and facilities.

(a) The Secretary concerned shall make available to the reserve components under his jurisdiction the supplies, services, and facilities of the armed forces under his jurisdiction that he considers necessary to support and develop those components.

(b) Whenever he finds it to be in the best interest of the United States, the Secretary concerned or his representative may issue supplies of the armed forces under his jurisdiction to the reserve components under his jurisdiction, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(c) Whenever he finds it to be in the best interest of the United States, the Secretary of the Army or the Secretary of the Air Force, or his representative, may issue to the Army National Guard or the Air National Guard, as the case may be, supplies of the armed forces under his jurisdiction that are in addition to supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(d) Supplies issued under subsection (b) or (c) may be repossessed or redistributed as prescribed by the Secretary concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 141.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2511 (a)	50: 1006 (a).	July 9, 1952, ch. 608, § 255 (less (d)), 66 Stat. 496.
2511 (b)	50: 1006 (b) (1st sentence, less last proviso).	
2511 (c)	50: 1006 (b) (less 1st sentence); 50: 1006 (c).	
2511 (d)	50: 1006 (b) (last proviso of 1st sentence).	

In subsection (a), the words "under his jurisdiction" are substituted for the word "each". The words "under his jurisdiction" are inserted after the words "armed forces" for clarity. The words "and advisable" are omitted as surplusage.

In subsections (a)—(d), the word "equipment" is omitted, since the word "supplies", as defined in section 101 (25) of this title, includes "equipment".

In subsection (b), the words "Whenever he" are substituted for the words "*Provided*, That the appropriate Secretary". The words "under his jurisdiction" are substituted for the word "appropriate". The words "authorized", "to issue such equipment and supplies", and "or in any way affecting" are omitted as surplusage.

Subsection (c) is substituted for the words "This subsection * * * applies to supplies and equipment issued in addition thereto" to state expressly the supplies referred to. The words "shall not apply * * * as amended, but" are omitted as surplusage, since the fact that the Army National Guard and Air National Guard are not reserve components clearly excludes, from the rule stated in subsection (b), the supplies described. 50: 1006 (c) is omitted as covered by the language of the revised subsection. The words "supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32" are substituted for the words "supplies and equipment issued * * * under sections 21, 22, 35 and 49 of Title 32", since under the latter sections supplies are not issued but are charged to appropriations. The reference to section 49 of Title 32 is omitted, since that section is based on a part of section 67 of the National Defense Act that is not germane to this section.

In subsection (d), the words "pursuant to this section" are omitted as surplusage.

CROSS REFERENCES

Naval Reserve and Marine Corps Reserve, see sections 5251, 5252 of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

Chapter 151.—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
2541. Equipment and barracks: national veterans' organizations.
2542. Equipment for instruction and practice: American National Red Cross.
2543. Equipment: Inaugural Committee.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (48) (B), Sept. 2, 1958, 72 Stat. 1459, added item 2543.

CROSS REFERENCES

Naval supplies and services, furnishing and sale to—
Foreign naval vessels and aircraft, see section 7227 of this title.
Merchant vessels, see section 7228 et seq. of this title.
Particular provisions relating to—
Air Force, see section 9651 et seq. of this title.
Army, see section 4651 et seq. of this title.
Property records, basis and reports, see section 2701 of this title.

§ 2541. Equipment and barracks: national veterans' organizations.

(a) The Secretary of a military department, under conditions prescribed by him, may lend cots, blankets, pillows, mattresses, bed sacks, and other supplies under the jurisdiction of that department to any recognized national veterans' organization for use at its national or state convention or national youth athletic or recreation tournament. He may, under conditions prescribed by him, also permit the organization to use unoccupied barracks under the

jurisdiction of that department for such an occasion.

(b) Property lent under subsection (a) may be delivered on terms and at times agreed upon by the Secretary of the military department concerned and representatives of the veterans' organization. However, the veterans' organization must defray any expense incurred by the United States in the delivery, return, rehabilitation, or replacement of that property, as determined by the Secretary.

(c) The Secretary of the military department concerned shall require a good and sufficient bond for the return in good condition of property lent or used under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 142.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2541 (a)	5: 150m.	Aug. 1, 1949, ch. 372, 63 Stat. 483.
2541 (b)	5: 150n.	
2541 (c)	5: 150o.	

In subsection (a) the word "may" is substituted for the words "are authorized to * * * at their discretion". The word "supplies" is substituted for the words "articles or equipment". The words "available" and "as may be needed" are omitted as surplusage. The words "under the jurisdiction of that department" are substituted for the words "of the Army, Navy, or Air Force" and "under their respective jurisdictions".

In subsection (b), the words "prior to any such conventions or national youth athletic or recreation tournaments" are omitted as surplusage.

In subsection (c), the words "require of" are substituted for the words "take from".

§ 2542. Equipment for instruction and practice: American National Red Cross.

The Secretary of a military department, under regulations to be prescribed by him, may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war. The Secretary shall by regulation require the immediate return, upon request, of equipment lent under this section. The Secretary shall require a bond, in double the value of the property issued under this section, for the care and safekeeping of that property and for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 142.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2542	10: 1255; 10: 1256; 34: 549; 34: 550.	May 8, 1914, J. Res. 15, 38 Stat. 771.

The word "may" is substituted for the words "is authorized * * * at his discretion", in 10: 1255 and 34: 549. The word "lend" is substituted for the word "issue", in 10: 1255 and 34: 549. The words "proper", "to be", "out of equipment for medical or other establishments", and "belonging to the Government", in 10: 1255 and 34: 549, are omitted as surplusage. The words "that needs it" are substituted for the words "as may appear to be required". The words "under the jurisdiction of that department" are inserted for clarity. The words "upon request" are substituted for the words "when called for by the authority which issued them".

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Cooperation and assistance to armed forces by American National Red Cross, see section 2602 of this title.

Sale of medical supplies and ordnance property to American National Red Cross, see sections 4624, 4625, 9624, 9625 of this title.

§ 2543. Equipment: Inaugural Committee.

(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under section 721 of title 36, hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

(b) The Inaugural Committee must give a good and sufficient bond for the return in good order and condition of property lent under subsection (a).

(c) Property lent under subsection (a) shall be returned within nine days after the date of the ceremony inaugurating the President. The Inaugural Committee shall—

(1) indemnify the United States for any loss of, or damage to, property lent under subsection (a); and

(2) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.

(Added Pub. L. 85-861, § 1 (48) (A), Sept. 2, 1958, 72 Stat. 1458.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2543 (a)	36: 726 (1st sentence).	Aug. 6, 1956, ch. 974, §§ 1 (b) (1) (as applicable to § 6), 6, 70 Stat. 1049, 1050.
2543 (b)	36: 726 (less 1st and 2d sentences).	
2543 (c)	36: 721 (b) (1) (as applicable to 36: 726).	
	36: 726 (2d sentence).	

In subsection (a), the words "under section 721 of title 36" are inserted for clarity. The words "ensigns" and "Red Cross flags" are omitted as covered by the word "flags".

In subsection (b), the words "and the whole without expense to the United States" are omitted as surplusage.

In subsection (c), the words "nine days after the date of the ceremony inaugurating the President" are substituted for the words "five days after the end of the inaugural period", in 36: 726 (2d sentence), and 36: 721 (b) (1).

Chapter 153.—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of property and services.
2572. Condemned or obsolete material: loan or gift to certain organizations.
2573. Excess property: transfers to Canal Zone Government.
2574. Armament: sale of individual pieces.
2575. Disposition of unclaimed property.
2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies.

AMENDMENTS

1968—Pub. L. 90-500, title IV, § 403(b), Sept. 20, 1968, 82 Stat. 851, added item 2576.

1958—Pub. L. 85-861, § 1 (50), Sept. 2, 1958, 72 Stat. 1459, substituted "property" for "supplies" in item 2571.

CROSS REFERENCES

Disposal of obsolete or surplus material—
Air Force, see section 9681 et seq. of this title.
Army, see section 4681 et seq. of this title.
Navy, see section 7541 et seq. of this title.
Property records, basis and reports, see section 2701 of this title.

§ 2571. Interchange of property and services.

(a) If either of the Secretaries concerned requests it and the other approves, supplies and real estate may be transferred, without compensation, from one armed force to another.

(b) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, without reimbursement or transfer of funds.

(c) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization. (Aug. 10, 1956, ch. 1041, 70A Stat. 143; Sept. 2, 1958, Pub. L. 85-861, § 1 (49), 72 Stat. 1459.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2571 (a)	5: 171t (less clause (2)).	Oct. 29, 1949, ch. 787, § 621, 63 Stat. 1020.
2571 (b)	5: 171t (clause (2)).	

In subsection (a), the words "After June 30, 1949" are omitted as executed. The words "may perform work and services for, or furnish supplies to" are substituted for the words "services, work, supplies, materials, and equipment may be rendered or supplied", since the word "supplies", as defined in section 101 (26) of this title, includes "equipment" and "material". The words "upon request" are inserted for clarity.

In subsection (b), the words "on a reimbursable or other basis as authorized by law", "to duty", and "naval" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (49) (A), substituted "property" for "supplies" in catchline.

Subsec. (a). Pub. L. 85-861, § 1 (49) (B), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsecs. (b) and (c). Pub. L. 85-861, § 1 (49) (C), redesignated former subsecs. (a) and (b) as (b) and (c).

§ 2572. Condemned or obsolete material: loan or gift to certain organizations.

Subject to regulations under section 486 of title 40, the Secretary of a military department, or the Secretary of the Treasury, under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

(1) a municipal corporation;

(2) a soldiers' monument association;

(3) a State museum;

(4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

(5) a post of the Veterans of Foreign Wars of the United States;

(6) a post of the American Legion;

(7) a local unit of any other recognized war veterans' association; or

(8) a post of the Sons of Veterans Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2572	5: 150p.	May 22, 1896, ch. 231; restated May 26, 1928, ch. 785; restated Feb. 28, 1933, ch. 137; restated June 19, 1940, ch. 398; July 31, 1947, ch. 421; restated Feb. 27, 1948, ch. 76, § 1, 62 Stat. 37; Oct. 31, 1951, ch. 654, § 2 (2), 65 Stat. 706.

The word "may" is substituted for the words "are each authorized, in their discretion". The reference to posts of the Grand Army of the Republic is omitted, since that organization disbanded in 1950. The words "under regulations to prescribed by him" are substituted for the words "subject to rules and regulations covering the same in each department". The words "without expense to the United States" are substituted for the words "and the Government shall be at no expense in connection with any such loan or gift". The words "local units" are inserted in clause (7) to conform to clauses (5), (6), and (8).

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

CROSS REFERENCES

American Legion, see section 41 et seq. of Title 36, Patriotic Societies and Observances.

Loan or gift of obsolete material and articles of historical interest by Secretary of the Navy, see section 7545 of this title.

Veterans of Foreign Wars of the United States, see section 111 et seq. of Title 36.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7545 of this title.

§ 2573. Excess property: transfers to Canal Zone Government.

A military department may transfer to the Canal Zone Government, without reimbursement and regardless of location, any supplies, including tools, structures, vessels, and floating equipment, that are excess property as defined by section 472 (e) of title 40 and have been certified by the Governor of the Canal Zone as necessary for the care, maintenance, operation, improvement, sanitation, or government of the Canal Zone. (Aug. 10, 1956, ch. 1041, 70A Stat. 143.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2573	10: 1257b; 34: 551b.	July 2, 1947, ch. 204, 61 Stat 243; July 31, 1947, ch. 411, § 5, 61 Stat. 694.

The words "without reimbursement" are substituted for the words "without charge to the Canal Zone Government". The words "materials" and "and equipment of every character" are omitted as covered by the definition of "supplies" in section 101 (26) of this title. The words "excess property as defined by section 472 (e) of title 40" are substituted for the words "which are surplus to the needs of the department having title thereto" for uniformity of expression and to reflect an opinion of the Deputy General Counsel of the Department of Defense, dated September 7, 1954. The word "or" is substituted for the word "and" for clarity. The words "Panama Canal and" are omitted as obsolete to reflect the opinion cited above.

§ 2574. Armament: sale of individual pieces.

A piece of armament that can be advantageously replaced, and that is not needed for its historical value, may be sold by the military department having jurisdiction over it for not less than cost, if the Secretary concerned considers that there are adequate sentimental reasons for the sale. (Aug. 10, 1956, ch. 1041, 70A Stat. 144.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2574	10: 1262b; 34: 545; 50: 69.	Mar. 2, 1905, ch. 1307 (last 55 words of last par. under "Ordnance Department"), 33 Stat. 841.

The words "by the military department having jurisdiction over it" are inserted for clarity. The words "if the Secretary concerned considers" are substituted for the words "when there exist * * * in the judgment of the Secretary".

§ 2575. Disposition of unclaimed property.

(a) The Secretary of any military department, and the Secretary of the Treasury, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of his department, other than property subject to section 4712, 4713, 6522, 9712, or 9713 of this title or subject to subsection (c) of this section. However, property may not be disposed of until diligent effort has been made to find the owner, his heirs or next of kin, or his legal representative. If the owner, his heirs or next of kin, or his legal representative is determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner, his heirs or next of kin, or his legal representatives is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of $25 or more the property may not be disposed of until three months after the date it is received at a storage point designated by the Secretary.

(b) The net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner, his heirs or next of kin, or his legal representative may file a claim for those proceeds with the General Accounting Office within five years after the date of the disposal of the property. If not filed within that period, such a claim may not be considered by a court or the General Accounting Office.

(c) No property covered by this section may be delivered to the Soldiers' Home by the Secretary of the Army or the Secretary of the Air Force, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes. The Home shall deliver the property to the owner, his heirs or next of kin, or his legal representative, if he establishes a right to it within two years after its receipt by the Home. (Aug. 10, 1956, ch. 1041, 70A Stat. 144; Aug. 28, 1965, Pub. L. 89–143, 79 Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2575 (a)	5: 150e; 5: 150h; [Uncodified: Apr. 14, 1949, ch. 50, § 6, 63 Stat. 45].	Apr. 14, 1949, ch. 50, 63 Stat. 45.
2575 (b)	5: 150f; 5: 150g.	
2575 (c)	5: 150i.	

In subsection (a), the words "under such regulations as they may respectively prescribe" are substituted for 5: 150h. The words "other than property * * * subject to subsection (c)" of this section are substituted for the words "subject to the provisions of section 150i of this title". The words "other than property subject to sections 4712, 4713, 6522, 9712, or 9713 of this title" are inserted, since uncodified section 6 of the source statute provided that the source statute for this revised section did not repeal or amend the source statutes for those revise sections. The words "that comes into" are substituted for the words "which is now or may hereafter come into". The word "possession" is omitted as covered by the words "custody or control". The words "However, property may not be disposed of until" are inserted for clarity. The word "find" is substituted for the words "determine and locate". The words "until the expiration" are substituted for the words "prior to the expiration of a period". The words "determined but not found" are substituted for the words "have or has been determined". The words "or owners", "or representatives", and "sold or otherwise" are omitted as surplusage.

In subsection (b), the words "may file * * * within five years" are substituted for the words "may be filed * * * at any time prior to the expiration of five years", in 5: 150g, since the claim must be disallowed if not filed within that period. The words "If not filed within that period" are substituted for the words "If claims are not filed prior to the expiration of five years from the date of the disposal of the property", in 5: 150g. The words "such a claim may not be considered" are substituted for the words "they shall be barred from being acted on", in 5: 150g.

In subsection (c), the words "No property * * * may * * * except" are substituted for the words "Any property * * * shall be limited". The last sentence is substituted for 5: 150i (proviso).

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–143 provided for notice by certified mail and substituted provision for disposition of property without delay when diligent effort to determine ownership is unsuccessful and after three months following receipt at designated storage point of property with fair market value of $25 or more, for former provision for disposition of property one year after receipt at designated storage point.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of

the Treasury were transferred to the Secretary of Transportation by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

CROSS REFERENCES

Soldiers' Home, see section 41 et seq. of Title 24, Hospitals, Asylums, and Cemeteries.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5564; title 37 section 554.

§ 2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies.

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement and firefighting agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, and protective body armor which (1) are suitable for use by such agencies in carrying out law enforcement and firefighting activities, and (2) have been determined to be surplus property pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended.

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement or firefighting agency unless request therefor is made by such agency, in such form and manner as the Secretary of Defense shall prescribe, and such request, with respect to the type and amount of equipment so requested, is certified as being necessary and suitable for the operation of such agency by the Governor (or such State official as he may designate) of the State in which such agency is located. Equipment sold to a State or local law enforcement or firefighting agency under this section shall not exceed, in quantity, the amount requested and certified for such agency and shall be for the exclusive use of such agency. Such equipment may not be sold, or otherwise transferred, by such agency to any individual or public or private organization or agency. (Added Pub. L. 90–500, title IV, § 403(a) Sept. 20, 1968, 82 Stat. 851.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, which is classified to chapters 10 and 16 of Title 40, Public Buildings, Property and Works, section 5 and chapter 4 of Title 41, Public Contracts, and chapters 21, 25, 27, 29 and 31 of Title 44, Public Printing and Documents.

Chapter 155.—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.
2602. American National Red Cross: cooperation and assistance.
2603. Acceptance of fellowships, scholarships, or grants.
2604. United Seamen's Service: cooperation and assistance.

AMENDMENTS

1970—Pub. L. 91–603, § 3(2), Dec. 31, 1970, 84 Stat. 1675, inserted item 2604.

1962—Pub. L. 87–555, § 1(2), July 27, 1962, 76 Stat. 244, added item 2603.

§ 2601. General gift funds.

(a) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department. He may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest made under this subsection.

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) "Department of the Army General Gift Fund", in the case of deposits of that department;

(2) "Department of the Navy General Gift Fund", in the case of deposits of that department;

(3) "Department of the Air Force General Gift Fund", in the case of deposits of that department; and

(4) "Coast Guard General Gift Fund", in the case of deposits of the Secretary of the Treasury.

The Secretary concerned may disburse funds deposited under this subsection for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

(c) For the purposes of Federal income, estate, and gift taxes, property that is accepted under subsection (a) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(d) The Secretary of the Treasury, upon the request of the Secretary of a military department, may retain money, securities, and the proceeds of the sale of securities, in the gift fund of the department concerned, and may invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The Secretary of the Treasury may do likewise with respect to the Coast Guard General Gift Fund. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund of the department concerned and may be disbursed as provided in subsection (b). (Aug. 10, 1956, ch. 1041, 70A Stat. 144.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2601 (a)	5: 150q.	Mar. 11, 1948, ch. 107, 62 Stat. 71.
2601 (b)	5: 150r.	
2601 (c)	5: 150s.	
2601 (d)	5: 150t.	

In subsection (a), the words "receive" and "administration" are omitted as surplusage.

In subsection (b), the words "and conditions" and "United States" are omitted as surplusage.

In subsection (c), the words "any gift, devise, or bequest of" and "real or personal" are omitted as surplusage.

In subsection (d), the words "or any part thereof deposited in the Treasury pursuant to section 150r of this title" are omitted as surplusage.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the

Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

CROSS REFERENCES

Estate tax deductions of transfers for public, charitable, and religious uses, see section 2055 of Title 26, Internal Revenue.

Gift tax deductions of charitable and similar gifts, see section 2522 of Title 26.

Income tax deductions of charitable, etc., contributions and gifts, see section 170 of Title 26.

§ 2602. American National Red Cross: cooperation and assistance.

(a) Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense.

(b) Personnel of the American National Red Cross who are performing duties in connection with its cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing, those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the American National Red Cross, except that where civilian employees of the armed forces are quartered without charge, employees of the American National Red Cross may also be quartered without charge; and

(3) available office space, warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the American National Red Cross for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the American National Red Cross, including gifts for the use of the armed forces, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance accepted under this section.

(e) For the purposes of this section, employees of the American National Red Cross may not be considered as employees of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 145.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2602 (a)	36: 17.	July 17, 1953, ch. 222, §§ 1, 2, 7, 67 Stat. 178, 179.
2602 (b)	36: 17a (less provisos).	
2602 (c)	36: 17a (1st proviso).	
2602 (d)	36: 17a (last proviso).	
2602 (e)	36: 17b.	

In subsection (a), the words "finds it necessary" are substituted for the words "shall find the * * * to be necessary". The words "cooperation and assistance" are substituted for the words "cooperation and use * * * assistance * * * the same". The words "under regulations to be prescribed by the Secretary of Defense" are substituted for 36: 17 (last sentence). The words "tendered by the said Red Cross" are omitted as surplusage.

In subsection (b), the introductory clause is substituted for 36: 17a (1st 33 words). In clause (1), the word "expense" is substituted for the words "cost and charge." The words "traveling to and from, and while performing, those duties" are substituted for the words "proceeding to their place of duty, while serving thereat, and while returning therefrom". In clause (2), the words "at their expense or at the expense of" are substituted for the words "providing the cost thereof is borne by such personnel or by". The words "quartered without charge" are substituted for the words "furnished quarters on the same basis without cost". In clause (3), the words "when such facilities are" are omitted as surplusage.

In subsection (c), the words "for travel outside the United States to assume or perform" are substituted for the words "so serving or proceeding abroad to enter upon such service".

In subsection (d), the word "equipment" is omitted as covered by the word "supplies". The words "gifts for the use of" are substituted for the words "Red Cross supplies that may be tendered as a gift and accepted for use by". The word "expense" is substituted for the words "cost and charge". The words "rules and" are omitted as surplusage.

In subsection (e), the words "Federal Government of" are omitted as surplusage.

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Equipment for instruction and practice, loan to American National Red Cross, see section 2542 of this title.

Fees for execution and issuance of passport, see section 214 of Title 22, Foreign Relations and Intercourse.

Military installations, erection and use of buildings license to American National Red Cross, see section 2670 of this title.

§ 2603. Acceptance of fellowships, scholarships, or grants.

(a) Notwithstanding any other provision of law, a fellowship, scholarship, or grant may, under regulations to be prescribed by the President or his designee, be made by a corporation, fund, foundation, or educational institution that is organized and operated primarily for scientific, literary, or educational purposes to any member of the Armed Forces, and the benefits thereof may be accepted by him—

(1) in recognition of outstanding performance in his field;

(2) to undertake a project that may be of value to the United States; or

(3) for development of his recognized potential for future career service.

However, the benefits of such a fellowship, scholarship, or grant may be accepted by the member in addition to his pay and allowances only to the extent that those benefits would be conferred upon him if the education or training contemplated by that fellowship, scholarship, or grant were provided at the expense of the United States. In addition, if such a benefit, in cash or in kind, is for travel, subsistence, or other expenses, an appropriate reduction shall be made from any payment that is made for the same purpose to the member by the United States incident to his acceptance of the fellowship, scholarship, or grant.

(b) Each member of the Armed Forces who accepts a fellowship, scholarship, or grant in accordance with subsection (a) shall, before he is permitted to undertake the education or training contemplated

by that fellowship, scholarship, or grant, agree in writing that, after he completes the education or training, he will serve on active duty for a period at least three times the length of the period of the education or training. (Added Pub. L. 87-555, § 1(1), July 27, 1962, 76 Stat. 244.)

EX. ORD. NO. 11079. REGULATIONS FOR ACCEPTANCE OF FELLOWSHIPS, SCHOLARSHIPS, OR GRANTS

Ex. Ord. No. 11079, Jan. 25, 1963, 28 F.R. 819, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

By virtue of the authority vested in me by section 2603 of Title 10, United States Code [this section], I hereby designate the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, the Secretary of Transportation, with respect to members of the Coast Guard when it is not operating as a service in the Navy, and the Secretary of Health, Education, and Welfare, with respect to commissioned officers of the Public Health Service, to prescribe regulations under which members of the Armed Forces and commissioned officers of the Public Health Service may accept fellowships, scholarships, or grants from corporations, funds, foundations, or educational institutions organized and operated primarily for scientific, literary, or educational purposes. To the extent practicable, such regulations shall be uniform.

JOHN F. KENNEDY

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 2604. United Seamen's Service: cooperation and assistance.

(a) Whenever the President finds it necessary in the interest of United States commitments abroad to provide facilities and services for United States merchant seamen in foreign areas, he may auhorize the Secretary of Defense, under such regulations as the Secretary may prescribe, to cooperate with and assist the United Seamen's Service in establishing and providing those facilities and services.

(b) Personnel of the United Seamen's Service who are performing duties in connection with the cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the United Seamen's Service, except that where civilian employees of the armed forces are quartered without charge, employees of the United Seamen's Service may also be quartered without charge; and

(3) available office space (including space for recreational activities for seamen), warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the United Seamen's Service for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the United Seamen's Service, including gifts for the use of merchant seamen, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance provided under this section.

(e) Where practicable, the President shall also make arrangements to provide for convertibility of local currencies for the United Seamen's Service, in connection with its activities under subsection (a).

(f) For the purposes of this section, employees of the United Seamen's Service may not be considered as employees of the United States. (Added Pub. L. 91-603, § 3(1), Dec. 31, 1970, 84 Stat. 1674.)

SHORT TITLE

Section 1 of Pub. L. 91-603 provided: "That this Act [enacting this section, amending sections 1151, 1152, 1171 and 1223 of Title 46, and enacting provisions set out as a note under this section] may be cited as the 'Seamen's Service Act'."

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Pub. L. 91-603 provided that: "It is the purpose of this Act [enacting this section and amending sections 1151, 1152, 1171 and 1223 of Title 46], by authorizing appropriate departments and agencies of the United States Government to cooperate with the United Seamen's Service (a nonprofit, charitable organization incorporated under the laws of the State of New York) in the establishment and operation of facilities for United States merchant seamen in foreign areas, to promote the welfare of such seamen, essential to the overall interests of shipment of United States goods and supplies to such areas."

Chapter 157.—TRANSPORTATION

Sec.
2631. Supplies: preference to United States vessels.
2632. Transportation to and from certain places of employment.
2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department.
2634. Motor vehicles: for members on change of permanent station.

AMENDMENTS

1965—Pub. L. 89-101, § 1(2), July 30, 1965, 79 Stat. 425, substituted "change of permanent station" for "permanent change of station" in item 2634.

1962—Pub. L. 87-651, title I, § 111(c), Sept. 7, 1962, 76 Stat. 511, substituted "Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department" for "Terminal Services, furnish to commercial steamship companies" in item 2633, and added item 2634.

1957—Pub. L. 85-44, § 2, June 1, 1957, 71 Stat. 45, added item 2633.

§ 2631. Supplies: preference to United States vessels.

Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons. (Aug. 10, 1956, ch. 1041, 70A Stat. 146.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2631	10: 1365; 34: 528.	Apr. 28, 1904, ch. 1766, 33 Stat. 518.

The word "supplies" is substituted for the words "coal, provisions, fodder, or supplies of any description", in 10: 1365 and 34: 528. The words "pursuant to law" and "the use of", in 10: 1365 and 34: 528, are omitted as surplusage. The words "as otherwise provided by law", in 10: 1365 and 34: 528, are used rather than the words "under the law as it now exists", in section 1 of the act of April 28, 1904, ch. 1766, 33 Stat. 518. The word "may" is substituted for the word "shall". The words "However, if" are substituted for the words "unless * * * in which case". The words "private persons" are substituted for the words "private parties or companies", in 10: 1365 and 34: 528. The last sentence is substituted for the proviso of 10: 1365 and 34: 528.

§ 2632. Transportation to and from certain places of employment.

(a) Whenever the Secretary of a military department determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare fixed under regulations to be prescribed by him, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed in, that department, and during a war or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.

(b) Transportation may not be provided under subsection (a) unless the Secretary of the military department concerned, or an officer of the department concerned designated by the Secretary, determines that—

(1) other facilities are inadequate and cannot be made adequate;

(2) a reasonable effort has been made to induce operators of private facilities to provide the necesssary transportation; and

(3) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force or Marine Corps, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and

(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer of the department designated by the Secretary, and that may provide for the pooling of Government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c) (3), shall be covered into the Treasury as miscellaneous receipts. (Aug. 10, 1956, ch. 1041, 70A Stat. 146.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2632 (a)	5: 189c (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3); 5: 415d (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3); 5: 626n (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	May 28, 1948, ch. 352, § 1, 62 Stat. 276.
2632 (b)	5: 189c (clause 4); 5: 415d (clause 4); 5: 626n (clause 4).	
2632 (c)	5: 189c (clause 1; and clause 3, less 17 words before proviso); 5: 415d (clause 1; and clause 3, less 17 words before proviso); 5: 626n (clause 1; and clause 3, less 17 words before proviso).	
2632 (d)	5: 189c (clause 2, less words before semicolon); 5: 415d (clause 2, less words before semicolon); 5: 626n (clause 2, less words before semicolon).	

In subsection (a), the words "it is necessary * * * he may * * * provide assured and adequate transportation" are substituted for the words "requires assured and adequate transportation facilities * * * he is authorized * * * to provide such transportation". The words "in the absence of adequate private or other facilities" are omitted as covered by subsection (b) (2). The words "subject, however, to the following provisions and conditions" are omitted, since the revised section states those conditions positively in the following subsections. The words "at reasonable rates of fare" are substituted for the first 23 words of clause 2 of 5: 189c, 415d, and 626n. The words "under regulations to be prescribed by him" are substituted for the words "under such regulations as the Secretary of the Army [Navy, Air Force] shall prescribe" in clause 2, and the 17 words before the proviso of clause 3, of 5: 189c, 415d, and 626n.

In subsection (b), the words "Transportation * * * under subsection (a)" are substituted for the words "The authority granted in this section to the Secretary of the Army [Navy, Air Force]". The words "may not be provided" are substituted for the words "shall be exercised". The word "transportation" is substituted for the word "service." The words "in each case", "as the case may be, that existing private and", and "by other means" are omitted as surplusage.

Subsection (b) (3) is substituted for the last 25 words of clause 4 of 5: 189c, 415d, and 626n.

In subsection (c), the introductory clause is substituted for the words "The equipment required to provide such transportation facilities may be either". The words "considered necessary" are substituted for the words "shall determine necessary and advisable under the existing circumstances". The proviso of clause 3 of 5: 189c, 415d, and 626n is stated as a positive rule in clause (3) of the revised subsection. The words "for operation by the Department of the Army [Navy, Air Force], and when so obtained", "civil", "with such department", "Equipment so obtained", "and conditions", and the first 25 words of clause 3 of 5: 189c, 415d, and 626n are omitted as surplusage.

In subsection (d), the words "Treasury as" are substituted for the words "Treasury of the United States to the credit of".

§ 2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department.

(a) Notwithstanding section 628 of title 31, the Secretary of a military department may, under such regulations as he may prescribe, furnish stevedoring and terminal services and facilities to vessels

carrying cargo, or passengers, or both, sponsored by his department.

(b) The furnishing of services and facilities under this section shall be at fair and reasonable rates.

(c) The proceeds from furnishing services and facilities under this section shall be paid to the credit of the appropriation or fund out of which the services or facilities were supplied. (Added Pub. L. 85–44, § 1, June 1, 1957, 71 Stat. 45, and amended Pub. L. 87–651, title I, § 111(a), Sept. 7, 1962, 76 Stat. 510.)

AMENDMENTS

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

§ 2634. Motor vehicles: for members on change of permanent station.

(a) When a member of an armed force is ordered to make a change of permanent station, one motor vehicle owned by him and for his personal use or the use of his dependents may, unless a motor vehicle owned by him was transported in advance of that change of permanent station under section 406(h) of title 37, be transported, at the expense of the United States, to his new station or such other place as the Secretary concerned may authorize—

(1) on a vessel owned, leased, or chartered by the United States;

(2) by privately owned American shipping services; or

(3) by foreign-flag shipping services if shipping services described in clauses (1) and (2) are not reasonably available.

When the Secretary concerned, or his designee, determines that a replacement for that motor vehicle is necessary for reasons beyond the control of the member and is in the interest of the United States, and he approves the transportation in advance, one additional motor vehicle of the member may be so transported.

(b) In this section, "change of permanent station" means the transfer or assignment of a member of the armed forces from one permanent station to another. It includes the change from home or from the place from which ordered to active duty to first station upon appointment, call to active duty, enlistment, or induction, and from last duty station to home or to the place from which ordered to active duty upon separation from the service, placement upon the temporary disability retired list, release from active duty, or retirement. It also includes an authorized change in home yard or home port of a vessel. (Added Pub. L. 87–651, title I, § 111(b), Sept. 7, 1962, 76 Stat. 510, and amended Pub. L. 88–431, § 1(b), Aug. 14, 1964, 78 Stat. 439; Pub. L. 89–101, § 1(1), July 30, 1965, 79 Stat. 425.)

AMENDMENTS

1965—Pub. L. 89–101 substituted "change of permanent station" for "permanent change of station" in the catchline, designated existing provisions as subsec. (a), substituted "change of permanent station" for "permanent change of station" in two instances, inserted "or for the use of his dependents" and "or such other place as the Secretary concerned may authorize", added cl. 3, provided for the transportation of one additional motor vehicle when replacement is necessary, and added subsec. (b).

1964—Pub. L. 88–431 inserted ", leased, or chartered" and "unless a motor vehicle owned by him was transported in advance of that permanent change of station under section 406(h) of title 37."

EFFECTIVE DATE OF 1965 AMENDMENT; REIMBURSEMENT OF EXPENSES

Section 3 of Pub. L. 89–101 provided that:

"This Act [amending this section and section 406(h)(2) of Title 37] shall be effective May 1, 1965. Any member who—

"(1) transported a motor vehicle at his personal expense after April 30, 1965, and before the enactment of this Act [July 30, 1965]; and

"(2) would have been entitled to the transportation of such motor vehicle at Government expense under the provisions of this Act;

shall be reimbursed for the allowable transportation cost actually expended by him. Appropriations available for permanent change of station travel shall be available for the reimbursements authorized by this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 37 section 406; title 42 section 213a.

Chapter 159.—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.
2661. Planning and construction of public works projects by military departments.
2662. Real property transactions: Reports to the Armed Services Committees.
2663. Acquisition.
2664. Acquisition of property for lumber production.
2665. Sale of certain interests in land; logs.
2666. Acquisition: land purchase contracts; limitation on commission.
2667. Leases: non-excess property.
2668. Easements for rights-of-way.
2669. Easements for rights-of-way: gas, water, sewer pipe lines.
2670. Licenses: military installations; erection and use of buildings; American National Red Cross.
2671. Military reservations and facilities: hunting, fishing, and trapping.
2672. Acquisition: interests in land when cost is not more than $25,000.
2673. Restoration or replacement of facilities damaged or destroyed.
2674. Establishment and development of military facilities and installations costing less than $300,000.
2675. Leases: foreign countries: structures not on a military base.
2676. Acquisition: limitation.
2677. Opinions: property required for public works projects of military departments.
2678. Acquisition of mortgaged housing units.
2679. Representatives of veterans' organizations: use of space and equipment.
2680. Reimbursement of owners of property acquired for public works projects for moving expenses.[1]
2681. Construction or acquisition of family housing and community facilities in foreign countries.
2682. Facilities for defense agencies.
2683. Relinquishment of legislative jurisdiction.

AMENDMENTS

1970—Pub. L. 91–511, title VI, §§ 607(1), 613(2), Oct. 26, 1970, 84 Stat. 1223, 1226, substituted "$300,000" for "$200,000" in item 2674, and added item 2683.

1963—Pub. L. 88–174, title VI, § 609(a)(2), Nov. 7, 1963, 77 Stat. 329, added item 2682.

1962—Pub. L. 87–651, title I, § 112(d), title II, § 209(b), Sept. 7, 1962, 76 Stat. 512, 524, substituted "$25,000" for "$5,000" in item 2672 and added items 2679—2681.

[1] Section repealed without amending analysis to reflect such repeal.

1960—Pub. L. 86-500, title V, § 511(2), June 8, 1960, 74 Stat. 187, substituted "Reports to the Armed Services Committees" for "Agreement with Armed Services Committees; reports" in item 2662.

1958—Pub. L. 85-861, § 1 (52), Sept. 2, 1958, 72 Stat. 1461, added items 2672—2678.

Pub. L. 85-337, § 4 (2), Feb. 28, 1958, 72 Stat. 29, added item 2671.

CROSS REFERENCES

Property records, basis and reports, see section 2701 of this title.

Real property—

Air Force, see section 9771 et seq. of this title.

Army, see section 4771 et seq. of this title.

§ 2661. Planning and construction of public works projects by military departments.

The Secretary of Defense shall maintain direct surveillance over the planning and construction of public works projects by the military departments. The Secretary shall keep currently and fully informed of the status, progress, and cost of, and other pertinent matters concerning, those projects. (Aug. 10, 1956, ch. 1041, 70A Stat. 147.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2661	5: 171z.	July 14, 1952, § 408, 66 Stat. 625; 195, Reorg. Plan No. 6, eff. June 30, 1953, § 1 (a) (less applicability to Munitions Board, Research and Development Board, and Defense Supply Management Agency), 67 Stat. 638.

5:171z (2d and last sentences) is omitted as impliedly repealed by section 2 of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638.

§ 2662. Real property transactions: Reports to the Armed Services Committees.

(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives:

(1) An acquisition of fee title to any real property, if the estimated price is more than $50,000.

(2) A lease of any real property to the United States, if the estimated annual rental is more than $50,000.

(3) A lease of real property owned by the United States, if the estimated annual rental is more than $50,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $50,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $50,000.

If a transaction covered by clause (1) or (2) is part of a project, the report must include a summarization of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made.

(b) The Secretary of each military department shall report quarterly to the Committees on Armed Services of the Senate and the House of Representatives on transactions described in subsection (a) that involve an estimated value of more than $5,000 but not more than $50,000.

(c) This section applies only to real property in the United States and Puerto Rico. It does not apply to real property for river and harbor projects or flood-control projects, or to leases of Government-owned real property for agricultural or grazing purposes.

(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive. (Aug. 10, 1956, ch. 1041, 70A Stat. 147; June 25, 1959, Pub. L. 86-70, § 6(c), 73 Stat. 142; June 8, 1960, Pub. L. 86-500, title V, § 511(1), 74 Stat. 186; July 12, 1960, Pub. L. 86-624, § 4(c), 74 Stat. 411.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2662 (a)	40: 551.	Sept. 28, 1951, ch. 434, §§ 601—604, 65 Stat. 365, 366.
2662 (b)	40: 552.	
2662 (c)	40: 553.	
2662 (d)	40: 554.	

In subsection (a), the words "must come to an agreement * * * before entering into any of the following transactions by or for the use of that department:" are substituted for the words "shall come into agreement * * * with respect to those real-estate actions by or for the use of the military departments * * * that are described in subsection (a)—(e) of this section, and in the manner therein described". The last sentence is substituted for the last sentence of 40: 551 (a) and 40: 551 (b).

In subsection (a) (4), the words "or another military department" are substituted for the words "including transfers between the military departments". The words "under the jurisdiction of the military departments" are omitted as surplusage.

In subsection (b), the words "more than $5,000 but not more than $25,000" are substituted for the words "between $5,000 and $25,000". The words "shall report" are substituted for the words "will, in addition, furnish * * * reports".

In subsection (c), the words "the United States, Alaska, Hawaii" are substituted for the words "the continental United States, the Territory of Alaska, the Territory of Hawaii", since, as defined in section 101 (1) of this title, "United States" includes the States and the District of Columbia; and "Territories" include Alaska and Hawaii.

In subsection (d), the words "A statement * * * that the requirements of this section have been met" are substituted for the words "A recital of compliance with this chapter * * * to the effect that the requirements of this chapter have been complied with". The words "in the alternative", "or lease", and "evidence thereof" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-500 prohibited the Secretary of a military department, or his designee, from entering into any of the transactions listed in subsec. (a) until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives, and increased the amounts in clauses (1)—(5) from $25,000 to $50,000.

Subsec. (b). Pub. L. 86-500 substituted "$50,000" for "$25,000."

Subsec. (c). Pub. L. 86-624 eliminated ", Hawaii," following "United States." An identical change was made by Pub. L. 86-500.

Subsec. (d). Pub. L. 86-500 reenacted subsection without change.

1959—Subsec. (c). Pub. L. 86–70 eliminated "Alaska," following "United States,".

CLOSING OF FACILITIES; REPORTS TO THE CONGRESS

Pub. L. 89–188, title VI, § 611, Sept. 16, 1965, 79 Stat. 818, as amended by Pub. L. 89–568, title VI, § 613, Sept. 12, 1966, 80 Stat. 757, provided that:

"(a) No camp, post, station, base, yard, or other installation under the authority of the Department of Defense shall be closed or abandoned until the expiration of thirty days of continuous session of the Congress following the date on which the Secretary of Defense or the Secretary of a military department makes a full report of the facts including the justification for such proposed action to the Congress.

"(b) For the purposes of subparagraph (a) continuity of session shall be considered as broken only by an adjournment of the Congress sine die; but in the computation of the thirty-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain.

"(c) This section shall apply only to posts, camps, stations, bases, yards, or other installations that are located in the United States and Puerto Rico and have a total military and civilian complement of more than two hundred and fifty. It shall not apply to any facility used primarily for river and harbor projects or flood control projects."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 3374.

§ 2663. Acquisition.

(a) The Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(3) the development and transmission of power for the operation of plants under clause (2).

(b) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the land to the extent of the interest sought to be acquired.

(c) The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(d) The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 147; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (14), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2663 (a)	50: 171 (less provisos).	July 2, 1917, ch. 35; restated Apr. 11, 1918, ch. 51, 40 Stat. 518.
2663 (b)	50: 171 (last proviso).	
2663 (c)	50: 171 (1st proviso).	
2663 (d)	50: 171 (2d proviso) [50: 171 is made applicable to the Navy by 50: 171–1 (less 16th through 21st words)].	Oct. 25, 1951, ch. 563, § 101 (less 22d through 43d words), 65 Stat. 641.

In subsection (a), the words "brought * * * in a court of proper jurisdiction" are substituted for the words "instituted * * * in any court having jurisdiction of such proceedings". The words "any interest in land, including temporary use" are substituted for the words "any land, temporary use thereof or other interest therein, or right pertaining thereto". The words "relating to suits for the condemnation of property" are omitted as surplusage. The last sentence is substituted for 50: 171 (words between semicolon and first proviso). The Act of July 2, 1917, ch. 35, as restated by the Act of April 11, 1918, ch. 51 (last 77 words), are not contained in 50: 171. They are also omitted from the revised section as executed.

In subsection (a) (1), the word "location" is omitted as surplusage. The words "operation of" are substituted for the words "prosecution of works for".

In subsection (b), the words "That when such property is acquired" are omitted as surplusage. The words "under subsection (a)" are substituted for the words "of any land, temporary use thereof or other use therein or right pertaining thereto to be acquired for any of the purposes aforesaid". The words "take and use" are substituted for the words "possession thereof may be taken * * * and used for military purposes".

In subsection (c), the words "as soon as the owner fixes a price for it" are substituted for the words "That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same". The word "considers" is substituted for the words "which in the opinion". The words "contract for or buy" are substituted for the words "purchase or enter into a contract". The words "without further delay" are omitted as surplusage.

In subsection (d), the words "a gift of any interest in land * * * for any purpose named in subsection (a)" are substituted for 50: 171 (last 15 words of 2d proviso).

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 eliminated provisions requiring proceedings under this subsection to be in accordance with the law of the State in which the suit is brought.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Condemnation of realty for sites and other uses, see section 257 of Title 40, Public Buildings, Property, and Works.

Helium, conservation, production, purchase and sale of, authority of Secretary of the Interior, see section 167a of Title 50, War and National Defense.

Original jurisdiction of district courts in condemnation proceedings, see section 1358 of Title 28, Judiciary and Judicial Procedure.

Taking possession and title to lands, etc. in advance of final judgment, see sections 258a—258e of Title 40, Public Buildings, Property, and Works.

FEDERAL RULES OF CIVIL PROCEDURE

Procedure in condemnation proceedings, see rule 71A, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 2664. Acquisition of property for lumber production.

(a) The Secretary of a military department, the Secretary of Commerce, and the Chairman of the Federal Maritime Board, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army,

Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273), as the case may be.

(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

(1) standing or fallen timber;

(2) sawmills;

(3) camps;

(4) machinery;

(5) logging roads;

(6) rights-of-way;

(7) supplies; and

(8) works, property, or appliances suitable for the production of lumber and timber products.

(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

(e) A person named in subsection (a) may contract for or buy any interest in property named in subsection (b), including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b), including temporary use, for any purpose named in subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 148; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (15), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2664 (a)	50: 172 (1st par., less 26th through 56th words of 1st sentence; and less last sentence).	July 9, 1918, ch. 143, subch. XV, § 8 (2d par.), 40 Stat. 888.
2664 (b)	50: 172 (26th through 56th words of 1st sentence of 1st par.).	
2664 (c)	50: 172 (last sentence of 1st par.).	
2664 (d)	No source.	
2664 (e)	No source.	
2664 (f)	No source.	

In subsection (a), the introductory clause is substituted for 50: 172 (1st 25 words, and 2d sentence). The words "Secretary of Commerce" and "Chairman of the Federal Maritime Board" are substituted for the words "Chairman of the United States Maritime Commission" and the words "functions transferred to the Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273" are substituted for the words "[functions of] the United States Maritime Commission", since the functions of the Chairman of the United States Maritime Commission and of the United States Maritime Commission were transferred to the Secretary of Commerce and the Federal Maritime Board by that Reorganization Plan. The words "or any one or more of them" are substituted for the words "individually or collectively", to make it clear that any number of them may act and not necessarily one or all of them. The words "equipment for them" are substituted for the words "their apparel or furniture". The words "manufacture, or building" are omitted as covered by the word "production". 50: 172 (1st 18 words of 3d sentence) is omitted as surplusage.

In subsection (a) (2), the word "supplies" is substituted for the words "materials and equipment", since the word "supplies" is defined in section 101 (26) of this title to include material and equipment.

The last sentence of subsection (a) is based on the 27 words preceding the first proviso of 50: 171, which is the source for section 2663 (a) (last sentence) of this title, and which was incorporated into 50: 172 by the cross reference in the first sentence thereof.

In subsection (b), the introductory clause is inserted for clarity. The words "equipment, materials" are omitted as covered by the word "supplies", since the word "supplies" is defined in section 101 (26) of this title to include material and equipment.

In subsection (c), the words "United States District Court for the district in which" are substituted for the words "district courts of the United States, where" to conform to section 132 of title 28.

Subsections (d)—(f) are based on the provisos of 50: 171, which are the source for section 2663 (b)—(d) of this title, and which were incorporated into 50: 172 by the cross reference in the first sentence thereof.

REFERENCES IN TEXT

1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273), referred to in subsec. (a) (3), is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861, § 33 (a) (15) (A), (B), inserted ", including temporary use," following "subsection (b)", and eliminated provisions requiring all proceedings under this subsection to be in accordance with the laws of the State in which the suit is brought.

Subsec. (e). Pub. L. 85–861, § 33 (a) (15) (C), inserted "named in subsection (b), including temporary use," following "property".

Subsec. (f). Pub. L. 85–861, § 33 (a) (15) (B), inserted ", including temporary use," following "subsection (b)".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

ABOLITION OF FEDERAL MARITIME BOARD

Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of said Reorg. Plan.

CROSS REFERENCES

Original jurisdiction of district courts in condemnation proceedings, see section 1358 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2665 of this title.

§ 2665. Sale of certain interests in land; logs.

(a) The President, through an executive department or the Federal Maritime Board, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department or the Federal Maritime Board, may sell to any person or foreign government any logs wholly or partly manufactured by, or otherwise procured for,

the Army, Navy, Air Force, or Federal Maritime Board.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Proceeds of sales under subsection (a) or (b) shall be credited to the appropriations under which the property was procured. (Aug. 10, 1956, ch. 1041, 70A Stat. 149.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2665 (a)	50: 172 (last par., less 36th through 64th, and 73d through 109th, words).	July 9, 1918, ch. 143, subch. XV, §8 (last par.), 40 Stat. 888.
2665 (b)	50: 172 (36th through 64th words of last par.).	
2665 (c)	50: 172 (73d through 90th words of last par.).	
2665 (d)	50: 172 (91st through 109th words of last par.).	

In subsection (a), the words "an executive department or the Federal Maritime Board" are substituted for the words "any department or the United States Maritime Commission" to reflect an opinion of the Judge Advocate General of the Army (JAGA 1954/1723) and to name the successor of the United States Maritime Commission. The last 18 words are inserted to reflect that opinion (see the Act of February 20, 1931 (10 U. S. C. 1354)). The words "and dispose of" are omitted as surplusage.

In subsection (b), the words "an executive department or the Federal Maritime Board" are inserted for clarity and to name the successor of the United States Maritime Commission.

In subsections (a) and (b), the word "person" is substituted for the words "individuals, corporations," since section 1 of title 1 defines the word "person" to cover both individuals and corporations. The words "States or" are omitted as surplusage.

In subsection (c), the words "the selling agency" are substituted for the words "his above representatives selling or disposing of the same".

ABOLITION OF FEDERAL MARITIME BOARD

Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of said Plan.

§ 2666. Acquisition: land purchase contracts; limitation on commission.

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price. (Aug. 10, 1956, ch. 1041, 70A Stat. 149.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2666	5: 174b.	Aug. 1, 1953, ch. 305, §606, 67 Stat. 350.

§ 2667. Leases: non-excess property.

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated. (Aug. 10, 1956, ch. 1041, 70A Stat. 150.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2667 (a)	5: 626s-3 (1st sentence); 10: 1270 (1st sentence); 34: 522a (1st sentence).	Aug. 5, 1947, ch. 493, §§ 1, 6, 61 Stat, 774, 775; Sept. 28, 1951, ch. 434. §605 (as applicable to Act of Aug. 5. 1947, ch. 493, §1), 65 Stat. 366.
2667 (b)	5: 626s-3 (2d through 6th sentences); 10: 1270 (2d through 6th sentences); 34: 522a (2d through 6th sentences).	
2667 (c)	5: 626s-3 (last sentence); 10: 1270 (last sentence); 34: 522a (last sentence).	
2667 (d)	5: 626s-3 (less 1st 6 sentences); 10: 1270 (less 1st 6 sentences); 34: 522a (less 1st 6 sentences).	
2667 (e)	5: 626s-6; 10: 1270d; 34: 522e.	

In subsection (a), the words "considers * * * United States" are substituted for the words "shall deem * * * Government". The words "and conditions" are omitted as surplusage. The words "he considers" are substituted for the words "in his judgment".

In subsection (a) (3), the words "excess property, as defined by section 472 of title 40" are substituted for the words "surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]", in 5: 626s–3, 10: 1270, and 34: 522a, since the words "excess property" are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b) (2), the words "may give" are substituted for the first 12 words of the third sentence of 5: 626s–3, 10: 1270, and 34: 522a. The words "if the lease is revoked to allow the United States to sell the property" are substituted for the words "in the event of the revocation of the lease in order to permit sale thereof by the Government". The words "under any other provision of law" are inserted for clarity. The words "the first right to buy" are substituted for the words "a right of first refusal". The words "but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law" are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b) (3), the words "must permit" are substituted for the words "Each such lease shall contain a provision permitting". The words "from the lease" are omitted as surplusage.

In subsection (b) (5), the words "any such lease" and "of such property" are omitted as surplusage.

In subsection (c), the words "This section does" are substituted for the words "The authority herein granted shall".

In subsection (e), the words "of property" are inserted for clarity. The words "leased under" are substituted for the words "made or created pursuant to". The words "may be taxed by State or local governments" are substituted for the words "shall be made subject to State or local taxation". The last sentence is substituted for the last sentence of 5: 626s–6, 10: 1270d, and 34: 522e.

§ 2668. Easements for rights-of-way.

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

(1) railroad tracks;

(2) oil pipe lines;

(3) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines;

(4) canals;

(5) ditches;

(6) flumes;

(7) tunnels;

(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;

(9) roads and streets; and

(10) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title or by section 961 of title 43.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse for a two-year period; or

(3) abandonment.

(d) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior. (Aug. 10, 1956, ch. 1041, 70A Stat. 150.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2668 (a)	43: 931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, § 7, 60 Stat. 643; Oct. 25, 1951, ch. 563, § 101 (31st through 43d words), 65 Stat. 641.
2668 (b)	43: 931b (2d proviso of 1st sentence).	
2668 (c)	43: 931b (3d proviso of 1st sentence).	
2668 (d)	43: 931b (last sentence) [43: 931b is made applicable to the Navy by 50: 171–1 (16th through 21st words)].	

In subsection (a), the word "conditions" is omitted as covered by the word "terms". The description of the persons covered in the opening paragraph and the lands covered in clauses (1)—(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word "over" includes the word "across". The words "of the United States", "and empowered", "acquired lands", "jurisdiction and", and "municipality" are omitted as surplusage. The word "Commonwealth" is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words "for the easement" are substituted for the words "for the purpose for which granted".

In subsections (b) and (c), the word "easement" is substituted for the word "rights-of-way".

In subsection (c), the word "terminate" is substituted for the words "annulled and forfeited". The words "and conditions" are omitted as covered by the word "terms". The words "two-year period" are substituted for the words "a period of two consecutive years". The words "of rights granted under authority hereof" are omitted as surplusage.

CROSS REFERENCES

Easements for rights-of-way across lands purchased for river, harbor, and flood control improvements granted by Secretary of the Army, see section 558c of Title 33, Navigation and Navigable Waters.

Rights of way and other easements in public lands, see section 931 et seq. of Title 43, Public Lands.

§ 2669. Easements for rights-of-way: gas, water, sewer pipe lines.

(a) If the Secretary of a military department finds that it will be in the public interest and will not substantially injure the interest of the United States in the property affected, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, for gas, water, and sewer pipe lines, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse; or

(3) abandonment.

(d) The Secretary concerned shall include in his annual report to the President a complete statement of each easement granted under this section, including the name and address of the grantee, the purpose of the grant, and the benefits accruing to the United States or to the public. (Aug. 10, 1956, ch. 1041, 70A Stat. 151.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2669 (a)	10: 1351 (less 2d and last provisos).	May 17, 1926, ch. 313, § 1, 44 Stat. 562; Oct. 25, 1951, ch. 563, § 101 (22d through 30th words), 65 Stat. 641.
2669 (b)	No source.	
2669 (c)	10: 1351 (2d proviso).	
2669 (d)	10: 1351 (last proviso).	

Section 101 of the act of October 25, 1951, cited above, makes the act of May 17, 1926, cited above, applicable to the Navy.

In subsection (a), the word "conditions" is omitted as covered by the word "terms". The descriptions of the lands and persons covered are restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 52). The words "and empowered", "of the United States", "across", and "military reservations and other" are omitted as surplusage. The word "Commonwealth" is inserted to reflect the present status of Puerto Rico.

Subsection (b) is inserted for clarity and is based on the above cited opinion.

In subsection (c), the words "any easement" are substituted for the words "such rights-of-way". The word "terminate" is substituted for the words "annulled and forfeited". The words "and conditions" are omitted as covered by the word "terms". The words "of rights granted under the authority hereof" are omitted as surplusage.

In subsection (d), the words "a complete statement of each easement" are substituted for the words "a full and complete statement of each and all easements".

CROSS REFERENCES

Easements for purpose under this section as exception to Secretary of military department's power to grant for other purposes, see section 2668(a)(10) of this title.

Easements for rights-of-way across lands purchased for river, harbor and flood control improvements granted by Secretary of the Army, see section 558c of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2668 of this title.

§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross.

Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or

(2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this section are available to aid the civilian population in a serious national disaster. (Aug. 10, 1956, ch. 1041, 70A Stat. 151.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2670	36: 12.	June 3, 1916, ch. 134, § 127a (5th par.); added June 4, 1920, ch. 227, subch. I, § 51 (5th par.); restated July 17, 1953, ch. 222, § 3, 67 Stat. 178.

The word "issue" is substituted for the words "grant permission". The word "use" is substituted for the words "occupy for that purpose".

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Cooperation and assistance to armed forces, see section 2602 of this title.

§ 2671. Military reservations and facilities: hunting, fishing, and trapping.

(a) The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a) (1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) This section does not modify any rights granted by treaty or otherwise to any Indian tribe or to the members thereof. (Added Pub. L 85–337, § 4 (1), Feb. 28, 1958, 72 Stat. 29.)

§ 2672. Acquisition: interests in land when cost is not more than $25,000.

The Secretary of a military department may acquire any interest in land that—

(1) he or his designee determines is needed in the interest of national defense; and

(2) does not cost more than $25,000, exclusive of administrative costs and the amounts of any deficiency judgments.

This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $25,000. (Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459, and amended Pub. L. 87–651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2672	50: 171b.	Aug. 3, 1956, ch. 939, § 406, 70 Stat. 1015.

The word "land" is omitted as covered by the words "any interest in land". The words "This section does not apply to the acquisition" are substituted for the words "The authority under this section may not, however, be used to acquire". The words "as a part of the same project" are inserted for clarity.

AMENDMENTS

1962—Pub. L. 87–651 substituted "$25,000" for "$5,000" in the section catchline and in two instances in the text, and "he or his designee determines is needed" for "he determines is urgently needed" in cl. (1).

§ 2673. Restoration or replacement of facilities damaged or destroyed.

With the approval of the Secretary of Defense and after notifying the Committees on Armed Services of the Senate and the House of Representatives, the Secretary of a military department may acquire, construct, rehabilitate, and install temporary or permanent public works, including appurtenances, utilities, equipment, and the preparation of sites, to restore or replace facilities that have been damaged or destroyed. (Added Pub. L. 85–861, § 1 (51), Sept. 2, 1958, 72 Stat. 1459.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2673	5: 171z–5.	Aug. 3, 1956, ch. 939, § 407, 70 Stat. 1016.

§ 2674. Establishment and development of military facilities and installations costing less than $300,000.

(a) Under such regulations as the Secretary of Defense may prescribe, the Secretary of a military department may acquire, construct, convert, extend, and install, at military installations and facilities, urgently needed permanent or temporary public works not otherwise authorized by law, including the preparation of sites and the furnishing of appurtenances, utilities, and equipment, but excluding the construction of family quarters. However, a determination that a project is urgently needed is not required for a project costing not more than $50,000.

(b) This section does not authorize a project costing more than $300,000. A project costing more than $100,000 must be approved in advance by the Secretary of Defense, and a project costing more than $50,000 must be approved in advance by the Secretary concerned.

(c) Not more than one allotment may be made for any project authorized under this section.

(d) Not more than $50,000 may be spent under this section during a fiscal year to convert structures to family quarters at any one installation or facility.

(e) Appropriations available for military construction may be used for the purposes of this section. In addition, the Secretary concerned may spend, from appropriations available for maintenance and operations, amounts necessary for any project costing not more than $50,000 that is authorized under this section.

(f) The Secretary of each military department shall report in detail every six months to the Committees on Armed Services of the Senate and House of Representatives on the administration of this section. (Added Pub. L. 85–861, § 1 (51), Sept. 2, 1958, 72 Stat. 1459, and amended Pub. L. 87–651, title I, § 112(b), Sept. 7, 1962, 76 Stat. 511; Pub. L. 88–174, title VI, § 608, Nov. 7, 1963, 77 Stat. 328; Pub. L. 89–188, title VI, § 613, Sept. 16, 1965, 79 Stat. 819; Pub. L. 89–568, title VI, § 608, Sept. 12, 1966, 80 Stat. 756; Pub. L. 91–511, title VI, § 607 (2)–(4), Oct. 26, 1970, 84 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2674 (a)	5: 171z–4 (a) (less 20th through 33d, and 78th through 89th, words; and less clauses (1)—(4)).	Aug. 3, 1956, ch. 939, § 408, 70 Stat. 1016.
2674 (b)	5: 171z–4 (a) (78th through 89th words and clauses (1) and (2)).	
2674 (c)	5: 171z–4 (a) (3).	
2674 (d)	5: 171z–4 (a) (4).	
2674 (e)	5: 171z–4 (a) (20th through 33d words).	
	5: 171z–4 (b).	
2674 (f)	5: 171z–4 (c).	

In subsection (a), the words "the establishment and development of military installations and facilities" and "for projects" are omitted as surplusage.

In subsection (e). the last 11 words are substituted for 5: 171z–4 (b) (last 24 words).

In subsection (f), the last six words are substituted for 5: 171z–4 (c) (last 12 words).

AMENDMENTS

1970—Pub. L. 91–511 substituted "$300,000" for "$200,000" in the section catchline, "$50,000" for "$25,000" in subsecs. (a) and (e), and "$300,000", "$100,000", and "$50,000" for "$200,000", "$50,000", and "$25,000", respectively, in subsec. (b).

1966—Subsec. (a). Pub. L. 89–568 increased from $15,000 to $25,000 the cost of a project for which a determination that the project is urgently needed is not required.

1965—Subsec. (a). Pub. L. 89–188 increased from $10,000 to $15,000 the cost of a project for which a determination that the project is urgently needed is not required.

1963—Subsec. (a). Pub. L. 88–174 increased from $5,000 to $10,000 the cost of a project for which a determination that the project is urgently needed is not required.

1962—Subsec. (a). Pub. L. 87–651 inserted sentence dispensing with a determination that a project is urgently needed for projects costing not more than $5,000.

LEASING OF HOUSING FACILITIES

Section 515 of act July 15, 1955, ch. 368, 69 Stat. 352, as amended Aug. 3, 1956, ch. 939, title IV, § 412, 70 Stat. 1017; Aug. 30, 1957, Pub. L. 85–241, title IV, § 402, 71 Stat. 555; Aug. 20, 1958, Pub. L. 85–685, title V, § 509, 72 Stat. 662; Aug. 10, 1959, Pub. L. 86–149, title IV, § 407, 73 Stat. 321; June 27, 1961, Pub. L. 87–57, title VI, § 608, 75 Stat. 111; July 27, 1962, Pub. L. 87–554, title V, § 505, 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 505, 77 Stat. 325; Aug. 1, 1964, Pub. L. 88–390, title V, § 504, 78 Stat. 361; Sept. 16, 1965, Pub. L. 89–188, title V, § 504, 79 Stat. 913; Sept. 12, 1966, Pub. L. 89–568, title V, § 501, 80 Stat. 753; Oct. 21, 1967, Pub. L 90–110, title VI, § 607, 81 Stat. 305; July 21, 1968, Pub. L. 90–408, title VI, § 606, 82 Stat. 388; Dec. 5, 1969, Pub. L. 91–142, title V, § 507, 83 Stat. 312; Oct. 26, 1970, Pub. L. 91–511, title V, § 506, 84 Stat. 1220, provided that: "During fiscal years 1971 and 1972, the Secretaries of the Army, Navy, and Air Force, respectively, are authorized to lease housing facilities for assignment as public quarters to military personnel and their dependents, if any, without rental charge, at or near any military installation in the United States, Puerto Rico or Guam if the Secretary of Defense, or his designee, finds that there is a lack of adequate housing at or near such military installation and that (1) there has been a recent substantial increase in military strength and such increase is temporary, or (2) the permanent military strength is to be substantially reduced in the near future, or (3) the number of military personnel assigned is so small as to make the construction of family housing uneconomical, or (4) family housing is required for personnel attending service school academic courses on permanent change of station orders, or (5) family housing has been authorized but is not yet completed or a family housing authorization request is in a pending military construction authorization bill. Such housing facilities may be leased on an individual unit basis and not more than seven thousand five hundred such units may be so leased at any one time. Expenditures for the rental of such housing facilities may not exceed an average of $190 per month for each military department, nor the amount of $250 per month for any one unit, including the cost of utilities and maintenance and operation."

§ 2675. Leases: foreign countries: structures not on a military base.

(a) Notwithstanding any other provision of law, the Secretary of a military department may acquire by lease, in any foreign country, structures and real property relating thereto that are not located on a military base and that are needed for military purposes. A lease under this section may not be for a period of more than five years.

(b) A lease may not be entered into under this section if the average estimated annual rental during the term of the lease is more than $250,000 until after the expiration of thirty days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.

(c) A statement in a lease that the requirements of this section have been met, or that the lease is not subject to this section, is conclusive. (Added Pub. L. 85–861, § 1 (51), Sept. 2, 1958, 72 Stat. 1460, and amended Pub. L. 91–511, title VI, § 608, Oct. 26, 1970, 84 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2675	5: 171z-3.	Aug. 3, 1956, ch. 939, § 417, 70 Stat. 1018.

The words "that are not located on a military base" are substituted for the words "off-base".

AMENDMENTS

1970—Pub. L. 91–511 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 15941.

§ 2676. Acquisition: limitation.

No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. (Added Pub. L. 85–861, § 1 (51), Sept. 2, 1958, 72 Stat. 1460.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2676	[Uncodified.]	July 27, 1954, ch. 579, § 501 (b) (less provisos), 68 Stat. 560.

The word "property" is substituted for the word "estate". The words "not owned by the United States" are substituted for the words "not in Federal ownership". The words "or shall be" are omitted as surplusage.

§ 2677. Options: property required for public works projects of military departments.

(a) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more than 5 per centum of the appraised fair market value of the property. However, such amount must be credited to the purchase price of the property if the acquisition is completed.

(c) For each six-month period ending on June 30 or December 31, during which he acquires options under subsection (a), the Secretary of each military department shall report those options to the Committees on Armed Services of the Senate and House of Representatives. (Added Pub. L. 85–861, § 1 (51), Sept. 2, 1958, 72 Stat. 1460, and amended Pub. L. 87–554, title VI, § 607, July 27, 1962, 76 Stat. 242.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2677	[Uncodified.]	July 27, 1954, ch. 579, § 501 (b) (provisos), 68 Stat. 560.

In subsections (a) and (b), the word "property" is substituted for the word "estate".

In subsection (a), the words "Before acquisition of a parcel of real property is authorized by law" are substituted for the words "prior to such authorization". The word "acquire" is substituted for the word "procure". The words "if he considers * * * likely to be needed" are substituted for the words "which in their judgment is * * * likely to be required". The word "prospective" is omitted as surplusage.

In subsection (b), the words "for each year the option is to continue, and proportionately for any other period" are substituted for the words "per annum" for clarity. The words "not more than 3 percent" are substituted for the words "not in excess of 3 per centum".

CODIFICATION

Catchline was not amended to reflect the substitution in subsec. (a) of "military" for "public works" projects by Pub. L. 87-554.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-554 provided for acquisition of option after acquisition of real property is authorized by law and for need of option for military rather than public works project.

Subsec. (b). Pub. L. 87-554 eliminated "for each year the option is to continue, and proportionately for any other period" following "fair market value of the property" and provided for credit to purchase price of the property if its acquisition is completed.

§ 2678. Acquisition of mortgaged housing units.

The Secretary of a military department may buy, subject to the mortgage, any housing unit that is subject to a mortgage insured under Title VI or IX of the National Housing Act (12 U. S. C. 1736 et seq. and 1750 et seq.), if the housing unit is—

(1) located near a military installation; and

(2) suitable and adequate for housing members of the armed forces and their dependents.

The Secretary may assume the obligation to make the payments on the mortgage that become due after the date of acquisition, and to make these payments he may use appropriations available for the construction of military public works. (Added Pub. L. 85-861, § 1 (51), Sept. 2, 1958, 72 Stat. 1460.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2678	42: 1502a.	July 15, 1955, ch. 368, § 509, 69 Stat. 351.

The words "may buy" are substituted for the words "are respectively authorized to acquire by purchase". The words "members of the armed forces" are substituted for the words "military personnel". The words "by the Federal Housing Commissioner" and "outstanding" are omitted as surplusage. The last sentence is substituted for 42: 1502a (last 11 words of first sentence, and last sentence).

REFERENCES IN TEXT

Title VI of the National Housing Act, referred to in the text, is classified to sections 1736—1746a of Title 12, Banks and Banking.

Title IX of the National Housing Act, referred to in the text, is classified to sections 1750, and 1750b to 1750g of Title 12.

§ 2679. Representatives of veterans' organizations: use of space and equipment.

(a) Upon certification to the Secretary concerned by the Administrator of Veterans' Affairs, the Secretary shall allow accredited, paid, full-time representatives of the organizations named in section 3402 of title 38, or of other organizations recognized by the Administrator, to function on military installations under the jurisdiction of that Secretary that are on land and from which persons are discharged or released from active duty.

(b) The commanding officer of each of those military installations shall allow the representatives described in subsection (a) to use available space and equipment at that installation.

(c) The regulations prescribed to carry out this section that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Administrator.

(d) This section does not authorize the violation of measures of military security. (Added Pub. L. 87-651, title I, § 112(c), Sept. 7, 1962, 76 Stat. 511.)

§ 2680. Repealed. Pub. L. 91-646, title II, § 220(a)(3), Jan. 2, 1971, 84 Stat. 1903.

Section, Pub. L. 87-651, title I, § 112(c), Sept. 7, 1962, 76 Stat. 511; Pub. L. 89-718, § 20, Nov. 2, 1966, 80 Stat. 1118, authorized reimbursement of moving expenses to owners of property acquired for public works projects, and is now covered by section 4601 et seq. of Title 42, The Public Health and Welfare.

§ 2681. Construction or acquisition of family housing and community facilities in foreign countries.

(a) In addition to family housing and to community facilities that otherwise may be constructed or acquired by the Department of Defense, the Secretary of Defense may, with the approval of the Director of the Bureau of the Budget, construct, or acquire by lease or otherwise, family housing to be occupied as public quarters, and community facilities, in foreign countries by using foreign currencies that have a value of not more than $250,000,000 and that were acquired under sections 1691—1724 of title 7 or through other commodity transactions of the Commodity Credit Corporation.

(b) The Department of Defense shall pay the Commodity Credit Corporation an amount not to exceed $6,000,000 a year until the amount due for foreign currencies used for housing constructed or acquired under this section has been liquidated.

(c) The Secretary of Defense shall report to the Committees on Armed Services of the Senate and House of Representatives on the fifteenth day of January, April, July, and October of each year—

(1) the cost, number, and location of housing units constructed or acquired under this section during the three-month period covered by the report; and

(2) the cost, number, and location of housing units that are intended to be constructed or acquired under this section during the following three-month period.

(Added Pub. L. 87-651, title II, § 209(a), Sept. 7, 1962, 76 Stat. 523, and amended Pub. L. 88-174, title V, § 508, Nov. 7, 1963, 77 Stat. 326.)

AMENDMENTS

1963—Subsec. (b). Pub. L. 88-174 substituted provision for payment to Commodity Credit Corporation of an amount not exceeding $6 million a year until the amount due for foreign currencies used for housing constructed or acquired under this section has been liquidated, for former provision for payment to such Corporation, from appropriations otherwise available for payment of quarters allowances for members of the armed forces and from appropriate allotments or rental charges for civilian employees, amounts equal to quarters allowances or allotments otherwise payable to, or rental charges collected from, persons occupying housing constructed or acquired under this section, less amounts equal to costs of maintenance and operation of that housing, the total payments being limited to the dollar value of the foreign currencies used for housing constructed or acquired under this section.

§ 2682. Facilities for defense agencies.

The construction, maintenance, rehabilitation, repair, alteration, addition, expansion, or extension of a real property facility for an activity or agency

of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense. (Added Pub. L. 88-174, title VI, § 609(a)(1), Nov. 7, 1963, 77 Stat. 329.)

§ 2683. Relinquishment of legislative jurisdiction.

(a) Notwithstanding any other provision of law, the Secretary of a military department may, whenever he considers it desirable, relinquish to a State all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor of the State concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State may otherwise provide.

(b) The authority granted by this section is in addition to and not instead of that granted by any other provision of law. (Added Pub. L. 91-511, title VI, § 613(1), Oct. 26, 1970, 84 Stat. 1226.)

Chapter 161.—PROPERTY RECORDS

Sec.
2701. Basis: reports.

§ 2701. Basis: reports.

(a) Under regulations prescribed by him, the Secretary of Defense shall have the records of the fixed property, installations, major equipment items, and stored supplies of the military departments maintained on both a quantitative and a monetary basis, so far as practicable.

(b) The Secretary shall report once a year to Congress and the President on property records maintained under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2701 (a)	5: 172i (less last sentence).	July 26, 1947, ch. 343, § 410;
2701 (b)	5: 172i (last sentence).	added Aug. 10, 1949, ch. 412, § 11 (410), 63 Stat. 590.

In subsection (a), the words "equipment" and "materials" are omitted, since the word "supplies", as defined in section 101 (26) of this title, includes equipment and materials. The word "stored" is substituted for the words "held in store by the armed services".

In subsection (b), the words "on property records maintained under this section" are substituted for the word "thereon".

CROSS REFERENCES

Cataloging and standardization of supplies, see section 2451 et seq. of this title.

Interchange of property and services and disposition of obsolete, surplus, or unclaimed property, see section 2571 et seq. of this title.

Real and personal property and lease of non-excess property, see section 2661 et seq. of this title.

Chapter 163.—MILITARY CLAIMS

Sec.
2731. Definition.
2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.
2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.
2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces: foreign countries; international agreements.
2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.
2735. Settlement: final and conclusive.
2736. Property loss; personal injury or death: advance payment.
2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.

AMENDMENTS

1968—Pub. L. 90-521, § 2, Sept. 26, 1968, 82 Stat. 874, substituted "advance payment" for "incident to aircraft or missile operation" in item 2736.

1966—Pub. L. 89-718, § 21(b), Nov. 2, 1966, 80 Stat. 1118, substituted "2737" for "2736" as the item number for "Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law."

1964—Pub. L. 88-558, § 5(2), Aug. 31, 1964, 78 Stat. 768, struck out item 2732 effective two years after Aug. 31, 1964.

1962—Pub. L. 87-769, § 1(1)(B), Oct. 9, 1962, 76 Stat. 768, added item 2736 "Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law."

Pub. L. 87-651, title I, § 113(b), Sept. 7, 1962, 76 Stat. 513, added items 2734a and 2734b.

1961—Pub. L. 87-212, § 1(2), Sept. 8, 1961, 75 Stat. 488, added item 2736 "Property loss; personal injury or death: incident to aircraft or missile operation."

1959—Pub. L. 86-223, § 1(2), Sept. 1, 1959, 73 Stat. 454, substituted "armed forces" for "Department of Army, Navy, or Air Force" in item 2734.

CROSS REFERENCES

Claims—
Air Force, see section 9801 et seq. of this title.
Army, see section 4801 et seq. of this title.
Navy, see section 7621 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 213a.

§ 2731. Definition.

In this chapter, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance. (Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2731	No source.	No source.

The revised section is inserted for clarity and is based on usage in the source laws for this revised chapter.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a.

§ 2732. Repealed. Pub. L. 88-558, § 5(3), Aug. 31, 1964, 78 Stat. 768.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85-861, §§ 1(53), 33(a)(16), 72 Stat. 1461, 1565, related to military claims for property loss incident to service of members of the Army, Navy, Air Force, or Marine Corps and civilian employees and is now covered by sections 240-242 of Title 31, Money and Finance.

EFFECTIVE DATE OF REPEAL

Section 5 of Pub. L. 88–558 provided for the repeal of this section effective two years from Aug. 31, 1964.

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief legal officer of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than $15,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of $15,000 is meritorious and would otherwise be covered by this section, he may pay the claimant $15,000 and report the excess to Congress for its consideration.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the Environmental Science Services Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) In any case where the amount to be paid is not more than $2,500, the authority contained in subsection (a) may be delegated to any officer of an armed force under the jurisdiction of the department concerned, subject to appeal to the Secretary concerned, or his designee for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment or otherwise incident to noncombat activities of that department. (Aug. 10, 1956, ch. 1041, 70A Stat. 153; Aug. 23, 1958, Pub. L. 85–729, 72 Stat. 813; Sept. 2, 1958, Pub. L. 85–861, § 1 (54), 72 Stat. 1461; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Sept. 26, 1968, Pub. L. 90–522, 82 Stat. 875; Sept. 26, 1968, Pub. L. 90–525, §§ 1, 3, 4, 5, 82 Stat. 877, 878; July 8, 1970, Pub. L. 91–312, § 2, 84 Stat. 412.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2733 (a)	31: 223b (1st sentence, less 52d through 62d, and 76th through 93d, words; and less proviso).	July 3, 1943, ch. 189, § 1 (less 4th sentence), 57 Stat. 372; May 29, 1945, ch. 135, § 4, 59 Stat. 225; June 28, 1946, ch. 514, § 1, 60 Stat. 332; July 3, 1952, ch. 570, § 2 (c), 66 Stat. 334; Mar. 31, 1953, ch. 13 (as applicable to Act of July 3, 1952, ch. 570, § 2 (c)), 67 Stat. 18; June 30, 1953, ch. 172 (as applicable to Act of July 3, 1952, ch. 570, § 2 (c)), 67 Stat. 131.
2733 (b)	[Uncodified: Aug. 2, 1946, ch. 753, § 424 (a) (4th clause), 60 Stat. 847]; 31: 223b (76th through 93d words and proviso of 1st sentence; and 2d sentence).	Aug. 2, 1946, ch. 753, § 424 (a) (4th clause), 60 Stat. 847.
2733 (c)	31: 223b (3d sentence).	Dec. 28, 1945, ch. 597, § 1, 59 Stat. 662; June 28, 1946, ch. 514, § 2, 60 Stat. 333.
2733 (d)	31: 223b (last sentence).	Dec. 28, 1945, ch. 597, § 6; added Mar. 20, 1946, ch. 104 (last par.), 60 Stat. 56.
2733 (e)	31: 223b (52d through 62d words of 1st sentence).	
2733 (f)	31: 222h [31: 223b is made applicable to the Navy by 31: 223d and 223e].	

In subsection (a), the words "a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be" are substituted for the words "military personnel or civilian employees of the Department of the Army or of the Army". The words "whether under a lease, express or implied" are omitted as surplusage. The words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 2731 of this title. The words "arising on or after May 27, 1941" are omitted as executed, since, under revised subsection (b), a claim must be filed within one year after it accrues, or within one year after the war is terminated, if it accrues in time of war.

In subsection (a) (1), the words "or loss" are inserted before the word "incident", for clarity.

In subsection (b) (1), the words "it accrues" are substituted for the words "the accident or incident out of which such claim arises shall have occurred", in 31: 223b. The words "the claim accrues" are substituted for the words "That if such accident or incident occurs". The words "not later than" are substituted for the word "within" to make it clear that a claim may be presented

during a war. The words "the war is terminated" are substituted for the words "after peace is established", since the other time covered is "time of war". 31: 223b (last 49 words of proviso of 2d sentence) is omitted as executed.

In subsection (b) (2), the words "or section 2672 of title 28" are substituted for the words "claims cognizable under part 2 of this title", to reflect the express amendment of 31: 223b and 223c by the fourth clause of section 424 (a) of the Federal Tort Claims Act, 60 Stat. 847. Section 424 (a) of the Federal Tort Claims Act referred to "claims cognizable under part 2 of this title". Part 2 of that act consisted of sections 403 and 404 which were repealed by section 39 of the Act of June 25, 1948, ch. 646, 62 Stat. 1008, and replaced by sections 2672 and 2673 of title 28. The words "or possessions thereof" are omitted, since possessions of foreign countries are not specifically covered by the section to which the words refer.

In subsection (d), the words "claim * * * that would otherwise be covered by this section" are substituted for the words "such claims".

In subsection (e), the words "and final settlement" are omitted as surplusage.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-312, § 2(a), substituted "$15,000" for "5,000".

Subsec. (d). Pub. L. 91-312, § 2(b), substituted "$15,000" for "$5,000.

1968—Subsec. (a). Pub. L. 90-525, § 1, substituted "Secretary concerned" for "Secretary of a military department", and authorized the Chief Legal Officer of the Coast Guard to settle claims, settlement of claims for damage or loss to personal property in possession of the Coast Guard, and settlements when the torts are caused by civilian officers or employees and members of the Coast Guard when acting within scope of employment or otherwise incident to noncombat activities of the Coast Guard.

Subsec. (b)(4). Pub. L. 90-522, § 1(1), authorized the application of local law in determining the effect of claimant's contributory negligence.

Subsec. (d). Pub. L. 90-525, § 5, struck out "of the military department" following "Secretary".

Subsec. (g). Pub. L. 90-525, § 3, increased the limitation on amount of settlement from $1,000 to $2,500, deleted "military" preceding "department concerned", and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force. See Pub. L. 90-522, § 1(2), hereunder, for identical provision for appeals to Secretary concerned.

Subsec. (g). Pub. L. 90-522, § 1(2), provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force.

Subsec. (h). Pub. L. 90-525, § 4, added subsec. (h).

1966—Subsec. (f). Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

1958—Subsec. (a). Pub. L. 85-729, § 1 (1) (A), substituted "the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than $5,000" for "any officer designated by him may settle, and pay in an amount not more than $1,000".

Subsec. (b). Pub. L. 85-861, § 1 (54) (A), (B), in cl. (1), substituted "two years" for "one year" in three instances and included claims accruing in time of armed conflict, and added sentence providing for the determination of dates of the beginning and ending of an armed conflict.

Subsec. (c). Pub. L. 85-861, § 1 (54) (C), substituted provisions prohibiting payment for reimbursement for medical, hospital, or burial services furnished at the expense of the United States for provisions which prohibited allowance of claims for personal injury or death for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

Subsec. (d). Pub. L. 85-729, § 1 (1) (B), substituted provisions authorizing partial payments on claims over $5,000 for provisions which authorized the Secretary of the military department concerned to report a claim for more than $1,000 to Congress for its consideration.

Subsec. (e). Pub. L. 85-729, § 1 (1) (B), substituted "Except as provided in subsection (d), no claim may be paid under this section" for "No claim may be paid under subsection (a)".

Subsec. (g). Pub. L. 85-729, § 1 (1) (C), added subsec. (g).

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ——, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Sciences Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

CLAIMS FOR INJURY OR DEATH ACCRUED BEFORE MAR. 30, 1956

Section 17 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1558, provided that: "A claim for personal injury or death under section 2733 of title 10, United States Code [this section], may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, if the claim accrued before March 30, 1956."

CROSS REFERENCES

Administrative adjustment of tort claims, see section 2672 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2735, 2736 of this title; title 5 section 5564; title 32 section 715; title 37 section 554.

§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.

(a) To promote and maintain friendly relations through the prompt settlement of meritorious claims the Secretary concerned or any officer designated by him may, under such regulations as the Secretary may prescribe, appoint one or more claims commissions, each composed of one or more commissioned officers of the armed forces, to settle and pay any claim for not more than $15,000, for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss, personal injury, or death occurs outside the United States, or the Territories, Commonwealths, or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, "foreign country" includes any place under the jurisdiction of the

United States in a foreign country. An officer may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues:

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) Allowance of a claim for more than $2,500 under subsection (a) may, by regulation, be made subject to the approval of any commissioned officer designated by the Secretary concerned.

(d) If the Secretary concerned considers that a claim in excess of $15,000 is meritorious and would otherwise be covered by this section, he may pay the claimant $15,000 and certify the excess to Congress as a legal claim for payment from appropriations made by Congress therefor, together with a brief statement of the claim, the amount claimed, the amounts allowed, and the amount paid.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of the Treasury shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations available to the Office of the Secretary of Defense for the payment of claims. (Aug. 10, 1956, ch. 1041, 70A Stat. 154; Sept. 2, 1958, Pub. L. 85–861, § 1 (55), 72 Stat. 1461; Sept. 1, 1959, Pub. L. 86–223, § 1(1), 73 Stat. 453; Apr. 8, 1960, Pub. L. 86–411, 73 Stat. 16; Sept. 26, 1968, Pub. L. 90–521, § 1, 3, 82 Stat. 874; July 8, 1970, Pub. L. 91–312, § 1, 84 Stat. 412.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2734 (a)	31: 224d (less 98th through 109th words and provisos).	Jan. 2, 1942, ch. 645, §§ 1 (less last proviso), 6, 7, 55 Stat. 880; restated Apr. 22, 1943, ch. 67, §§ 1 (less last proviso), 6, 7, 57 Stat. 66, 67.
2734 (b)	31: 224d (1st and 3d provisos).	
2734 (c)	31: 224d (2d proviso, less words after semicolon).	
2734 (d)	31: 224d (words of 2d proviso after semicolon).	
2734 (e)	31: 224d (98th through 109th words).	
2734 (f)	31: 224i.	
2734 (g)	31: 224h.	

In subsection (a), the words "for such purposes", "or destruction", "public", "private", "Army * * * forces", and "whether under a lease, express or implied" are omitted as surplusage. The words "armed forces under his jurisdiction" are substituted for the words "Army, Air Force, Navy, or Marine Corps". The same words are substituted for the words "Army, Air Force, Navy, or Marine Corps forces" to reflect the opinion of the Judge Advocate General of the Army (JAGD/D–55–51000, 17 Jan. 55). The word "settle" is substituted for the words "consider, ascertain, adjust, determine", since the word "settle", as defined in section 2731 of this title, includes those actions. The words "a member thereof, or by a civilian employee of the department concerned" are substituted for the words "or individual members thereof, including military personnel and civilian employees". The last sentence is substituted for the words "including places located therein which are under the temporary or permanent jurisdiction of the United States".

In subsection (a) (2), the words "United States" are substituted for the word "Government".

In subsection (b), the word "accident" is omitted as surplusage. The words "except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944" are omitted as executed. Clauses (2) and (3) are substituted for 31:224d (3d proviso).

In subsection (c), the first 28 words of the second proviso of 31:224d and the words "but does not exceed $5,000" are omitted as covered by subsection (a). The words "commanding officer or other" are omitted as surplusage. The word "commissioned" is inserted for clarity. The word "designated" is substituted for the words "may prescribe".

In subsection (d), the word "may" is substituted for the words "shall have authority, if he deems". The words "that would otherwise be covered by this section" are inserted for clarity. The words "to be meritorious" and "character of such" are omitted as surplusage.

In subsection (f), the words "a military department" are substituted for the words "service concerned" after the words "the request of the". The words "or Commissions" and "even though not" are omitted as surplusage. The words "an armed force under the jurisdiction of another military department" are substituted for the words "service concerned" after the words "officers of the". 31: 224i (last 19 words) is omitted, since all claims are paid from one appropriation made to the Department of Defense.

AMENDMENTS

1970—Subsec. (d). Pub. L. 91–312 authorized the Secretary to pay, without certification to Congress, up to $15,000 towards the settlement of meritorious claims in excess of $15,000.

Subsec. (e). Pub. L. 91–312 excepted claims under subsec. (d) from the requirement that all claims paid be accepted by the claimant in full satisfaction, and struck out provision limiting the application of such requirement to claims payable under subsec. (a) of this section.

1968—Subsec. (a). Pub. L. 90-521, § 1, struck out "under his jurisdiction" following "armed forces" in text preceding cl. (1) and permitted an officer to serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but required him to perform his duties under regulations of the department appointing the commission, respectively.

Subsec. (b)(3). Pub. L. 90-521, § 3, provided for allowance of claim if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including the airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

1960—Subsec. (b). Pub. L. 86-411 substituted "two years" for "one year" in cl. (1).

1959—Pub. L. 86-223, § 1(1)(A), substituted "the armed forces" for "Department of Army, Navy, or Air Force" in the section catchline.

Subsec. (a). Pub. L. 86-223, § 1(1)(B), substituted "concerned" and "the military department concerned or the Coast Guard, as the case may be" for "of a military department" and "the department concerned", respectively.

Subsec. (c). Pub. L. 86-223, § 1(1)(C), deleted "of the military department" following "Secretary".

Subsec. (d). Pub. L. 86-223, § 1(1)(C), deleted "of the military department" following "Secretary".

Subsec. (f). Pub. L. 86-223, § 1(1)(D), substituted "the department concerned" for "a military department" and deleted "military" following another".

Subsec. (g). Pub. L. 86-223, § 1(1)(E), substituted provision for payment of claims against the Coast Guard arising while it is operating as a service in the Department of the Treasury out of the appropriation for the operating expenses of the Coast Guard for provisions excluding such claims unless they arise, are settled and paid while the Coast Guard is operating as a service of the Navy and authorizing Coast Guard officers to serve on claims commissions or to approve settlements, only for claims against the Coast Guard.

1958—Subsec. (a). Pub. L. 85-861, § 1 (55) (A)—(D), eliminated words "arising in foreign countries" which followed "meritorious claims", and substituted "$15,000" for "$5,000", outside the United States, or the Territories, Commonwealths, or possessions," for "in that country", and "a foreign country" for "that country" in clauses (1) and (2).

Subsec. (d). Pub. L. 85-861, § 1 (55) (A), substituted "$15,000" for "$5,000".

Subsec. (f). Pub. L. 85-861, § 1 (55) (E), substituted "Upon" for "In time of war and upon".

Subsec. (h). Pub. L. 85-861, § 1 (55) (F), added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2733, 2735, 2736 of this title; title 32 section 715.

§ 2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces; foreign countries; international agreements.

(a) Under an international agreement to which the United States is a party that provides that claims against the United States arising out of the acts or omissions in the performance of official duty in a foreign country of a civilian employee, or a member, of an armed force may be adjudicated by that country under its laws and regulations, the Secretary of Defense may—

(1) reimburse that country for the agreed pro rata share of such amounts as are spent by that country to pay those claims, including the costs of settlement or arbitration; or

(2) pay that country the agreed pro rata share of claims arising out of damage to the property of that country, including the costs of settlement or arbitration.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Transportation or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of the appropriation for claims of the Department of Defense, subject to reimbursement from the Department of Transportation. (Added Pub. L. 87-651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512, and amended Pub. L. 90-521, § 4, Sept. 26, 1968, 82 Stat. 874.)

AMENDMENTS

1968—Subsec. (c). Pub. L. 90-521, § 4(a), provided for payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation out of appropriations for operating expenses of the Coast Guard.

Subsec. (d). Pub. L. 90-521, § 4(b), added subsec. (d).

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.

(a) Where an international agreement to which the United States is a party provides that claims against a foreign country arising out of the acts or omissions in the performance of official duty in the United States, or a Territory, Commonwealth, or possession, of a civilian employee, or member, of the armed forces of that country, be adjudicated by the United States under its laws and regulations subject to an agreed pro rata reimbursement, those claims may be prosecuted against the United States, or settled by the United States, under then existing laws and regulations as if the acts or omissions upon which they are based were the acts or omissions in the performance of official duty of a civilian employee, or a member, of an armed force.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose. (Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512.)

§ 2735. Settlement: final and conclusive.

Notwithstanding any other provision of law, the settlement of a claim under section 2733 or 2734 of this title is final and conclusive. (Aug. 10, 1956, ch. 1041, 70A Stat. 155; Aug. 31, 1964, Pub. L. 88–558, § 5(1), 78 Stat. 768.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2735	31: 222c (1st sentence of (e)); 31: 223b (4th sentence); 31: 224d (last proviso).	May 29, 1945, ch. 135, § 1 (e) (1st sentence); restated July 3, 1952, ch. 548, § 1 (1st sentence of last par.), 66 Stat. 323. July 3, 1943, ch. 189, § 1 (4th sentence), 57 Stat. 373. Jan. 2, 1942, ch. 645, § 1 (last proviso); restated Apr. 22, 1943, ch. 67, § 1 (last proviso), 57 Stat. 67.

The words "for all purposes" and "to the contrary", in each source credit; "by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Defense, or their designees" and "such regulations as they, respectively, may prescribe hereunder", in 31: 222c (e); "by the Secretary of the Army, or his designee" and "such regulations as he may prescribe hereunder", in 31: 223b; and "by such Commissions", in 31: 224d; are omitted as surplusage.

AMENDMENTS

1964—Pub. L. 88–558 eliminated reference to section 2732.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(1) of Pub. L. 88–558 provided in part that the amendment of this section shall be effective two years from Aug. 31, 1964.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a.

§ 2736. Property loss; personal injury or death: advance payment.

(a) Under such regulations as the Secretary of a military department may prescribe, payment of an amount not in excess of $1,000 may be made in advance of the submission of a claim to or for any person, or his legal representatives, who was injured or killed, or whose property was damaged or lost, under circumstances for which allowance of a claim is authorized by law. Payments under this subsection are limited to those which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned. (Added Pub. L. 87–212, § 1(1), Sept. 8, 1961, 75 Stat. 448, and amended Pub. L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874.)

AMENDMENTS

1968—Pub. L. 90–521 substituted in the section catchline "advance payment" for "incident to aircraft or missile operation".

Subsec. (a). Pub. L. 90–521 substituted "under circumstances" for "as the result of an accident involving an aircraft or missile under the control of that department".

§ 2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.

(a) Under such regulations as the Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) So far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of

the military departments must be approved by the Secretary of Defense. (Added Pub. L. 87–769, § 1(1)(A), Oct. 9, 1962, 76 Stat. 767, § 2737, formerly § 2736, renumbered Pub. L. 89–718, § 21(a), Nov. 2, 1966, 80 Stat. 1118.)

Chapter 165.—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
2771. Final settlement of accounts: deceased members.
2772.[1] Withholding pay of officers.
2773. Accountability for public money: disbursing officers; agent officers.

AMENDMENTS

1962—Pub. L. 87–480, § 1(1)(B), June 8, 1962, 76 Stat. 94, added item 2773.

CROSS REFERENCES

Particular provisions relating to—
Air Force, see section 9831 et seq. of this title.
Army, see section 4831 et seq. of this title.

§ 2771. Final settlement of accounts: deceased members.

(a) In the settlement of the accounts of a deceased member of the armed forces who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a) (1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform for the armed forces, the Environmental Science Services Administration, and the Public Health Service.

(c) Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the military department concerned or the Department of the Treasury, as the case may be. Payment under clause (6) of subsection (a) shall be made—

(1) upon settlement by the General Accounting Office; or

(2) as otherwise authorized by the Comptroller General.

(d) A payment under this section bars recovery by any other person of the amount paid. (Aug. 10, 1956, ch. 1041, 70A Stat. 155; Sept. 2, 1958, Pub. L. 85–861, § 1(56), 72 Stat. 1461; July 12, 1960, Pub. L. 86–641, 74 Stat. 473; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

[1] Section 2772 was repealed but analysis was not amended to reflect such repeal.

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
2771 (a)	10: 868 (less proviso); 34: 941a (less proviso).	June 30, 1906, ch. 3914, § 1 (last par. under "State or Territorial Homes for Disabled Soldiers and Sailors"); restated Dec. 7, 1944, ch. 519; restated Feb. 25, 1946, ch. 35, § 4, 60 Stat. 30.
2771 (b)	10: 868 (proviso); 34: 941a (proviso).	Feb. 25, 1946, ch. 35, § 1, 60 Stat. 30; Aug. 4, 1949, ch. 393, § 18, 63 Stat. 560.

In subsections (a) and (b), the words "General Accounting Office" are substituted for the words "accounting officers", for clarity.

In subsection (a), the word "member" is substituted for the words "officers or enlisted persons", in 10: 868 and 34: 941a. The words "his legal representative" are substituted for the words "a duly appointed legal representative of the estate", since an estate, being property and not an entity, has no representative. The words "duly appointed" are omitted as surplusage. The words "highest on the following list" are substituted for the words "following order of precedence", in 10: 868 and 34: 941a. Clauses (1)—(4) are substituted for the words between the first and second colons of 10: 868 and 34: 941a. The words "Surviving spouse" are substituted for the words "widow or widower" after the words "First, to".

In subsection (b), the words "That this section shall not be so construed as to prevent", "or persons", and "actually", in 10: 868 and 34: 941a, are omitted as surplusage.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

1960—Subsec. (c). Pub. L. 86–641 substituted provisions requiring payment under clause (6) of subsection (a) to be made upon settlement by the General Accounting Office or as otherwise authorized by the Comptroller General for provisions which permitted payments under clauses (2)—(6) of subsection (a) to be made only after settlement by the General Accounting Office.

1958—Subsec. (a). Pub. L. 85–861 amended subsec. (a) generally to restrict application of section to members of the armed forces who die after Dec. 31, 1955, and to permit payment to the designated beneficiaries, surviving spouse, children and their descendants, and to parents before payment to the legal representative.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designations and changes of designation of beneficiaries for provisions which authorized reimbursement of funeral expenses.

Subsecs. (c) and (d). Pub. L. 85–861 added subsecs. (c) and (d).

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. —, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

FINAL SETTLEMENT OF ACCOUNTS OF MEMBERS WHO DIED BEFORE JAN. 1, 1960

Section 29 of Pub. L. 85-861 provided that:

"(a) In the settlement of the accounts of a member of the Army, Navy, Air Force, or Marine Corps who died before January 1, 1956, if a demand is not made by his legal representative, the General Accounting Office may allow any amount due, to the person highest on the following list living on the date of settlement:

"(1) Surviving spouse.

"(2) Children and their issue, per stirpes.

"(3) Father and mother in equal parts or, if either is dead, the survivor.

"(4) Brothers and sisters, and their children, per stirpes.

"(b) Reimbursement for funeral expenses may be made from the amount due the decedent's estate, if the person who paid the expenses presents a claim for them before settlement by the General Accounting Office."

DESIGNATION OF BENEFICIARY MADE BEFORE JAN. 1, 1956

Section 31 of Pub. L. 85-861 provided that: "The designation of a beneficiary made for the purposes of any six months' death gratuity, including the designation of a person whose right to the gratuity does not depend upon that designation, and received in the military department concerned, the Department of the Treasury, the Department of Commerce, or the Department of Health, Education, and Welfare, as the case may be, before January 1, 1956, is considered as the designation of a beneficiary for the purposes of section 2771 of title 10, United States Code [this section], section 714 of title 32, United States Code, and sections 3 and 4 of this Act [amending section 857a of Title 33, and section 213a of Title 42], in the absence of a designation under one of those sections, unless the member making the designation was missing, missing in action, in the hands of a hostile force, or interned in a foreign country any time after July 11, 1955, and before January 1, 1956."

CROSS REFERENCES

Limitations, claims for proceeds of sale of deceased's effects, see sections 4713, 9713 of this title.

Payment of claims incident to correction of military records, see section 1552 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1552, 4713, 9713 of this title; title 5 section 8316; title 32 section 714; title 33 section 857a; title 37 section 501; title 42 section 213a.

§ 2772. Repealed. Pub. L. 87-649, § 14c(3), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 156, authorized withholding of pay of officers of the Army, Navy, Air Force, or Marine Corps, and is now covered by section 1007 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 2773. Accountability for public money: disbursing officers; agent officers.

Under such regulations as the Secretary concerned may prescribe, any officer of an armed force accountable for public money may entrust it to another officer of an armed force to make disbursement as his agent. Both the officer to whom money is entrusted under this section, and the officer who entrusts the money to him, are pecuniarily responsible for that money to the United States. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense. (Added Pub. L. 87-480, § 1(1)(A), June 8, 1962, 76 Stat. 94.)

Subtitle B.—Army

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AMENDMENTS

1968—Pub. L. 90-377, § 3, July 5, 1968, 82 Stat. 288, eliminated chapter 351: "United States Disciplinary Barracks".

Pub. L. 90-235, § 8(5), Jan. 2, 1968, 81 Stat. 764, eliminated chapter 347: "The Uniform".

1964—Pub. L. 88-647, title III, § 301(11), Oct. 13, 1964, 78 Stat. 1072, eliminated chapter 405: "Reserve Officers' Training Corps."

1960—Pub. L. 86-616, §§ 2(b), 3(b), July 12, 1960, 74 Stat. 388, 390, substituted "Substandard Performance of Duty" for "Failure to Meet Standards" in the heading of chapter 359 and added chapter 360.

1958—Pub. L. 85-861, § 1 (95), Sept. 2, 1958, 72 Stat. 1487, substituted "3841" for "[No present sections]" in the heading of chapter 363.

PART I.—ORGANIZATION

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Chapter 301.—DEFINITIONS

Sec.
3001. Definitions.

§ 3001. Definitions.

In this title, "Army" means the Army or Armies referred to in the Constitution of the United States, less than part established by law as the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 157.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3001	5: 181-3 (a); 10: 1a (a).	June 28, 1950, ch. 383, § 2 (a), 64 Stat. 263.

The words "Army of the United States" and "are synonymous and" are omitted as surplusage, since the term "Army" is used throughout the revised title. 5: 181-3 (a) (last sentence) and 10: 1a (a) (last sentence) are omitted as surplusage.

CROSS REFERENCES

General military law, see section 101 of this title.

Chapter 303.—DEPARTMENT OF THE ARMY

Sec.
3010. Organization.
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AMENDMENTS

1967—Pub. L. 90-168, § 2(17), Dec. 1, 1967, 81 Stat. 524, added item 3019.

1964—Pub. L. 88-426, title III, §§ 305(40) (B), 306(j) (2), Aug. 14, 1964, 78 Stat. 427, 431, eliminated "; compensation" from item 3012, and struck out item 3018.

1962—Pub. L. 87-651, title II, § 210(b), Sept. 7, 1962, 76 Stat. 524, added item 3010.

1958—Pub. L. 85-861, § 1 (59) (B), Sept. 2, 1958, 72 Stat. 1462, added item 3018.

§ 3010. Organization.

The Department of the Army is separately organized under the Secretary of the Army. It operates under the authority, direction, and control of the Secretary of Defense. (Added Pub. L. 87-651, title II, § 210(a), Sept. 7, 1962, 76 Stat. 524.)

CROSS REFERENCES

Cooperation with Office of Secretary of Defense in carrying out this section, see section 136 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 136 of this title.

§ 3011. Department of the Army: seal.

The Secretary of the Army shall have a seal for the Department of the Army. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal. (Aug. 10, 1956, ch. 1041, 70A Stat. 157.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3011	5: 181-1 (d).	July 26, 1947, ch. 343, § 205 (d), 61 Stat. 501.

The words "of office" are omitted as surplusage.

CROSS REFERENCES

Seal of the United States, see sections 41 and 42 of Title 4, Flag and Seal, Seat of Government, and the States.

§ 3012. Secretary of the Army: powers and duties; delegation by.

(a) There is a Secretary of the Army, who is the head of the Department of the Army.

(b) The Secretary is responsible for and has the authority necessary to conduct all affairs of the Department of the Army, including—

(1) functions necessary or appropriate for the training, operations, administration, logistical support and maintenance, welfare, preparedness, and effectiveness of the Army, including research and development; and

(2) direction of the construction, maintenance, and repair of buildings, structures, and utilities for the Army;

(3) acquisition of all real estate and the issue of licenses in connection with Government reservations;

(4) operation of water, gas, electric, and sewer utilities; and

(5) such other activities as may be prescribed by the President or the Secretary of Defense as authorized by law.

He shall perform such other duties relating to Army affairs, and conduct the business of the Department in such manner, as the President or the Secretary of Defense may prescribe. The Secretary is responsible to the Secretary of Defense for the operation and efficiency of the Department. After first informing the Secretary of Defense, the Secretary may make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

(c) The Secretary may assign such of his duties as he considers appropriate to the Under Secretary of the Army and to the Assistant Secretaries of the Army. Officers of the Army shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or an Assistant Secretary.

(d) The Secretary or, as he may prescribe, the Under Secretary or an Assistant Secretary shall supervise all matters relating to—

(1) the procurement activities of the Department of the Army; and

(2) planning for the mobilization of materials and industrial organizations essential to the wartime needs of the Army.

(e) The Secretary, as he considers appropriate, may assign, detail, and prescribe the duties of members of the Army and civilian personnel of the Department of the Army.

(f) The Secretary may change the title of any other officer, or of any activity, of the Department of the Army.

(g) The Secretary may prescribe regulations to carry out his functions, powers, and duties under this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 157; Sept. 2, 1958, Pub. L. 85–861, § 1 (57), 72 Stat. 1462; Sept. 7, 1962, Pub. L. 87–651, title II, § 211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(2), 306(j)(1), 78 Stat. 422, 431; Nov. 2, 1966, Pub. L. 89–718, § 22, 80 Stat. 1118.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3012 (a)	5: 181.	R. S. 214.
3012 (b)	5: 181–4 (a); 5: 190.	June 28, 1950, ch. 383, § 101 (less (e)), 64 Stat. 264; Aug. 3, 1954, ch. 652, § 1 (b), 68 Stat. 649.
3012 (c)	5: 181–4 (b).	
3012 (d)	5: 181–4 (c)	
3012 (e)	5: 181–4 (d).	
3012 (f)	5: 181–1 (a) (2d sentence).	R. S. 216.
3012 (g)	No source.	July 26, 1947, ch. 343, § 205 (a) (2d sentence), 61 Stat. 501.
3012 (h)	5: 181–2.	July 26, 1947, ch. 343, § 301 (b) (last sentence); restated Aug. 10, 1949, ch. 412, § 10 (a) (last sentence of 301 (b)), 63 Stat. 585; Oct. 15, 1949, ch. 695, § 1 (words after 2d semicolon), 63 Stat. 880.

In subsection (a), 5: 181 (1st 20 words) is omitted as superseded by 5: 171 (b) (1).

In subsection (b), 5: 190 and 5: 181–4 (a), which define the duties and responsibilities of the Secretary of the Army in general terms, are combined to reflect the provisions of the National Security Act of 1947, as amended (5 U. S. C. 171 et seq.), relating to the authority of the Secretary of Defense. The words "relative to military commissions, the military forces, the warlike stores of the United States", in 5: 190, are omitted as covered by the enumeration in 5: 181–4 (a). The appropriation authorization in 5: 181–4 (a) is omitted as surplusage.

In subsections (b), (d), and (e), the words "Except as otherwise prescribed by law" are omitted as surplusage.

In subsection (d), the words "in addition to other duties" and "and of other business pertaining thereto" are omitted as surplusage. The word "supervise" is substituted for the words "be charged with supervision".

In subsection (e), 5: 181–4 (d) (words after semicolon) is omitted as surplusage.

Subsection (g) is inserted to make express the Secretary's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–718 redesignated existing clause (2) as clause (5) and added clauses (2)—(4).

1964—Pub. L. 88–426, § 306(j)(1), eliminated "; compensation" from the catchline.

Subsec. (h). Pub. L. 88–426, § 305(2), repealed former subsec. (h), which prescribed the compensation of the Secretary. See section 5313(17) of Title 5, Government Organization and Employees.

1962—Subsec. (b). Pub. L. 87–651 inserted sentences providing that the Secretary is responsible to the Secretary of Defense for the operation and efficiency of the Department, and permitting the Secretary, after first informing the Secretary of Defense, to make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

1958—Subsec. (h). Pub. L. 85–861 substituted "$22,000" for "$18,000".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

CROSS REFERENCES

Armed Forces Policy Council, member of, see section 171 (a) (3) of this title.

Assignment and detail to—

Basic and special branches, see section 3065 of this title.

Judge Advocate General's Corps, assignment of members of Army by Secretary, see section 3072 of this title.

Chief of staff, appointment and duties, see section 3034 of this title.

Compensation of Secretary, see section 5313(17) of Title 5, Government Organization and Employees.

Cooperation with Office of Secretary of Defense in carrying out last two sentences of subsec. (b), see section 136 of this title.

Courts-martial, authority to convene, see sections 822–824 of this title.

Establishment of advisory committees and panels for research and development activities, see section 174 (a) of this title.

President's appointing power, see Const. Art. 2, § 2, cl. 2.

Reports to Congress, active duty, see section 686 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 3034 of this title.

§ 3013. Under Secretary of the Army; Assistant Secretaries of the Army.

There are an Under Secretary of the Army and five Assistant Secretaries of the Army in the Department of the Army. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Manpower and Reserve affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Army. One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources including flood control, navigation, shore protection, and related purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 158; Aug. 6, 1958, Pub. L. 85–599, § 8(a), 72 Stat. 519; Sept. 2, 1958, Pub. L. 85–861, § 1(58), 72 Stat. 1462; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(3), 78 Stat. 422; Dec. 1, 1967, Pub. L. 90–168, § 2(12), 81 Stat. 523; Dec. 31, 1970, Pub. L. 91–611, title II, § 211(a), 84 Stat. 1829.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
3013 (a)	5:181–5(a) (less last 9 words).	June 28, 1950, ch. 383, § 102 (a), 64 Stat. 264; Aug. 3, 1954, ch. 652, § 1 (a), 68 Stat. 649.
3013 (b)	5: 181–5 (a) (last 9 words). [Uncodified July 26, 1947, ch. 343, Title III, § 302 (as applicable to Army); restated Aug. 10, 1949, ch. 412, § 10 (b) (as applicable to Army), 63 Stat. 585.]	July 26, 1947, ch. 343, § 302; restated Aug. 10, 1949, ch. 412, § 10 (b), 63 Stat. 585.

Subsection (b) combines those parts of 5: 181–5 (a) and uncodified section 302 of the National Security Act of 1947, as amended, which deal with the compensation of

the Under and Assistant Secretaries of the Army. Section 302, as amended, provides that their compensation shall be "at the rate of $10,330 a year or at the rate hereafter prescribed by law for assistant secretaries of executive departments". That part of section 302 which specifies a salary of $10,330 a year is omitted as superseded by section 5 (a) of the Act of October 15, 1949, ch. 695, 63 Stat. 880, which specifies an annual salary of $15,000 for assistant secretaries of executive departments, 5: 181–5 (a) provides that the Under Secretary and Assistant Secretaries "shall receive the compensation prescribed by law". In the revised subsection the current rate of compensation is omitted as surplusage.

The last 11 words of section 302 are omitted as superseded by section 3012(c) of this title.

AMENDMENTS

1970—Pub. L. 91–611 increased the number of Assistant Secretaries from four to five, provided that one of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works, and prescribed his duties.

1967—Pub. L. 90–168 struck out the (a) and (b) subsec. designations, increased the number of Assistant Secretaries from three to four, and added provision for an Assistant Secretary of the Army for Manpower and Reserve Affairs with the principal duty of overall supervision of manpower and reserve component affairs of the Department of the Army.

1964—Subsec. (b). Pub. L. 88–426 repealed former subsec. (b), which prescribed the compensation of the Under Secretary and of each of the Assistant Secretaries. See section 5315 (8) and (15), respectively, of Title 5, Government Organization and Employees.

1958—Subsec. (a). Pub. L. 85–599 reduced the number of Assistant Secretaries from four to three, and omitted provisions which authorized the Secretary to designate one of the Assistant Secretaries as the Assistant Secretary of the Army for Financial Management and as Comptroller of the Army.

Subsec. (b). Pub. L. 85–861 substituted "and of each of the four Assistant Secretaries is $20,000 a year" for "and of the Assistant Secretaries is that prescribed by law for assistant secretaries of executive departments".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13 of Pub. L. 85–599, provided that: "Sections 8 and 10 of this Act [amending subsec. (a) of this section and sections 5034 and 8013 (a) of this title, and former section 171c(C) of Title 5, Executive Departments and Government Officers and Employees, and repealing section 5035 of this title and section 3 of Reorganization Plan No. 6 of 1953, set out in the Appendix to Title 5] shall become effective six months after the date of enactment of this Act [August 6, 1958]."

CROSS REFERENCES

Compensation of Under Secretary and Assistant Secretaries see section 5315 of Title 5, Government Organization and Employees.

President's appointing power, see Const. Art. 2, § 2, cl. 2.

§ 3014. Comptroller of the Army: appointment; functions.

(a) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army shall have the following matters in the Department of the Army organized and conducted consistently with the operations of the Office of the Comptroller of the Department of Defense:

(1) Budgeting.

(3) Progress and statistical reporting.

(2) Accounting.

(4) Internal audit.

(5) Administrative organization structure, and managerial procedures, relating to the matters covered by clauses (1)—(4).

(b) There are a Comptroller of the Army and a Deputy Comptroller of the Army in the Department of the Army. They shall be appointed by the Secretary of the Army. The Secretary may appoint either civilian or military personnel to these offices. If either the Comptroller or the Deputy Comptroller is not a civilian, the other must be a civilian.

(c) Subject to the authority of the Secretary of the Army, the Comptroller is responsible for the matters in the Department of the Army named in subsection (a) (1)—(5).

(d) The Comptroller is under the direction and supervision of, and is directly responsible to, either the Secretary of the Army, the Under Secretary, or an Assistant Secretary. However, this subsection does not prevent the Comptroller from having concurrent responsibility to the Chief of Staff, the Vice Chief of Staff, or a Deputy Chief of Staff, if the Secretary so prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 158.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
3014 (a)	5: 172a (a).	July 26, 1947, ch. 343, § 402; added Aug. 10, 1949, ch. 412, § 11 (402), 63 Stat. 586.
3014 (b)	5: 172a (b) (less 3d and 5th sentences).	
3014 (c)	5: 172a (b) (3d sentence).	
3014 (d)	5: 172a (b) (5th sentence).	

In subsection (b), the second sentence is inserted for clarity. The last sentence makes express the rule, necessarily implied in the source text, that the Deputy Comptroller may be appointed from either civilian or military personnel, and that if the Deputy Comptroller is not a civilian, the Comptroller must be.

In subsection (c), the words "matters in the Department of the Army named in subsection (a) (1)—(5)" are substituted for the words "all budgeting, accounting, progress and statistical reporting, and internal audit in their respective departments and for the administrative organization structure and managerial procedures relating thereto", to avoid repetition.

§ 3015. Chief of National Guard Bureau: appointment; acting chief.

(a) There is a National Guard Bureau, which is a Joint Bureau of the Department of the Army and the Department of the Air Force, headed by a chief who is the adviser to the Army Chief of Staff and the Air Force Chief of Staff on National Guard matters. The National Guard Bureau is the channel of communication between the departments concerned and the several States, Territories, Puerto Rico, the Canal Zone, and the District of Columbia on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

(b) The President, by and with the advice and consent of the Senate, shall appoint the Chief of the National Guard Bureau from officers of the

Army National Guard of the United States or the Air National Guard of the United States who—

(1) have been recommended by their respective governors;

(2) have had at least 10 years of commissioned service in the active National Guard; and

(3) are in a grade above lieutenant colonel.

(c) The Chief of the National Guard Bureau holds office for four years, but may be removed for cause at any time and may not hold that office after he becomes 64 years of age. He is eligible to succeed himself. If he holds a lower reserve grade he shall be appointed as a Reserve in his armed force in the grade of major general for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be.

(d) If the Chief of the National Guard Bureau is unable, because of disability, to perform the functions of his office, or if that office is vacant, the senior officer of the Army National Guard of the United States or the Air National Guard of the United States on duty in the Bureau shall act as its chief until the disability ceases or a successor is appointed. (Aug. 10, 1956, ch. 1041, 70A Stat. 159; Aug. 6, 1958, Pub. L. 85-599, § 12, 72 Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3015 (a)	32: 172 (1st sentence).	June 3, 1916, ch. 134, § 81 (1st par., less 1st sentence); restated June 4, 1920, ch. 227, subch. I, § 44 (2d, 3d, and 4th sentences); restated Sept. 22, 1922, ch. 423, § 4 (2d through 5th sentences); restated Feb. 28, 1925, ch. 371, § 3 (2d through 5th sentences); restated June 15, 1933, ch. 87, § 16 (1st par., less 1st sentence), 48 Stat. 159; June 19, 1935, ch. 277, § 5, 49 Stat. 392; July 9, 1952, ch. 608, § 806 (g) (less last 107 words), 66 Stat. 507.
3015 (b)	32: 172 (less 1st sentence).	
3015 (c)	32: 173.	June 3, 1916, ch. 134, § 81 (1st sentence of last par.); added Feb. 28, 1925, ch. 371, § 3 (9th sentence); restated June 15, 1933, ch. 87, § 16 (1st sentence of last par.), 48 Stat. 160; July 9, 1952, ch. 608, § 806 (g) (25th through 50th words of last 107 words), 66 Stat. 508.

In subsection (a), the words "at least 10" are substituted for the words "ten or more". The words "active National Guard" are substituted for the words "active National Guard or Air National Guard or any combination thereof". Clause (3) is substituted for 32: 172 (last 10 words of 1st sentence). The words "by selection * * * lists of" and "as suitable for such appointment" are omittted as surplusage.

In subsection (b), the words "but may be" are substituted for the words "unless sooner". The words "and may not hold that office after he becomes 64 years of age" are substituted for the words "when sixty-four years of age shall cease to hold such office". The last sentence is substituted for 32: 172 (last 34 words) since, under section 591 of this title, appointments of Reserves are made as Reserves of an armed force, for service in the respective components. The words "Upon accepting his office" are omitted as surplusage.

In subsection (c), the word "If" is substituted for the words "In case the office of". The words "to perform the functions of his office" are substituted for the words "to discharge the powers and duties of the office". The words "or if that office" are inserted for clarity. The words "of the" are substituted for the words "appointed from". The word "its" is substituted for the words "of said bureau". The words "until the disability ceases or a successor is appointed" are substituted for 32: 173 (last 18 words).

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-599 added subsec. (a) and redesignated former subsec. (a) as (b).

Subsecs. (b)—(d). Pub. L. 85-599 redesignated former subsecs. (a)—(c) as (b)—(d), respectively.

CROSS REFERENCES

National Guard Bureau—

Appropriations, see section 107 of Title 32, National Guard.

Chief's issuance of certificate of eligibility for Federal recognition of officers, see section 307 of Title 32.

President's appointing power, see Const. Art. 2, § 2, cl. 2.

Provisions respecting responsibility for reserve affairs as not affecting functions of Chief of National Guard Bureau, see section 264 of this title.

§ 3016. Administrative Assistant.

(a) There is an Administrative Assistant in the Department of the Army. The Administrative Assistant shall be appointed by the Secretary of the Army and shall perform duties that the Secretary considers appropriate.

(b) During a vacancy in the office of Secretary, the Administrative Assistant has charge and custody of all records, books, and papers of the Department of the Army.

(c) The Secretary may authorize the Administrative Assistant to sign, during the temporary absence of the Secretary, any paper requiring his signature. In such a case, the Administrative Assistant's signature has the same effect as the Secretary's signature. (Aug. 10, 1956, ch. 1041, 70A Stat. 159.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3016 (a)	5: 185.	R. S. 215; Feb. 27, 1877, ch. 69 (2d par.), 19 Stat. 241.
3016 (b)	5: 186.	
3016 (c)	5: 187.	Mar. 4, 1874, ch. 44, 18 Stat. 19.

Although 5: 185, 186, and 187 are omitted from the United States Code as covered by 5: 181-5, they are not so superseded and are restated in this revised section.

In subsections (a), (b), and (c), the title "Administrative Assistant" is substituted for the title "Assistant and Chief Clerk", to accord with present usage. R. S. 215 (less last sentence) is not contained in 5: 185 and 186. It is also omitted from the revised section as obsolete.

In subsection (a), the words "an inferior officer" are omitted, since the Secretary's authority to appoint the Administrative Assistant makes the office an inferior office within the meaning of the Constitution. The words "perform duties that the Secretary considers appropriate" are substituted for the words "to be employed therein as he shall deem proper".

In subsection (b), the words "During a vacancy in the office of Secretary * * * has" are substituted for the words "whenever the Secretary of the Army shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy have the". The word "of" is substituted for the words "appertaining to".

In subsection (c), the words "during the temporary absence of the Secretary" are substituted for the words "When, from illness or other cause, the Secretary of War is temporarily absent from the War Department". The words "requisitions upon the Treasury Department" are omitted as surplusage. The last sentence is substituted for 5: 187 (words after semicolon).

§ 3017. Secretary of the Army: successors to duties.

(a) If the Secretary of the Army dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries of the Army in order of their length of service as such.

(3) The Chief of Staff.

(b) Performance of the duties of the Secretary by the Chief of Staff or any officer of the Army designated under section 3347 of title 5 shall not be considered as the holding of a civil office within the meaning of section 973 (b) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 159; Nov. 2, 1966, Pub. L. 89–718, § 23, 80 Stat. 1118; Jan. 2, 1968, Pub. L. 90–235, § 4(a)(7), 81 Stat. 759.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3017 (a)	5: 181–5 (b).	June 28, 1950, ch. 383, § 102 (less (a)), 64 Stat. 265.
3017 (b)	5: 181–5 (c).	

In subsection (a), the word "person" is substituted for the words "officer of the United States". The words "until a successor is appointed" are omitted as surplusage.

Subsection (b) is substituted for 5: 181–5 (c) and states the effect of section 3544 (b) of this title.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–235 substituted "section 973(b) of this title" for "section 3544(b) of this title".

1966—Pub. L. 89–718 substituted "section 3347 of title 5" for "section 6 of title 5" wherever appearing.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 3018. Repealed. Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427.

Section, Pub. L. 85–861, § 1(59)(A), Sept. 2, 1958, 72 Stat. 1462, prescribed the compensation of the General Counsel of the Department of the Army, and is now covered by section 5316(80) of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first pay period which begins on or after July 1, 1964, see section 501 of Pub. L. 88–426.

§ 3019. Office of Army Reserve: appointment of Chief.

(a) There is in the executive part of the Department of the Army an Office of the Army Reserve which is headed by a chief who is the adviser to the Chief of Staff on Army Reserve matters.

(b) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Army Reserve from officers of the Army Reserve not on active duty, or on active duty under section 265 of this title, who—

(1) have had at least 10 years of commissioned service in the Army Reserve;

(2) are in grade of brigadier general and above; and

(3) have been recommended by the Secretary of the Army.

(c) The Chief of Army Reserve holds office for four years but may be removed for cause at any time. He is eligible to succeed himself. If he holds a lower reserve grade, he shall be appointed in the grade of major general for service in the Army Reserve. (Added Pub. L. 90–168, § 2(16), Dec. 1, 1967, 81 Stat. 523.)

EFFECTIVE DATE

Section effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

Chapter 305.—THE ARMY STAFF

Sec.
3031. Composition: assignment and detail of members of Army and civilians.
3032. General duties.
3033. Reserve components of Army; policies and regulations for government of.
3034. Chief of Staff: appointment; duties.
3035. Vice Chief of Staff, Deputy Chief of Staff,[1] and Assistant Chiefs of Staff: succession to duties of Chief of Staff.
3036. Chiefs of branches: appointments; duties.[1]
3037. Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties.
3039. Inspector General; Provost Marshal General.
3040. Deputy and assistant chiefs of branches.

AMENDMENTS

1966—Pub. L. 89–718, § 25(b), Nov. 2, 1966, 80 Stat. 1119, struck out item 3038: "Chief of Engineers: additional duties."

§ 3031. Composition: assignment and detail of members of Army and civilians.

(a) There is in the executive part of the Department of the Army an Army Staff consisting of—

(1) the Chief of Staff;

(2) the Vice Chief of Staff;

(3) not more than three Deputy Chiefs of Staff, as prescribed by the Secretary of the Army;

(4) not more than five Assistant Chiefs of Staff, as prescribed by the Secretary;

(5) the officers named in sections 3036, 3039, and 3040 of this title;

(6) other members of the Army assigned or detailed to the Army Staff; and

(7) civilians in the Department of the Army assigned or detailed to the Army Staff.

(b) Except as otherwise specifically prescribed by law, the Army Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe. A part of the Army Staff may be designated as the Army General Staff.

(c) Not more than 3,000 officers of the Army may be assigned or detailed to permanent duty in the executive part of the Department of the Army. Of this number not more than 1,000 may be detailed or assigned to duty on or with the Army General Staff. However, these limitations do not apply in time of war, or of national emergency declared by Congress, or whenever the President finds that it is in the national interest to increase the number of officers

[1] Catchline in the analysis does not correspond to section catchline.

in the executive part of the Department or on or with the Army General Staff. The Secretary shall report quarterly to Congress the number of officers in the executive part of the Department of the Army and the number of commissioned officers on or with the Army General Staff, and the justification therefor.

(d) No commissioned officer who is assigned or detailed to duty in the executive part of the Department of the Army may serve for a tour of duty of more than four years. However, the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest. No officer may be assigned or detailed to duty in the executive part of the Department of the Army within two years after relief from that duty, except upon a special finding by the Secretary that the assignment or detail is necessary in the public interest. This subsection does not apply in time of war, or of national emergency declared by Congress.

(Aug. 10, 1956, ch. 1041, 70A Stat. 160.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3031 (a)	10: 21a (a).	June 28, 1950, ch. 383, § 201, 64 Stat. 265.
3031 (b)	10: 21a (b).	
3031 (c)	10: 21a (c).	
3031 (d)	10: 21a (d).	

In subsection (a), the words "an Army Staff consisting of—" are substituted for the words "a staff, which shall be known as the Army Staff, and which shall consist of—". The words "under regulations prescribed by the Secretary of the Army" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (c), the third sentence is substituted for 10: 21a (c) (1st 13 words and 1st proviso). The words "officers and employees * * * or under the jurisdiction of" are omitted as surplusage.

In subsections (c) and (d), the word "hereafter" is omitted, since all wars and emergencies declared by Congress before June 24, 1950, have been terminated.

In subsection (d), the second sentence is substituted for 10: 21a (d) (last 31 words of 1st sentence). The third sentence is substituted for 10: 21a (d) (2d sentence). 10: 21a (d) (1st 13 words of last sentence) is omitted as executed. The words "This subsection does not apply" are substituted for the words "and shall be inapplicable".

CROSS REFERENCES

Detail of commissioned officers of Army as general staff officers, see section 3065 of this title.

§ 3032. General duties.

(a) The Army Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Army.

(b) Under the direction and control of the Secretary, the Army Staff shall—

(1) prepare for such employment of the Army, and for such recruiting, organizing, supplying, equipping, training, serving, mobilizing, and demobilizing of the Army, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Army and its preparation for military operations;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) act as agent of the Secretary and the Chief of Staff in coordinating the action of all organizations of the Department of the Army; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161; Aug. 6, 1958, Pub. L. 85-599, § 4 (g), 72 Stat. 517.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3032 (a)	10: 21e (a).	June 28, 1950, ch. 383, § 205, 64 Stat. 266.
3032 (b)	10: 21e (b).	

In subsection (a), the word "furnish" is substituted for the word "render".

In subsection (b) (1), the words "power, duty, or function of" are substituted for the words "power vested in, duty imposed upon, or function assigned to".

In subsection (b) (2), the words "all questions affecting" and "state of" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b) (1). Pub. L. 85-599 substituted "prepare for such employment of the Army" for "prepare such plans for the national security, for employment of the Army for that purpose, both separately and in conjunction with the naval and air forces".

§ 3033. Reserve components of Army; policies and regulations for government of.

(a) There is in the office of the Secretary of the Army an Army Reserve Forces Policy Committee which shall review and comment upon major policy matters directly affecting the reserve components of the Army, and the Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Chief of Staff and the Assistant Secretary responsible for reserve affairs.

(b) The Committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Army on duty with the Army General Staff;

(2) five members of the Army National Guard of the United States not on active duty; and

(3) five members of the Army Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matter affecting both the Army National Guard of the United States and Army Reserve are being considered. However, when any matter solely affecting one of the reserve components of the Army is being considered, it shall be acted upon only by the Subcommittee on Army National Guard Policy or the Subcommittee on Army Reserve Policy, as appropriate.

(e) The Subcommittee on Army National Guard Policy consists of the members of the Committee other than the Army Reserve members.

(f) The Subcommittee on Army Reserve Policy consists of the members of the Committee other than the Army National Guard members.

(g) Membership on the Committee is determined by the Secretary of the Army and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Army, the Secretary of the Army, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Army National Guard of the United States and the Army Reserve on duty with the Army General Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Army General Staff while on that duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 161; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(17), 72 Stat. 1565; Dec. 1, 1967, Pub. L. 90–168, § 2(18), 81 Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3033 (a)	10: 38 (1st par., less last 37 words).	June 3, 1916, ch. 134, § 5 (less last par.); June 4, 1920, ch. 227, subch. I, § 5 (1st 7 pars.); Sept 22, 1922, ch. 423, § 1; July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647; added June 15, 1933, ch. 87, § 2 (less last par.), 48 Stat. 153; June 3, 1938, ch. 319; July 14, 1939, ch. 269; June 28, 1950, ch. 383, § 401 (b), 64 Stat. 271.
3033 (b)	10: 38 (last 37 words of 1st par.).	
3033 (c)	10: 38 (1st sentence, less proviso of 2d par.).	
3033 (d)	10: 38 (proviso of 1st sentence of 2d par.).	
3033 (e)	10: 38 (2d sentence, and 3d sentence less proviso, of 2d par.).	
3033 (f)	10: 38 (proviso of 3d sentence, and last sentence, of 2d par.).	

In subsection (a), the words "the following subjects" are inserted for clarity.

In subsections (a) and (c), the words "of officers", after the word "committee", are inserted for clarity. The words "and of" are substituted for the words "to which shall be added".

In subsection (e), the words "For the purpose specified herein" are omitted as surplusage. The words "on that duty" are substituted for the words "so serving".

AMENDMENTS

1967—Pub. L. 90–168 redesignated former subsec. (e) as subsec. (h) and increased from six to eight the number of subsecs. in the section and in such subsecs. (a)–(h) restated with certain changes the existing relating to the Army Reserve Forces Policy Committee within the Office of the Secretary of the Army, reduced the membership of the Committee from 21 to 15, reduced the grade requirements so as to permit inclusion of colonels, and provided that the Committee review and comment upon all major policies affecting Army Reserve matters and that the Committee comments accompany any final submission to the Chief of Staff and Assistant Secretary responsible for Reserve Affairs.

1958—Subsec. (d). Pub. L. 85–861 substituted "affecting the organization, distribution, training, appointment, assignment, promotion, or discharge of members of the Army Reserve and those of either" for "affecting the Army Reserve and either".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Reserve Forces Policy Board, designation of two officers of Army National Guard of the United States and two Army Reserve officers as members, see section 175 (a) (6) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 175 of this title; title 37 section 204.

§ 3034. Chief of Staff: appointment; duties.

(a) The Chief of Staff shall be appointed by the President, by and with the advice and consent of the Senate, for a period of four years, from the general officers of the Army. He serves during the pleasure of the President. In time of war or national emergency, declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his regular or reserve grade, and is counted as one of the officers authorized to serve in a grade above lieutenant general under section 3066 of this title.

(c) Except as otherwise prescribed by law and subject to section 3012 (c) and (d) of this title, the Chief of Staff performs his duties under the direction of the Secretary of the Army, and is directly responsible to the Secretary for the efficiency of the Army, its preparedness for military operations, and plans therefor.

(d) The Chief of Staff shall—

(1) preside over the Army Staff;

(2) send the plans and recommendations of the Army Staff to the Secretary, and advise him with regard thereto;

(3) after approval of the plans or recommendations of the Army Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision over such of the members and organizations of the Army as the Secretary of the Army determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title;

(5) perform the duties described for him by sections 141 and 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162; Aug. 6, 1958, Pub. L. 85–599, § 4 (a), 72 Stat. 516; Sept. 7, 1962, Pub. L. 87–651, title I, § 114, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, § 401, 81 Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3034 (a)	10: 21b (1st sentence).	June 28, 1950, ch. 383, §§ 202, 204, 64 Stat. 266.
3034 (b)	10: 21b (less 1st sentence).	
3034 (c)	10: 21d (a) (1st 9 words); 10: 21d (b) (2d sentence); 10: 21d (c).	June 3, 1916, ch. 134, § 5 (last par.), added June 15, 1933, ch. 87, § 2 (last par.), 48 Stat. 154.
3034 (d)	10: 21d (a) (less 1st 9 words); 10: 21d (b) (less 2d sentence); 10: 38 (last par.).	

In subsection (a), the words "not for" are substituted for the words "no person shall serve as Chief of Staff for a term of".

In subsection (b), the words "so serving" are substituted for the words "holding office as such". The words

"regular or reserve" are substituted for the word "permanent", since there are no other "permanent" grades. The words "in the Army" are omitted as surplusage. The words "and shall take rank as prescribed by law" are omitted as covered by section 743 of this title. The words "He shall receive the compensation prescribed by law" are omitted as covered by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

In subsection (c), the provisions of 10: 21d relating to the direction of the Secretary of the Army over the Chief of Staff are combined. The words "and of subsection (c) of this section" and "state of" are omitted as surplusage.

In subsection (d), 10: 38 (last par.) is omitted as covered by 10: 21d (a). The words "by sections 1a—1g, 19, 21a—21h, 61–1, 81–1, 231a and 316–1 of this title and section 181–3 to 181–5 of Title 5" are omitted as covered by the words "other provisions of law".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–22 changed the requirement that the Chief of Staff be reappointed only with the advice and consent of the Senate by providing for his reappointment for a term of not more than four years by the President without such advice and consent in a time of war or national emergency as declared by the Congress.

1962—Subsec. (d). Pub. L. 87–651 substituted "under section 124 of this title" for "pursuant to section 202(j) of the National Security Act of 1947, as amended" in cl. (4).

1958—Subsec. (d) (4). Pub. L. 85–599 required the Chief of Staff to exercise supervision only as the Secretary of the Army determines and in a manner consistent with the full operational command vested in unified or specified combatant commanders.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 405 of Pub. L. 90–22 provided that: "The amendments made by this title [amending subsec. (a) of this section and sections 5081 (a), 5201 (a), and 8034 (a) of this title] shall take effect as of January 1, 1969."

CROSS REFERENCES

Armed Forces Policy Council, member of, see section 171 (a) (8) of this title.

Army National Guard division in Federal service, detail as chief and assistant chief of staff, see section 3542 of this title.

Army Staff as including Chief of Staff, see section 3031 of this title.

Chief of Naval Operations: appointment, term of office, powers, duties, see section 5081 of this title.

Chief of Staff to President, appointment, see section 3531 of this title.

Higher retired grade for service in special positions, see section 3962 of this title.

Personal money allowance, see section 414(a)(5) of Title 37, Pay and Allowances of the Uniformed Services.

President's appointing power, see Const. Art. 2, § 2, cl. 2.

Rank, see section 743 of this title.

§ 3035. Vice Chief of Staff, Deputy Chiefs of Staff, and Assistant Chiefs of Staff: succession to duties of Chief of Staff.

(a) The Vice Chief of Staff, the Deputy Chiefs of Staff, and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) If the Chief of Staff is absent or disabled or if that office is vacant, the officer who is highest on the following list and who is not absent or disabled shall, unless otherwise directed by the President, perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases:

(1) The Vice Chief of Staff.

(2) The Deputy Chiefs of Staff in order of seniority.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Army as the Chief of Staff, with the approval of the Secretary of the Army, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff. (Aug. 10, 1956, ch. 1041, 70A Stat. 162; Aug. 6, 1958, Pub. L. 85–599, § 6 (a), 72 Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3035 (a)	10: 21c (1st sentence).	June 28, 1950, ch. 383, § 203, 64 Stat. 266.
3035 (b)	10: 21c (less 1st sentence).	

In subsection (a), the words "of the Army" are omitted as surplusage.

In subsection (b), the words "If the Chief of Staff is absent or disabled or if that office is vacant" are substituted for 10: 21c (1st 18 words of last sentence). The words "the officer who is highest on the following list and" are inserted for clarity. The words "until his successor is appointed" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–599 added subsec. (c).

CROSS REFERENCES

Army Staff as including Vice Chief of Staff, Deputy Chiefs of Staff and Assistant Chiefs of Staff, see section 3031 of this title.

Assistant Chiefs of Naval Operations: detail, duties, see section 5087 of this title.

Deputy Chiefs of Naval Operations: detail, duties, see section 5086 of this title.

Vice Chief of Naval Operations: appointment, powers, duties, see section 5085 of this title.

§ 3036. Chiefs of branches: appointment; duties.

(a) There are in the Army the following officers:

(1) Chief of Engineers.

(2) Surgeon General.

(3) Judge Advocate General.

(4) Chief of Chaplains.

(b) Each officer named in subsection (a), except the Judge Advocate General, shall be appointed by the President, by and with the advice and consent of the Senate, from officers above the grade of major who—

(1) have shown by extensive duty in the branch concerned, or by similar duty, that they are qualified for the appointment; and

(2) have been recommended by a board under subsection (e).

If the officer holds a lower regular grade, he shall be appointed in the regular grade of major general. Each officer covered by the preceding sentence, except the Surgeon General, shall be appointed in the regular grade of major general. The Surgeon General, while so serving, has the grade of lieutenant general. The Judge Advocate General shall be appointed as prescribed in section 3037 of this title.

(c) An officer appointed under subsection (b) normally holds office for four years. However, the President may terminate or extend the appointment at any time.

(d) Each officer named in subsection (a) shall perform the duties prescribed by the Secretary and by law.

(e) For each office to be filled under subsection (b), the Secretary shall select a board of five general officers, including the incumbent, if any, of the office, and at least two officers, if available, in a

grade above major general who have had extensive service in the branch concerned. The Secretary shall give the board a list of the officers to be considered and shall specify the number of officers, not less than three, to be recommended. The list shall include—

(1) the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is colonel;

(2) the name of each officer whose regular grade is above colonel, who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment;

(3) to the extent that the Secretary determines advisable, the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is lieutenant colonel, in the order in which their names appear on the applicable promotion lists; and

(4) to the extent that the Secretary considers advisable, the name of each regular or reserve officer on active duty in a grade above lieutenant colonel who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment.

From these officers, the board shall recommend by name the number prescribed by the Secretary, and the President may appoint any officer so recommended. If the President declines to appoint any of the recommended officers, or if the officer nominated cannot be appointed because of advice by the Senate, the Secretary shall convene a board to recommend additional officers. An officer who is recommended but not appointed shall be considered not to have been recommended. This does not affect his eligibility for selection and recommendation for the grade of brigadier general or major general under section 3306 or 3307 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 163; Oct. 22, 1965, Pub. L. 89–288, § 1, 79 Stat. 1050; Nov. 2, 1966, Pub. L. 89–718, § 24, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3036 (a)	10: 21f (a).	June 28, 1950, ch. 383, § 206, 64 Stat. 267.
3036 (b)	10: 21f (b); 10: 181 (1st 17 words); 10: 559g (a) (less 3d and 5th sentences).	June 3, 1916, ch. 134, § 11. (1st 17 words); restated June 4, 1920, ch. 227, subch. I, § 11 (1st 17 words), 41 Stat. 768.
3036 (c)	10: 559g (a) (3d sentence).	Aug. 7, 1947, ch. 512, § 513 (a) (less 5th sentence), (b), 61 Stat. 901.
3036 (d)	10: 21f (c).	
3036 (e)	10: 559g (b).	

In subsection (b), all references to the appointment of assistant chiefs are omitted as covered by sections 3037 and 3040 of this title. All references to the grade of brigadier general are omitted, since 10: 21f (b) specifies the grade of major general for the offices. 10: 559g (a) (4th sentence) is omitted as surplusage, since the appointment is to a permanent grade. 10: 559g (a) (6th and 7th sentences) is omitted as executed. 10: 559g (a) (last sentence) is omitted, since the revised section applies only to the officers named in subsection (a). The words "except the Judge Advocate General" are inserted for clarity. The eight words before clause (1), and clauses (1) and (2), are substituted for the words "as prescribed in section 559g of this title", in 10: 21f (b), and 10: 559g (a) (1st sentence). The second sentence is substituted for 10: 559g (a) (2d sentence) and 10: 21f (b) (1st 15 words). The words "selected and", in 10: 21f (b), are omitted as surplusage. The words "arms, or services", in 10: 559g (a) are omitted as obsolete, since sections 3063 and 3064 of this title designate the former arms and services as "branches".

In subsection (c), the words "normally holds office" are substituted for the words "shall normally continue in that assignment for a tour of duty". The words "appointment" and "office" are substituted for the words "assignment" and "tour of duty" whenever they are used in that sense.

In subsection (e), the introductory clause is substituted for 10: 559g (b) (words before colon of 1st sentence). The words "in a grade above major general" are substituted for the words "of a rank above that of the position for which selections are to be made", since all the positions are in the grade of major general. The word "select" is substituted for the word "appoint", since the filling of the offices is not appointment to an office in the constitutional sense. The word "extensive" is substituted for the word "extended", except where it refers to "extended" active duty, in which case the word "extended" is omitted as surplusage. The words "the name of" are inserted for clarity. The words "appointed in, or assigned to" are substituted for the words "of the", and "in the", before the words "that branch" to conform to sections 3063 and 3064 of this title. The word "regular" is substituted for the word "permanent". The words "each regular or reserve officer" are substituted for the words "of officers of any component of the Army of the United States". The words "these officers" are substituted for the words "among those recommended by such board". The words "This does not affect" are substituted for the words "but this shall in no way prejudice". The words "to be filled", "by it", "other", "which number shall", "to be considered", "and may in addition thereto and", and "in the position concerned" are omitted as surplusage.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 struck out clauses (2) through (8), naming the Chief Signal Officer, Adjutant General, Quartermaster General, Chief of Finance, Chief of Ordnance, Chief Chemical Officer, and Chief of Transportation respectively, and redesignated clauses (9)—(11) as (2)—(4) respectively.

1965—Subsec. (b). Pub. L. 89–288 provided the Surgeon General, while so serving, with the grade of lieutenant general.

CHIEF OF ENGINEERS; WORK OR SERVICES FOR OTHER FEDERAL DEPARTMENTS AND AGENCIES

Pub. L. 89–298, title II, § 219, Oct. 27, 1965, 79 Stat. 1089, provided that: "The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to accept orders from other Federal departments and agencies for work or services and to perform all or any part of such work or services by contract."

CROSS REFERENCES

Army Staff as including chiefs of branches, see section 3031 of this title.

Basic branches, see section 3063 of this title.

Bureaus, Navy, see section 5131 et seq. of this title.

Chief of Medical Service Corps, see section 3068 of this title.

Chief of Ordnance; tests of iron, steel and other materials, see section 4508 of this title.

Deputy and assistant chiefs of branches, see section 3040 of this title.

President's appointing power, see Const. Art. 2, § 2, cl. 2.

Provisions respecting promotion to brigadier general or major general inapplicable to appointments of chiefs of branches, see sections 3306, 3307 of this title.

Special branches, see section 3064 of this title.

Strength in grade; temporary increases, see section 3212 of this title.

DEPARTMENT OF DEFENSE REORGANIZATION ORDER

January 10, 1962

REORGANIZATION OF THE DEPARTMENT OF THE ARMY

By virtue of the authority vested in me by section 202(c) of the National Security Act of 1947, as amended (72 Stat.

514; 5 U.S.C. 171a(c)), and as Secretary of Defense, it is hereby ordered as follows:

SECTION 1. *Abolition of officers and transfer of functions.* The following officers named in section 3036, Title 10, United States Code, are hereby abolished and their functions transferred to the Secretary of the Army:

(a) Chief Signal Officer;
(b) Adjutant General;
(c) Quartermaster General;
(d) Chief of Finance;
(e) Chief of Ordnance;
(f) Chief Chemical Officer, and
(g) Chief of Transportation.

SEC. 2. *Transfer of functions from Chief of Engineers.* The functions vested in the Chief of Engineers by sections 3038 and 3533, Title 10, United States Code, are hereby transferred to the Secretary of the Army.

SEC. 3. *Performance of transferred functions.* The Secretary of the Army may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any office, agency, or employee of the Department of the Army of any function transferred to the Secretary by the provisions of this order.

SEC. 4. *Transitional provisions.* In order to assist in the orderly transfer of functions and to promote continuity of operation, the Secretary of the Army may, if he considers it necessary, delay beyond the effective date of this order the abolition of any office or transfer of any function.

SEC. 5. *Effective date.* The provisions of this order shall take effect on the date determined under section 202(c) of the National Security Act of 1947, as amended (72 Stat. 514; 5 U.S.C. 171a(c)), or the 16th day of February 1962, whichever is later.

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3031, 3040, 3212 of this title.

§ 3037. Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties.

(a) The President, by and with the advice and consent of the Senate, shall appoint the Judge Advocate General, the Assistant Judge Advocate General, and general officers of the Judge Advocate General's Corps, from officers of the Judge Advocate General's Corps, who are recommended by the Secretary of the Army. An officer appointed as the Judge Advocate General or Assistant Judge Advocate General normally holds office for four years. However, the President may terminate or extend the appointment at any time. If an officer who is so appointed holds a lower regular grade, he shall be appointed in the regular grade of major general.

(b) The Judge Advocate General shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General, in addition to other duties prescribed by law—

(1) is the legal adviser of the Secretary of the Army and of all officers and agencies of the Department of the Army;

(2) shall direct the members of the Judge Advocate General's Corps in the performance of their duties; and

(3) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 164; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (18), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3037 (a)	10: 21h (c); 10: 61a.	June 28, 1950, ch. 383, § 208 (c), 64 Stat. 267.
3037 (b)	50: 741.	June 24, 1948, ch. 625, §§ 248, 249, 62 Stat. 643.
3037 (c)	10: 62; 10: 62a; 10: 63.	May 5, 1950, ch. 169, § 13, 64 Stat. 147. R. S. 1199. June 23, 1874, ch. 458, § 2, 18 Stat. 244. R. S. 1201.

In subsection (a), the words "Notwithstanding any other provision of law" and "for such positions" are omitted as surplusage. The last sentence is substituted for 10: 61a (last sentence). 10: 21h (c) is omitted as covered by 10: 61a.

In subsection (b), the words "Hereafter" and "exclusive of the present incumbents" are omitted as surplusage.

In subsection (c), the words "In addition to duties elsewhere prescribed for him by law", in 10: 62, are omitted as surplusage. The words "and perform such other duties as may be prescribed by the Secretary of the Army", in 10: 62, are omitted as superseded by sections 3012 (e) and 3036 (d) of this title. Clause (2) is substituted for 10: 62a (words after semicolon) and 63. The Act of June 23, 1874, ch. 458, § 2 (words before semicolon of 1st sentence, and last sentence, 18 Stat. 244), are not contained in 10: 62. They are also omitted from the revised section as superseded by sections 3037 (a) and 3211 of this title.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 provided that the Judge Advocate General or Assistant Judge Advocate General shall normally hold office for four years, and empowered the President to terminate or extend the appointment at any time.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Air Force, appointment and duties of Judge Advocate General, see section 8072 of this title.

Commissioned officers, Regular Army: original appointment; additional qualifications; grade, see section 3292 of this title.

Judge Advocate General's Corps, see sections 3064, 3072 of this title.

Navy—

Appointment, term, emoluments and duties of Judge Advocate General, see section 5148 of this title.

Detail as Assistant Judge Advocate General; pay, succession to duties, see section 5149 of this title.

President's appointing power, see Const. Art. 2, § 2, cl. 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3036, 3040 of this title.

§ 3038. Repealed. Pub. L. 89–718, § 25(a), Nov. 2, 1966, 80 Stat. 1119.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 164, charged the Chief of Engineers with the responsibility for Army construction, real estate acquisition and management, and the operation of water, gas, electric, and sewer utilities.

§ 3039. Inspector General; Provost Marshal General.

(a) There is an Inspector General in the Army. When directed by the Secretary of the Army or the Chief of Staff, the Inspector General shall inquire into and report upon the discipline, efficiency, and economy of the Army, and shall perform any other

duties prescribed by the Secretary, by the Chief of Staff, or by law.

(b) There is a Provost Marshal General in the Army. The Provost Marshal General shall perform the duties prescribed by the Secretary, by the Chief of Staff, or by law.

(c) The position of Inspector General and that of Provost Marshal General shall each be filled by the detail of a general officer of the Army for a tour of duty of not more than four years. However, the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest. (Aug. 10, 1956, ch. 1041, 70A Stat. 164.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3039 (a)	10: 21g (a) (1st 9 words); 10: 21g (b).	June 28, 1950, ch. 383, § 207, 64 Stat. 267.
3039 (b)	10: 21g (a) (10th through 14th words); 10: 21g (c).	
3039 (c)	10: 21g (a) (less 1st 14 words).	

In subsection (a), the words "matters which pertain to", in 10: 21g (b), are omitted as surplusage.

In subsections (a) and (b), the word "required" is omitted as surplusage.

In subsection (c), the first 25 words are substituted for the words "who shall be general officers of the Army detailed to those positions". The words "However, the Secretary may extend" are substituted for the words "except that * * * may be extended * * * by the Secretary of the Army". The words "beyond four years" are omitted as surplusage.

CROSS REFERENCES

Army Staff as including Inspector General and Provost Marshal General, see section 3031 of this title.

Deputy and assistant chiefs of branches, see section 3040 of this title.

Detail of commissioned officers of Army as inspectors general, see section 3065 of this title.

Naval Inspector General, see section 5088 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3031, 3040 of this title.

§ 3040. Deputy and assistant chiefs of branches.

(a) Each officer named in sections 3036 and 3039 of this title shall have, in addition to the assistants prescribed by subsections (b) and (c) and by section 3037 of this title, such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary similar to that prescribed in section 3036 of this title.

(b) There is an Assistant Surgeon General appointed from the officers of the Dental Corps, as prescribed in section 3036 of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(c) There are two assistants to the Chief of Engineers appointed as prescribed in section 3036 of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general. (Aug. 10, 1956, ch. 1041, 70A Stat. 165.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3040 (a)	10: 21h (a).	June 28, 1950, ch. 383, § 208 (less (c)), 64 Stat. 268.
3040 (b)	10: 21h (b).	
3040 (c)	10: 181 (18th through 25th words); 10: 181a (14th through 30th words).	June 3, 1916, ch. 134, § 11 (18th through 25th words); restated June 4, 1920, ch. 227, subch. I, § 11 (18th through 25th words), 41 Stat. 768. June 26, 1936, ch. 839 (16th through 31st words), 49 Stat. 1974.

In subsection (a), the words "in addition to the assistants prescribed by subsections (b) and (c) and section 3037 of this title" are substituted for the words "Except as prescribed in subsections (b) and (c) of this section". The words "selected and", "which procedure shall be", and 10: 21h (a) (last 21 words) are omitted as surplusage.

In subsection (b), the words "appointed from the officers of the Dental Corps" are substituted for the words "who shall be an officer of the Dental Corps, and who shall be selected and appointed". The last sentence is substituted for the words "with the rank of major general".

Subsection (c) is based on section 11 of the National Defense Act, as amended by the Act of June 26, 1936, ch. 839, 49 Stat. 1974 (10: 181 and 181a), which provides for two assistants to the Chief of Engineers with the rank of brigadier general, and as impliedly amended by section 513 (a) and 513 (b) of the Officer Personnel Act of 1947 (10: 559g), which provides the method of selection of assistant chiefs of branches, and prescribes that assistant chiefs be promoted to the grade held as such in the Regular Army if they hold a lower grade in the Regular Army. Section 404 (f) of the Army Organization Act of 1950, 64 Stat. 274, exempts these two positions from the operation of section 208 (a) of that act (10: 21h (a)).

CROSS REFERENCES

Army Staff as including deputy and assistant chiefs of branches, see section 3031 of this title.

Bureaus, Navy, see section 5131 et seq. of this title.

Provisions respecting promotion to brigadier general or major general inapplicable to appointments of assistant chiefs of branches, see sections 3306, 3307 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3031 of this title.

Chapter 307.—THE ARMY

Sec.
3061. Regulations.
3062. Policy; composition; organized peace establishment.
3063. Basic branches.
3064. Special branches.
3065. Assignment and detail: officers assigned or detailed to basic and special branches.
3066. Generals and lieutenant generals.
3067. Army Medical Department.
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3074. Commands: territorial organization; engineer tactical units.
3075. Regular Army: composition.
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3078. Army National Guard: when a component of Army.
3079. Army National Guard of United States: status when not in Federal service.
3080. Army National Guard of the United States: authority of officers with respect to Federal status.

AMENDMENTS

1968—Pub. L. 90-329, June 4, 1968, 82 Stat. 170, substituted "Army Medical Department" for "Army Medical Service" in item 3067.

1967—Pub. L. 90-130, § 1(8)(D), Nov. 8, 1967, 81 Stat. 375, substituted "composition; chief and assistant chief" for "Chief" in item 3069.

1960—Pub. L. 86-603, § 1(2)(B), July 7, 1960, 74 Stat. 357, added item 3080.

1957—Pub. L. 85-155, title I, § 101 (3), Aug. 21, 1957, 71 Stat. 376, substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in item 3070.

§ 3061. Regulations.

The President may prescribe regulations for the government of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 165.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3061	10: 16.	July 15, 1870, ch. 294, § 20, 16 Stat. 319; Mar. 1, 1875, ch. 115, 18 Stat. 337.

The word "prescribe" is substituted for the words "make and publish". 10: 16 (last 35 words) is omitted as surplusage.

CROSS REFERENCES

General regulatory powers of President, see section 121 of this title.

§ 3062. Policy; composition; organized peace establishment.

(a) It is the intent of Congress to provide an Army that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) In general, the Army, within the Department of the Army, includes land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It is responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.

(c) The Army consists of—

(1) The Regular Army, the Army National Guard of the United States, the Army National Guard while in the service of the United States and the Army Reserve; and

(2) all persons appointed or enlisted in, or conscripted into, the Army without component.

(d) The organized peace establishment of the Army consists of all—

(1) military organizations of the Army with their installations and supporting and auxiliary elements, including combat, training, administrative, and logistic elements; and

(2) members of the Army, including those not assigned to units;

necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency. (Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3062 (a)	10: 20.	July 10, 1950, ch. 454, § 2, § 101, 64 Stat. 321.
3062 (b)	5: 181-1 (e).	July 26, 1947, ch. 343, § 205 (e), 61 Stat. 501.
3062 (c)	10: 1b.	June 28, 1950, ch. 383, § 301, 64 Stat. 268; July 9, 1952, ch. 608, § 807 (b), 66 Stat. 508.
3062 (d)	10: 20i; 50: 1021.	July 9, 1952, ch. 608, § 301, 66 Stat. 498.

In subsection (a), 10: 20 (1st 19 words) is omitted as surplusage. The word "Commonwealth" is inserted to reflect the present status of Puerto Rico. The words "any areas occupied by the United States" are substituted for the words "occupied areas wherever located".

In subsection (c), the words "consists of" are substituted for the word "includes".

In subsection (c) (1), the words "the Army National Guard while in the service of the United States" are substituted for the words "all persons serving in the Army under call * * * under any provision of law, including members of the National Guard of the several States, Territories, and the District of Columbia when in the service of the United States pursuant to call as provided by law". 10: 1b (words between 1st and 3d semicolons) and 50: 1021 (last sentence) are omitted, since the components listed include their members.

In subsection (c) (2), the words "or inducted" are omitted as covered by the word "conscripted".

In subsection (d), 10: 20i (8th through 38th words) is omitted as surplusage. The words "consists of all" are substituted for the words "shall include all of". The words "members of the Army" are substituted for the word "personnel".

CROSS REFERENCES

Training, see section 4301 et seq. of this title.

Transfer, reassignment, consolidation or abolition of functions, powers and duties, see section 125 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

§ 3063. Basic branches.

(a) The Secretary of the Army may assign members of the Army to its basic branches. The basic branches are—

(1) Infantry;

(2) Armor;

(3) Artillery;

(4) Corps of Engineers;

(5) Signal Corps;

(6) Adjutant General's Corps;

(7) Quartermaster Corps;

(8) Finance Corps;

(9) Ordnance Corps;

(10) Chemical Corps;

(11) Transportation Corps;

(12) Military Police Corps; and

(13) such other basic branches as the Secretary considers necessary.

(b) The Secretary may discontinue or consolidate basic branches of the Army for the duration of any war, or of any national emergency declared by Congress.

(c) The Secretary may not assign to a basic branch any commissioned officer appointed in a special branch. (Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
0363 (a)	10: 1g (a) (less words of 1st sentence after semicolon, and less last sentence).	June 28, 1950, ch. 383, § 306 (a), 64 Stat. 269.
3063 (b)	10: 1g (a) (last sentence).	
3063 (c)	10: 1g (a) (words of 1st sentence after semicolon).	

In subsection (a), the words "The basic branches are" are substituted for the words "There shall be in the Army certain branches, which shall be known as basic branches of the Army" and "The basic branches of the Army shall be".

In subsection (b), the words "enumerated in this subsection" are omitted as surplusage. The word "hereafter" is omitted, since all wars and emergencies declared by Congress before June 29, 1950, have been terminated.

In subsection (c), the words "and commissioned" are omitted as covered by the word "appointed". The words "specified in subsection (b) of this section" are omitted as surplusage. The word "commissioned" is inserted before the word "officer", for clarity.

PHILIPPINE SCOUTS

Section 42 of act Aug. 10, 1956, provided that: "The President is authorized to form the Philippine Scouts into such branches and tactical units as he may deem expedient, within the limit of strength prescribed by law, organized similarly to those of the Regular Army."

CROSS REFERENCES

Chiefs of branches: appointment; duties, see section 3036 of this title.

Engineer tactical units, see section 3074 of this title.

Provost Marshal General, see section 3039 of this title.

§ 3064. Special branches.

(a) The special branches of the Army consist of commissioned officers of the Regular Army appointed therein, other members of the Army assigned thereto by the Secretary of the Army, and the sections prescribed in this chapter. The special branches are—

(1) each corps of the Army Medical Department;

(2) the Judge Advocate General's Corps; and

(3) the Chaplains.

(b) The Secretary may not assign any officer of the Regular Army to a special branch. (Aug. 10, 1956, ch. 1041, 70A Stat. 167; June 4, 1968, Pub. L. 90–329, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3064 (a)	10: 1g (b) (less words of 1st sentence after semicolon).	June 28, 1950, ch. 383, § 306 (b), 64 Stat. 269.
3064 (b)	10: 1g (b) (words of 1st sentence after semicolon).	

In subsection (a), the words "The special branches of the Army" are substituted for the words "There shall be in the Army certain branches, which shall be known as special branches, and which shall". The words "authorized by sections 61–1, 81–1, and 231a of this title" are omitted as surplusage. The words "and the sections prescribed in this chapter" are inserted, since some of the corps of the Army Medical Service consist of members and sections. Clauses (1), (2), and (3) are substituted for 10: 1g (b) (last sentence).

In subsection (b), the words "who has been appointed and commissioned in some other special branch, or * * * without specification of branch" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (a)(1). Pub. L. 90–329 redesignated the "Army Medical Service" as the "Army Medical Department".

CROSS REFERENCES

Chief of Chaplains: appointment; duties, see section 3036 of this title.

Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties, see section 3037 of this title.

§ 3065. Assignment and detail: officers assigned or detailed to basic and special branches.

(a) Commissioned officers of the Army may be detailed as general staff officers and as inspectors general.

(b) Members of the Army may be detailed to duty in particular fields specified by the Secretary, including intelligence, counter-intelligence, and military government.

(c) Members of the Army appointed in or assigned to one branch may be detailed for duty with any other branch.

(d) Members of the Army while not on active duty may be assigned to any basic or special branch, or to such other branches or groups, and to such organizations, as the Secretary considers appropriate.

(e) No officer of the Army may be assigned to perform technical, scientific, or other professional duties unless he is qualified to perform those duties and meets professional qualifications at least as strict as those in effect on June 28, 1950. If the duties to which an officer is assigned involve professional work that is the same as or is similar to that usually performed in civil life by a member of a learned profession, such as engineering, law, medicine, or theology, the officer must have the qualifications, by education, training, or experience, equal to or similar to those usually required of members of that profession, unless the exigencies of the situation prevent. (Aug. 10, 1956, ch. 1041, 70A Stat. 167.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3065 (a)	10: 1g (c) (1st 27 words).	June 28, 1950, ch. 383, § 306 (less (a) and (b)), § 404 (e), 64 Stat. 269, 274.
3065 (b)	10: 1g (c) (less 1st 27 words).	
3065 (c)	10: 1g (d).	
3065 (d)	10: 1g (e).	
3065 (e)	10: 1g (f) (Uncodified: June 28, 1950, ch. 383, § 404 (e), 64 Stat. 274).	

In subsections (a) and (c)—(e), the words "Under such regulations as the Secretary of the Army may prescribe" and "under [Under] regulations prescribed by the Secretary of the Army" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (b), the word "specified" is substituted for the words "designated from time to time", in 10: 1g (c). The words "but not limited to", in 10: 1g (c), are omitted as surplusage.

In subsection (d), the words "basic or special branch" are substituted for the words "branches of the Army provided for in this section". The word "considers" is substituted for the words "may deem to be".

In subsection (e), the words "No officer * * * may be * * * unless he is" are substituted for the words "officers of the Army * * * shall * * * possess". The last

16 words of the first sentence are substituted for the Act of June 28, 1950, ch. 383, Title IV, § 404 (e), 64 Stat. 274. The last sentence is substituted for 10: 1g (f) (1st 9 words).

CROSS REFERENCES

Army Staff, assignment or detail of members of Army, see section 3031 (a) (6) of this title.

Commissioned officers in Regular Army, transfer between branches, see section 3283 of this title.

Reserve Forces Policy Board, designation of officer of Regular Army as member, see section 175 (a) (3) of this title.

Secretary of the Army, authority to assign, detail, and prescribe duties of members of the Army, see section 3012 (e) of this title.

§ 3066. Generals and lieutenant generals.

(a) The President may designate positions of importance and responsibility to carry the grade of general or lieutenant general. He may assign to those positions officers of the Army on active duty in any grade above brigadier general. While he holds one of those positions an officer has the grade specified for the position if appointed thereto by and with the advice and consent of the Senate.

(b) The number of positions designated under subsection (a) may not be more than 15 percent of the number of general officers on active duty. Not more than 25 percent of those positions may be designated as positions to be held by officers in the grade of general.

(c) General officers on the active list of the Regular Army who are specifically authorized by law to hold any civil office under the United States, or any instrumentality thereof, are in addition to the numbers authorized by this section.

(d) Appointment to the grade of general or lieutenant general under subsection (a) does not vacate the regular or reserve grade held by the officer. When his appointment under that subsection terminates, he is entitled to resume any other grade that he may then be entitled to hold. (Aug. 10, 1956, ch. 1041, 70A Stat. 167; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (19), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3066 (a)	10: 506b (b) (less 37 words before 1st proviso, and less last three provisos).	Aug. 7, 1947, ch. 512, § 504 (b) (less 3d proviso), 61 Stat. 886.
3066 (b)	10: 506b (b) (2d proviso).	
3066 (c)	10: 506b (b) (last proviso).	
3066 (d)	10: 506b (b) (37 words before 1st proviso).	

In subsection (a), the word "may" is substituted for the words "is authorized, from time to time, to". The word "grade" is substituted for the word "rank". The words "officers of the Army on active duty in any grade above brigadier general" are substituted for the words "any of the general officers holding office in the grade of major general or higher grade, under permanent or temporary appointments (including general officers of the Army of the United States and general officers of each of the components thereof who may be serving on active Federal duty)". The last sentence is substituted for the words "and such officers so designated and assigned, shall have the rank, title, pay and allowances of a general or lieutenant general, as the case may be, while so serving", and for 10: 506b (b) (1st proviso).

In subsection (c), the words "are in addition to the numbers authorized by this section" are substituted for 10: 506b (b) (1st 24 words of last proviso). The words "by law to hold any civil office under the United States" are substituted for the words "by Acts of Congress to hold appointments in the Diplomatic or Consular Service of the Government or to hold any civil office under the Government".

Subsection (d) is substituted for 10: 506b (b) (37 words before 1st proviso).

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 eliminated words "in the Army" following "importance and responsibility".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Chief of Staff as general, see section 3034 of this title.

Chief of Staff to President as general, see section 3531 of this title.

Higher retired grade for service in special positions, see section 3962 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3034, 3962 of this title.

§ 3067. Army Medical Department.

There is an Army Medical Department in the Army. The Army Medical Department consists of—

(1) the Surgeon General;
(2) the Assistant Surgeons General;
(3) the Medical Corps;
(4) the Dental Corps;
(5) the Veterinary Corps;
(6) the Medical Service Corps;
(7) the Army Nurse Corps; and
(8) the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Sept. 2, 1958, Pub. L. 85-861, § 1 (60), 72 Stat. 1462; June 4, 1968, Pub. L. 90-329, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3067	10: 81-1 (less last sentence).	June 28, 1950, ch. 383, § 307 (less last sentence), 64 Stat. 270.

The words "authorized by sections 21f and 21h, respectively, of this title" are omitted as surplusage. 10: 81-1 (2d sentence) is omitted as covered by section 3064 of this title.

AMENDMENTS

1968—Pub. L. 90-329 redesignated the "Army Medical Service" as the "Army Medical Department".

1958—Pub. L. 85-861 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in cl. (8).

CROSS REFERENCES

Officers: female; limitations on appointment, see section 3311 of this title.

Surgeon General, appointment and duties, see section 3036 of this title.

§ 3068. Medical Service Corps: organization; Chief and assistant chiefs.

There is a Medical Service Corps in the Army. The Medical Service Corps consists of—

(1) the Chief of the Medical Service Corps, who shall be appointed by the Secretary of the Army from among the officers of the Medical Service Corps whose regular grade is above captain;

(2) the assistant chiefs of the Medical Service Corps, who shall be designated by the Surgeon General from officers in that Corps and who shall

be his consultants on activities relating to their sections;

(3) commissioned officers of the Regular Army appointed therein;

(4) other members of the Army assigned thereto by the Secretary of the Army; and

(5) the following sections—

(a) the Pharmacy, Supply, and Administration Section;

(b) the Medical Allied Sciences Section;

(c) the Sanitary Engineering Section;

(d) the Optometry Section; and

(e) other sections considered necessary by the Secretary of the Army.

(Added Pub. L. 89–603, § 1(1), Sept. 24, 1966, 80 Stat. 846.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3068 (a)	10: 81–1 (last sentence, less 5th through 14th words); 10: 156a (less 2d sentence).	June 28, 1950, ch. 383, § 307 (last sentence, less 5th through 14th words), 64 Stat. 270.
3068 (b)	10: 156b.	Aug. 4, 1947, ch. 459, §§ 101 (less 2d sentence), 102 (a), (b), 61 Stat. 734, 735; Mar. 23, 1954, ch. 103, 68 Stat. 30.
3068 (c)	10: 156d.	

In subsection (a), 10: 156a (1st 20 words) is omitted as superseded by section 3067 of this title, which establishes the Medical Service Corps in the Army Medical Service. 10: 156a (last 16 words of 1st sentence) is omitted as superseded by section 3012 (e) of this title, which authorizes the Secretary of the Army to prescribe the duties of members of the Army. 10: 81–1 (last sentence, less 5th through 14th words) is omitted as surplusage.

In subsection (b), the words "of the Regular Army in that corps whose regular grade is above captain" are substituted for the words "commissioned in the Medical Service Corps, Regular Army, in the permanent grade of major or above". The words "If he holds a lower regular grade" are substituted for the words "if commissioned in permanent grade below colonel". The words "is entitled" are substituted for the words "shall * * * have". The words "ranks above" are substituted for the words "shall be superior in rank".

In subsection (c), the words "is the Surgeon General's consultant" are substituted for the words "who shall be consultants to him".

CODIFICATION

A prior section 3068, acts Aug. 10, 1956, h. 1041, 70A Stat. 168; Sept. 7, 1962, Pub. L. 87–649, § 6(a)(1), 76 Stat. 494, which contained substantially the same provisions as the present section but placed the upper limit for the rank of officers of the Medical Service Corps at colonel, was stricken by Pub. L. 89–603.

CROSS REFERENCES

Active duty in retired grade of officer who served four years as Chief of Medical Service Corps, see section 3504 of this title.

Chiefs of branches generally, see section 3036 of this title.

Commissioned officers, Regular Army: original appointment; additional qualifications; grade, see section 3290 of this title.

Deputy and assistant chiefs of branches, see section 3040 of this title.

Officers; female; limitations on appointment, see section 3311 of this title.

§ 3069. Army Nurse Corps: composition; Chief and assistant chief; appointment.

(a) The Army Nurse Corps consists of the Chief and assistant chief of that corps and other officers in grades prescribed by the Secretary of the Army.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above major and who are recommended by the Surgeon General. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed.

(c) The Surgeon General shall appoint the assistant chief from the officers of the Regular Army in that corps whose regular grade is above major. The assistant chief serves during the pleasure of the Surgeon General, but not for more than four years and may not be reappointed to the same position.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(1), 71 Stat. 375; Sept. 7, 1962, Pub. L. 87–649, § 6(b)(1), 76 Stat. 494; Sept. 30, 1966, Pub. L. 89–609, § 1(1), 80 Stat. 852; Nov. 8, 1967, Pub. L. 90–130, § 1(8)(A), 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3069	10: 81–1 (5th through 8th words of last sentence). 10: 166 (a) (words of last sentence before proviso); 10: 166 (b).	June 28, 1950, ch. 383, § 307 (5th through 8th words of last sentence), 64 Stat. 270. Apr. 16, 1947, ch. 38 §§ 101 (a) (words of last sentence before proviso), 101 (b), 61 Stat. 41.

The words "officers of the Regular Army in that corps" are substituted for the words "officers permanently commissioned in such Army Nurse Corps". The words "but not for more than" are substituted for the words "for a term not to exceed", in 10: 166 (a). The words "vacating her regular grade" are substituted for the words "vacation of her permanent grade".

AMENDMENTS

1967—Pub. L. 90–130 divided existing provisions into subsecs. (a), (b), and (c), made minor changes in phraseology, added provision for the appointment and service of an assistant chief, removed limitation restricting membership in the Corps to grades of second lieutenant through colonel, and struck out provision entitling the Chief to the temporary grade of colonel while serving as Chief.

1966—Pub. L. 89–609 combined the third and fourth sentences, substituting ", and" for the period at the end of the third sentence and the introductory word "She" to the fourth sentence, and substituted "the regular grade held, the Chief" for "her regular grade, she" in the fifth sentence.

1962—Pub. L. 87–649 eliminated provisions which authorized the pay and allowances of a colonel for the Chief of the Army Nurse Corps.

1957—Pub. L. 85–155 substituted "second lieutenant through colonel" for "second lieutenant through lieutenant colonel", "major" for "captain", and "entitled to the temporary grade and the pay and allowances of a colonel while so serving and ranks above all other colonels in that corps" for "entitled to the rank, pay and allowances of a colonel so serving."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SHORT TITLE

Congress, in enacting amendments to sections 3069, 3070, 3206, 3207, 3288, 3291, 3296–3299, 3304, 3305, 3888, 3915, 3916, 3927 and 3991 of this title, provided by section 105 of Pub. L. 85–155, that such amendments should be popularly known as the "Army Nurse and Medical Specialist Act of 1957".

SAVINGS PROVISIONS

Section 104 of Pub. L. 85–155 provided that:

"(a) This Act [amending sections 3069, 3070, 3206, 3207, 3288, 3291, 3296—3299, 3304, 3305, 3888, 3915, 3916, 3927,

3991, 5140, 5444, 5449, 5702, 5707, 5708, 5753, 5762, 5773, 5775, 5776, 5782, 6377—6379, 6381, 6388, 6395, 6396, 8206, 8207, 8212, 8285—8288, 8297, 8298—8301, 8303, 8305, 8888, 8915, 8927 and 8991 of this title, and repealing sections 3881, 3882, 3887, 3912, 3928, 8291, 8304, 8881, 8882, 8887, 8912 and 8928 of this title] does not affect the appointment of an officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, on the active list on the effective date of this Act [Aug. 21, 1957].

"(b) This Act does not affect the retired status or retired pay of a person retired under section 108, Army-Navy Nurses Act of 1947, as amended, or any other law.

"(c) An officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, on the active list on the effective date of this Act [Aug. 21, 1957] does not lose any years of service creditable to her on that date for promotion, computation of basic pay, or other purposes, by the enactment of this Act.

"(d) Notwithstanding any other provision of law, an officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, who is on a recommended list for promotion to a higher regular grade on the effective date of this Act [Aug. 21, 1957] may, if nominated by the President and confirmed by the Senate, be promoted to that grade.

"(e) Notwithstanding any other provision of law, an officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, who, on the effective date of this Act [Aug. 21, 1957], has been nominated by the President and confirmed by the Senate for appointment to any regular grade, may be appointed in that grade."

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OR TRANSFER FROM ACTIVE STATUS

Section 4(a) of Pub. L. 90–130 provided that: "For five years following the effective date of this Act [Nov. 8, 1967], the Secretary of the Army may suspend the operation of any provision of law pertaining to the mandatory retirement, discharge, separation, or transfer from an active status on an officer of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps."

AUTHORITY OF MILITARY DEPARTMENT SECRETARIES TO CONVENE BOARDS TO RECOMMEND DEFERMENT OF RETIREMENT OR SEPARATION OF NURSES

Section 4(f) of Pub. L. 90–130, Nov. 8, 1967, 81 Stat. 384, provided that: "Until July 1, 1972, when the needs of the service require, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force may convene annually boards of officers to consider officers of the Army Nurse Corps, officers of the Navy Nurse Corps, or Air Force nurses, respectively, who otherwise would be required to be retired or separated under this Act within the calendar or fiscal year in which the board is convened. Upon the recommendation of such a board, the Secretary concerned may defer the separation or retirement of such an officer for a term of not more than five years, unless recommended for further deferment by a subsequent board of officers, and in any case not beyond the month following her attaining age sixty or July 1, 1976, whichever may be earlier. Officers whose separation or retirement is so deferred shall be additional to the numbers of officers authorized by sections 3203, 3211, 8202, and 8211, title 10, United States Code."

CROSS REFERENCES

Active duty in retired grade of officer who served certain time as Chief of Army Nurse Corps, see section 3504 of this title.

Chiefs of branches, generally, see section 3036 of this title.

Commissioned officers, Regular Army: original appointment; additional qualifications; grade, see section 3291 of this title.

Deputy and assistant chiefs of branches, see section 3040 of this title.

Higher retired grade for service as Chief of Army Nurse Corps, see section 3962 of this title.

Officers: female; limitations on appointment, see section 3311 of this title.

§ 3070. Army Medical Specialist Corps: organization; Chief and assistant chiefs.

(a) The Army Medical Specialist Corps consists of the Chief and assistant chiefs of that corps, other officers in grades prescribed by the Secretary of the Army, and the following sections—

(1) the Dietitian Section;

(2) the Physical Therapist Section; and

(3) the Occupational Therapist Section.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above captain and who are recommended by the Surgeon General. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed.

(c) The Surgeon General shall appoint three assistant chiefs from officers of the Regular Army in that corps whose regular grade is above captain. Each assistant chief is the chief of a section of that corps. An assistant chief serves during the pleasure of the Surgeon General, but not for more than four years, and may not be reappointed to the same position. (Aug. 10, 1956, ch. 1041, 70A Stat. 169; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(2), 71 Stat. 375; Sept. 7, 1962, Pub. L. 87–649, § 6(b) (2), (3), 76 Stat. 494; Sept. 30, 1966, Pub. L. 89–609, § 1 (2), (3), 80 Stat. 852; Nov. 8, 1967, Pub. L. 90–130, § 1(8)(B), 81 Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3070 (a)	10: 81–1 (9th through 14th words of last sentence); 10: 166a (a) (less 2d sentence; and less last sentence, as applicable to strength).	June 28, 1950, ch. 383, § 307 (9th through 14th words of last sentence), 64 Stat. 270. Apr. 16, 1947, ch. 38, §§ 102 (a) (less 2d sentence; and less last sentence, as applicable to strength), 102 (b), 61 Stat. 42.
3070 (b)	10: 166a (b).	

In subsection (a), 10: 166a (a) (1st 20 words of 1st sentence) is omitted as superseded by section 3067 of this title, which establishes the Women's Medical Specialist Corps in the Army Medical Service. 10: 166a (a) (last 16 words of 1st sentence) is omitted as superseded by section 3012 (e) of this title, which authorizes the Secretary of the Army to prescribe the duties of members of the Army.

In subsection (b), the words "officers of the Regular Army in that corps" are substituted for the words "officers permanently commissioned in such Women's Medical Specialist Corps". The words "vacating her regular grade" are substituted for the words "vacation of her permanent grade".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 removed limitation restricting membership in the Corps to officers in grades of second lieutenant through colonel and added provisions authorizing the Secretary of the Army to prescribe the grades of officers comprising the Corps.

Subsec. (b). Pub. L. 90–130 struck out provision entitling the Chief to the temporary grade of colonel while serving, ranking above all other colonels in the Corps.

Subsec. (c). Pub. L. 90–130 struck out provisions entitling each assistant chief to the temporary grade of lieutenant colonel while so serving, ranking above all other lieutenant colonels in the section.

1966—Subsec. (b). Pub. L. 89–609, § 1(2), combined the second and third sentences, substituting ", and" for the period at the end of the second sentence and the introductory word "She" to the third sentence, and substituted "the regular grade held, the Chief" for "her regular grade, she" in the fourth sentence.

Subsec. (c). Pub. L. 89–609, § 1(3), combined the second and third sentences, substituting ", and" for the period at the end of the second sentence and the introductory word "She" to the third sentence, substituted "An assistant chief" for "She" in the fourth sentence, and in the fifth sentence substituted "the regular grade held" and "in the section" for "her regular grade" and "in her section", respectively, and deleted "and the pay and allowances" preceding "of a lieutenant colonel".

1962—Subsec. (b). Pub. L. 87–649, § 6(b)(2), eliminated provisions which authorized the pay and allowances of a colonel for the Chief of the Army Medical Specialist Corps.

Subsec. (c). Pub. L. 87–649, § 6(b)(3), eliminated provisions which authorized the pay and allowances of a lieutenant colonel for each assistant chief of the Army Medical Specialist Corps.

1957—Pub. L. 85–155 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in the catchline.

Subsec. (a). Pub. L. 85–155 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" and "colonel" for "major".

Subsec. (b). Pub. L. 85–155 eliminated provisions which related to assistant chiefs which are now covered by subsec. (c) of this section, substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps", required the chief to be above the regular grade of captain, prohibited service for more than four years and reappointment, and provided that the chief shall rank above all other colonels in the corps.

Subsec. (c). Pub. L. 85–155 added subsec. (c). Former provisions which related to assistant chiefs were contained in subsec. (b) of this section.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OR TRANSFER FROM ACTIVE STATUS

Secretary of the Army authorized to suspend the operation of any provision of law pertaining to the mandatory retirement, discharge, separation, or transfer from an active status of an officer of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, for five years following Nov. 8, 1967, see section 4(a) of Pub. L. 90–130, set out as a note under section 3069 of this title.

CROSS REFERENCES

Active duty in retired grade of officer who served certain time as Chief or assistant chief of Army Medical Specialist Corps, see section 3504 of this title.

Chiefs of branches, generally, see section 3036 of this title.

Commissioned officers, Regular Army: original appointment; additional qualifications; grade, see section 3291 of this title.

Deputy and assistant chiefs of branches, see section 3040 of this title.

Higher retired grade for service as chief or assistant chief of Army Medical Specialist Corps, see section 3962 of this title.

Officers: female; limitations on appointment, see section 3311 of this title.

§ 3071. Women's Army Corps: Director; Deputy Director; other positions.

(a) The Women's Army Corps consists of the Director and Deputy Director, other officers in grades prescribed by the Secretary of the Army, and enlisted members.

(b) The Secretary of the Army shall appoint the Director from the officers of the Regular Army in that corps whose regular grade is above major. The Director is the adviser to the Secretary on Women's Army Corps matters and serves during his pleasure, but normally not for more than four years.

(c) The Secretary of the Army shall appoint the Deputy Director from the officers of the Regular Army in that corps whose regular grade is above major. She serves during the pleasure of the Secretary, but normally not for more than four years.

(d) The Secretary of the Army shall designate the positions that he finds necessary for the training and administration of the Women's Army Corps. He shall fill those positions from officers of that corps who are on active duty and whose Regular or Reserve grade is above captain. An officer holding such a position serves during the pleasure of the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 169; Sept. 7, 1962, Pub. L. 87–649, § 6(a)(2), (3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, § 1(8)(C), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3071 (a)	10: 316; 10: 316–1.	June 12, 1948, ch. 449, §§ 101, 103 (a), 62 Stat. 356, 357. June 28, 1950, ch. 383, § 310, 64 Stat. 270.
3071 (b)	10: 316b (a) (words before 2d semicolon).	
3071 (c)	10: 316b (a) (less words before 2d semicolon, and less provisos).	
3071 (d)	10: 316b (a) (provisos).	

In subsection (a), 10: 316 (1st 4 words) is omitted as executed. 10: 316 (last 15 words) is omitted as superseded by section 3012 (e) of this title, which authorizes the Secretary of the Army to prescribe the duties of members of the Army. The words "as now authorized by law", in 10: 316–1, are omitted, since the law to which it refers is included in the revised section. The words "in the Army", in 10: 316–1, are omitted as surplusage, since the revised section, which is partially based on 10: 316, states that the Women's Army Corps is in the Regular Army, which is a component of the Army.

In subsection (b), the word "regular" is substituted for the word "permanent". The words "is entitled to" are substituted for the words "shall have the" and "shall * * * have the". The words "if she has a lower regular" are substituted for the words "permanently commissioned in a lower". The words "one officer to be" are omitted as surplusage.

In subsection (c), the words "officers of that corps or from female members of the Army Reserve who are on active duty" are substituted for the words "officers of the Women's Army Corps (including Women's Army Corps officers of the Army of the United States or any component thereof serving on extended active duty)", since the only provisions of law relating to female officers (other than Regular Army officers) relate to the appointment of female members of the Army Reserve. The word "extended" is omitted as surplusage. The words "If she has a lower regular or reserve" are substituted for the words "if permanently commissioned in a lower". The words "vacating that" are substituted for the words "vacation of permanent".

In subsection (d), the words "That after July 1, 1952" and 10: 316b (a) (last proviso) are omitted as executed, since the Secretary of the Army did not exercise his authority under that proviso before the expiration date set forth therein. The word "regular" is substituted for the word "permanent". The words "above captain" are substituted for the words "lieutenant colonel or major".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 substituted provisions covering the composition of the Women's Army Corps to consist of the Director, Deputy Director, officers in grades prescribed by the Secretary of the Army, and enlisted members for provisions merely declaratory of the existence of a Women's Army Corps in the Regular Army.

Subsec. (b). Pub. L. 90–130 transferred to subsec. (c) provisions covering the appointment of the Deputy Director, struck out provisions entitling the Director and Deputy Director to the grades of colonel and lieutenant

colonel respectively while so serving, and added provisions limiting the Secretary to the officers of the Regular Army in the Corps whose regular grade is above major in making his selection of Director.

Subsec. (c). Pub. L. 90–130 redesignated as subsec. (c) the provisions formerly contained in subsec. (b) covering the appointment of the Deputy Director and added requirements that the Deputy Director be appointed from the officers of the Regular Army whose regular grade is above major. Former subsec. (c) was redesignated as subsec. (d).

Subsec. (d) of Pub. L. 90–130 redesignated subsec. (c) as subsec. (d), and, in subsec. (d) as so designated, curtailed the Secretary's power to fill positions for the training and administration of the Women's Army Corps from among the female members of the Army Reserve, requiring him to select only officers on active duty with grades above captain.

1962—Subsec. (b). Pub. L. 87–649, § 6(a)(2), eliminated provisions which authorized the pay and allowances of a colonel for the Director and that of a lieutenant colonel for the Deputy Director.

Subsec. (c). Pub L. 87–649, § 6(a)(3), eliminated provisions which authorized the pay and allowances of either a lieutenant colonel or major as the Secretary determined.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OR TRANSFER FROM ACTIVE STATUS

Secretary of the Army authorized to suspend the operation of any provision of law pertaining to the mandatory retirement, discharge, separation, or transfer from an active status of an officer of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, for five years following Nov. 8, 1967, see section 4(a) of Pub. L. 90–130, set out as a note under section 3069 of this title.

EX. ORD. NO. 9365. WOMEN'S ARMY CORPS SERVICE MEDAL

Ex. Ord. No. 9365, July 29, 1943, 8 F. R. 10651, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the Army and Navy of the United States, it is ordered as follows:

There is hereby established the Women's Army Corps Service Medal, which shall include suitable appurtenances. Such medal may be awarded, under such regulations as the Secretary of War may prescribe, to members of the Women's Army Corps for honorable service performed by them in the Women's Army Auxiliary Corps.

CROSS REFERENCES

Active duty in retired grade of officer who served certain time as Director or Deputy Director of Women's Army Corps, see section 3504 of this title.

Chiefs of branches, generally, see section 3036 of this title.

Deputy and assistant chiefs of branches, see section 3040 of this title.

Higher retired grade for service as Director or Deputy Director of Women's Army Corps, see section 3962 of this title.

Officers; female; limitations on appointment, see section 3311 of this title.

§ 3072. Judge Advocate General's Corps.

There is a Judge Advocate General's Corps in the Army. The Judge Advocate General's Corps consists of—

(1) the Judge Advocate General;

(2) the Assistant Judge Advocate General;

(3) three officers in the grade of brigadier general;

(4) commissioned officers of the Regular Army appointed therein; and

(5) other members of the Army assigned thereto by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3072	10: 61–1 (1st sentence, less applicability to strength).	June 28, 1950, ch. 383, § 308 (1st sentence, less applicability to strength), 64 Stat. 270.

The words "authorized by sections 21f and 21h, respectively, of this title" are omitted as surplusage. The word "grade" is substituted for the word "rank". The words "but the Secretary shall not assign to the Judge Advocate General's Corps any officer who has been appointed and commissioned in some other special branch or in the Regular Army without specification of branch" are omitted as covered by section 3064 of this title.

CROSS REFERENCES

Appointment and duties of Judge Advocate General, see section 3036 of this title.

Secretary of the Army—

Authority to assign, detail, and prescribe duties of members of the Army, see section 3012 (e) of this title.

Prohibition against assignment of officer of Regular Army to Corps, see section 3064 of this title.

Strength in commissioned officers on active list of Regular Army, see section 3209 of this title.

§ 3073. Chaplains.

There are chaplains in the Army. The Chaplains include—

(1) the Chief of Chaplains;

(2) commissioned officers of the Regular Army appointed as chaplains; and

(3) other officers of the Army appointed as chaplains in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3073	10: 231a.	June 28, 1950, ch. 383, § 309, 64 Stat. 270.

The words "authorized by section 21f of this title", "as now or hereafter provided by law", and "and commissioned * * * or in any component thereof" are omitted as surplusage.

CROSS REFERENCES

Appointment and duties of Chief of Chaplains, see section 3036 of this title.

Commissioned officers, Regular Army: original appointment; examination, see section 3293 of this title.

Secretary of the Army prohibited from assigning officers of Regular Army to Chaplains, see section 3064 of this title.

§ 3074. Commands: territorial organization; engineer tactical units.

(a) Except as otherwise prescribed by law, the Army shall be divided into such commands, forces, and organizations as may be prescribed by the Secretary of the Army.

(b) For Army purposes, the United States, the Territories, Commonwealths, and possessions, and other places in which the Army is stationed or is operating may be divided into such areas as may be directed by the Secretary. Officers of the Army may be assigned to command Army activities, installa-

tions, and personnel in those areas. In the discharge of the Army's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(c) Such part of the Corps of Engineers as the President directs shall be formed into tactical units organized as he prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3074 (a)	10: 1d.	June 28, 1950, ch. 383, §§ 303, 304, 64 Stat. 268.
3074 (b)	10: 1e.	
3074 (c)	10: 181 (less 1st 39 words).	June 3, 1916, ch. 134, § 11 (less 1st 41 words); restated June 4, 1920, ch. 227, subch. I, § 11 (less 1st 41 words), 41 Stat. 768.

In subsection (b), the words "have the duties and powers" are substituted for the words "shall perform such duties and exercise such powers". The words "of America", "other provisions", and "so assigned" are omitted as surplusage. The word "Commonwealths" is inserted to reflect the present status of Puerto Rico.

§ 3075. Regular Army: composition.

(a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.

(b) The Regular Army includes—

(1) the officers and enlisted members of the Regular Army;

(2) the professors, registrar, and cadets of the United States Military Academy; and

(3) the retired officers and enlisted members of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Aug. 6, 1958, Pub. L. 85-600, § 1 (1), 72 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3075 (a)	10: 1c (a).	June 28, 1950, ch. 383, § 302, 64 Stat. 268.
3075 (b)	10: 1c (less (a))	

In subsection (b), the words "holding appointments or enlisted in the Regular Army as now or hereafter provided by law", "and such other persons as are now or may hereafter be specified by law", and "commissioned * * * warrant officers" are omitted as surplusage, since the revised section lists all persons in the Regular Army. 10: 1c (last sentence) is omitted as executed.

AMENDMENTS

1958—Subsec. (b) (2). Pub. L. 85-600 included the registrar of the Military Academy.

§ 3076. Army Reserve: composition.

The Army Reserve includes all Reserves of the Army who are not members of the Army National Guard of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3076	50: 1023.	July 9, 1952, ch. 608, § 303, 66 Stat. 498.

The word "Reserves" is substituted for the words "Reserve officers and Reserve enlisted members". The words "other than those" are omitted as surplusage.

§ 3077. Army National Guard of United States: composition.

The Army National Guard of the United States is the reserve component of the Army that consists of—

(1) federally recognized units and organizations of the Army National Guard; and

(2) members of the Army National Guard who are also Reserves of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3077	50: 1111; 50: 1112 (a).	July 9, 1952, ch. 608, §§ 701, 702 (a), 66 Stat. 501.

The words "and references in this chapter, in the absence of express provision otherwise, are to be construed accordingly", in 50: 1111, are omitted as executed by the revised sections of this title. 50: 1111 (last sentence) is omitted, since the "Air National Guard of the United States" and "Army National Guard of the United States" are referred to separately throughout this title. The words "are also" are substituted for the words "in addition to their status as such", in 50: 1112 (a). The words "same commissioned, warrant, or enlisted", in 50: 1112 (a), are omitted as surplusage.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3078. Army National Guard: when a component of Army.

The Army National Guard while in the service of the United States is a component of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 171.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3078	No source.	No source.

The revised section is inserted to make clear that the Army National Guard is a component of the Army while it is in the service of the United States in the same manner as the Air National Guard under section 8078 of this title and to conform to section 3062 (c) (1) of this title.

§ 3079. Army National Guard of United States: status when not in Federal service.

When not on active duty, members of the Army National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Army National Guard. (Aug. 10, 1956, ch. 1041, 70A Stat. 171.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3079	50: 1119 (less 1st sentence).	July 9, 1952, ch. 608, § 709 (less 1st sentence), 66 Stat. 503.

The word "uniformed" is omitted as surplusage. The words "in the service of the United States" are omitted as surplusage.

CROSS REFERENCES

Active duty, see section 3495 of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3080. Army National Guard of the United States: authority of officers with respect to Federal status.

Under regulations to be prescribed by the Secretary of the Army, officers of the Army National Guard of the United States who are not on active duty may—

(1) order members of the Army National Guard of the United States or, with the approval of the Secretary of the Air Force, members of the Air National Guard of the United States, to active duty for training under section 672(d) of this title;

(2) enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(3) with respect to their Federal status, promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(Added Pub. L. 86-603, § 1(2)(A), July 7, 1960, 74 Stat. 357.)

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AMENDMENTS

1968—Pub. L. 90-377, § 3, July 5, 1968, 82 Stat. 288, eliminated chapter 351: "United States Disciplinary Barracks".

Pub. L. 90-235, § 8(5), Jan. 2, 1968, 81 Stat. 764, eliminated chapter 347: "The Uniform".

1960—Pub. L. 86-616, §§ 2(b), 3(b), July 12, 1960, 74 Stat. 388, 390, substituted "Substandard Performance of Duty" for "Failure to Meet Standards" in the heading of chapter 359 and added chapter 360.

1958—Pub. L. 85-861, § 1 (95), Sept. 2, 1958, 72 Stat. 1487, substituted "3841" for "[No present sections]" in the heading of chapter 363.

Chapter 331.—STRENGTH

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AMENDMENTS

1958—Pub. L. 85-861, § 1 (70), Sept. 2, 1958, 72 Stat. 1464, inserted "; Army Reserve; Army National Guard of United States" in item 3212, and added items 3217-3220 and 3230.

1957—Pub. L. 85-155, title I, § 101(6), Aug. 21, 1957, 71 Stat. 376, substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in item 3207.

CROSS REFERENCES

Air Force, see section 8201 et seq. of this title.

Navy and Marine Corps, see section 5401 et seq. of this title.

§ 3201. Army: members on active duty.

(a) The authorized strength of the Army in members on active duty, exclusive of—

(1) officer candidates;

(2) Reserves on active duty for training;

(3) members paid from appropriations for the Army National Guard or the Army Reserve;

(4) Reserves ordered to active duty in an emergency; and

(5) enlisted members in a reserve officers' training corps or serving as cadets at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 837,000.

(b) The authorized daily average strength of the Army in members on active duty during the fiscal year, exclusive of—

(1) officer candidates;

(2) Reserves on active duty for training purposes only;

(3) members employed in the Selective Service System; and

(4) enlisted members in a reserve officers' training corps or serving as cadets at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 837,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 172; Sept. 2, 1958, Pub. L. 85-861, § 1 (62), 72 Stat. 1462; Oct. 13, 1964, Pub. L. 88-647, title III, § 301 (4), 78 Stat. 1071.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3201 (a)	10: 20j (a).	July 10, 1950, ch. 464, § 102 (a), 64 Stat. 332.
3201 (b)	50 App.: 452.	June 24, 1948, ch. 625, § 2; restated June 19, 1951, ch. 144, § 1 (b), 65 Stat. 76.

Subsections (a) and (b) are in force concurrently according to an opinion of the Judge Advocate General of the Army (JAGA 1952/2294, 4 Mar. 1952).

In subsection (a) the reference to one-year enlistees as an excepted category, in 10: 20j (a), is omitted to conform to 50 App.: 452. The one-year enlistee program was abolished by section 1 (h) of the 1951 amendments to the Universal Military Training and Service Act, 65 Stat. 80.

In subsection (a) (3), the word "members" is substituted for the word "persons".

In subsections (a) (4), the word "hereafter" is omitted, since all emergencies declared before July 11, 1950, have been terminated.

In subsections (a) (2) and (4), and (b) (2), the word "reserves" is substituted for the words "personnel of the reserve components".

In subsection (b) (3), the word "members" is substituted for the words "personnel of the armed forces".

AMENDMENTS

1964—Subsec. (a)(5). Pub. L. 88-647, § 301(4)(A), inserted "in a reserve officers' training corps or" following "members."

Subsec. (b)(4). Pub. L. 88-647, § 301(4)(B), inserted "in a reserve officers' training corps or" following "members."

1958—Subsec. (a). Pub. L. 85-861 added cl. (5).

Subsec. (b). Pub. L. 85-861 added cl. (4).

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH UNTIL JULY 1, 1971

Act Aug. 3, 1950, ch. 537, 64 Stat. 408, as amended June 19, 1951, ch. 144, title I, § 3, 65 Stat. 88; Mar. 15, 1954, ch. 79, 68 Stat. 27; Pub. L. 85-63, June 27, 1957, 71 Stat. 208; Pub. L. 86-4, § 2, Mar. 23, 1959, 73 Stat. 13; Pub. L. 88-2, § 2, Mar. 28, 1963, 77 Stat. 4; Pub. L. 90-40, § 2, June 30, 1967, 81 Stat. 105; Pub. L. 91-121, title IV, § 406, Nov. 19, 1969, 83 Stat. 207, provided:

"That provisions of law imposing restrictions on the authorized personnel strength of any component of the Armed Forces, including sections 102, 202, 213, and 302 of the Women's Armed Services Integration Act of 1948 (62 Stat. 357, 363, 369, and 371), section 2, title I of the Selective Service Act of 1948 (62 Stat. 605), as amended section 2 of the Act of April 18, 1946 (60 Stat. 92), and sections 102 and 202 of the Act of July 10, 1950 (64 Stat. 322 and 323), are hereby suspended until July 1, 1971.

"SEC. 2. After July 1, 1970, the active-duty personnel strength of the Armed Forces, exclusive of personnel of the Coast Guard, personnel of the reserve components on active duty for training purposes only, and personnel of the Armed Forces employed in the Selective Service System, shall not exceed a total of 3,285,000 persons at any time during the period of suspension prescribed in the first section of this Act except when the President of the United States determines that the application of this ceiling will seriously jeopardize the national security interest of the United States and informs the Congress of the basis for such determination."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3214 of this title.

§ 3202. Army: officers in certain commissioned grades.

(a) The authorized strength of the Army in officers on active duty in each of the following grades on the last day of each fiscal year, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, is, except as provided in subsections (e) and (f), based on the total number of those officers authorized by the Secretary of the Army in all commissioned grades, as follows:

If the total number authorized is—	The authorized strength in grade is—			
	For general officers	For colonels	For lieutenant colonels	For majors
50,000	350	3,352	6,940	9,350
60,000	400	3,752	8,045	10,950
70,000	425	4,102	9,150	12,500
80,000	450	4,452	10,205	14,050
90,000	475	4,752	11,260	15,600
100,000	495	5,002	12,265	17,060
110,000	510	5,202	13,270	18,370
120,000	520	5,402	14,175	19,680
130,000	530	5,602	15,075	20,890
140,000	540	5,802	15,875	22,095
150,000	550	6,002	16,675	23,300

If the total number authorized by the Secretary is determined to be between two of the figures named in the first column of the table, the corresponding authorized strengths in grade are determined by mathematical interpolation between the respective authorized strengths named in the table. If it is determined to be more than 150,000, the Secretary shall fix the corresponding authorized strengths in grade in general conformity with the table.

(b) Not more than one-half of the general officer strength may be in grades above brigadier general.

(c) A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(d) In time of war, or of national emergency declared after May 5, 1954, by Congress or the President, the President may suspend the operation of any provision of this section.

(e) The authorized strengths of the Army in Officers in the Medical Corps and Dental Corps in grades below brigadier general shall be based on the needs of the Army, as determined by the Secretary under regulations to be prescribed by the Secretary of Defense.

(f) In determining the authorized strength of the Army under subsection (a), the strengths authorized for the Medical Corps and Dental Corps shall be excluded. (Aug. 10, 1956, ch. 1041, 70A Stat. 172; Sept. 2, 1958, Pub. L. 85-861, § 1(63), 72 Stat. 1463; Dec. 28, 1967, Pub. L. 90-228, § 1(1), (2), 81 Stat. 745.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3202 (a)	10: 506d-1 (less 3d and last sentences); 10: 506d-2.	May 5, 1954, ch. 180, §§ 101, 102, 403, 68 Stat. 65, 66, 70.
3202 (b)	10: 506d-1 (last sentence).	
3202 (c)	10: 506d-1 (3d sentence).	
3202 (d)	10: 506d-3.	

In subsection (a), the words "The authorized strength of the Army * * * is based on" are substituted for the

words "The number of * * * shall not exceed the numbers set forth". The words "commissioned" and "Reserve" are omitted as surplusage.

Subsection (c) is substituted for 10: 506d-1 (3d sentence).

In subsection (d), the words "the operation of any provision of" are substituted for the words "all or any part of the provisions of".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-228, § 1(1), inserted ", except as provided in subsections (e) and (f)," after "basis, is".

Subsecs. (e), (f). Pub. L. 90-228, § 1(2), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85-861 substituted "an authorized appointment" for "an appointment".

CROSS REFERENCES

Vacancy in commissioned grade on promotion list, filling by appointment in lower grade, see section 3211 of this title.

Vacancy in officer grade in Regular Army, filling by appointment in higher grade, see section 3442 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3210 of this title.

§ 3203. Regular Army: members on active duty.

The authorized strength of the Regular Army in members on active duty, exclusive of officer candidates, is 837,000 less the number of members of the Army on active duty who are neither members of the Regular Army nor members of the Army in the categories listed in section 3201 (a) (1)—(5) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 173; Sept. 2, 1958, Pub. L. 85-861, § 1 (64), 72 Stat. 1463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3203	No source.	No source.

The revised section is inserted to make explicit in the law the authorized strength of the Regular Army, which has heretofore been implied from provisions relating to the strength of the Army in members on active duty. The implication is based on an opinion of the Judge Advocate General of the Army (JAGA 1951/1549, 14 Feb. 1951) that the authorized strength of the Regular Army is the same as the authorized strength of the Army in members on active duty, exclusive of the categories named in section 3201 (a) (1)—(4) of this title, less the number of non-Regulars on active duty. In stating those members excluded, reference is made only to officer candidates, since there are no Regulars in the other categories listed in section 3201 (a) of this title. An express statement in the law of the authorized strength of the Regular Army is desirable, since other sections, for example section 3206 of this title, expressly refer to that authorized strength.

AMENDMENTS

1958—Pub. L. 85-861 substituted "section 3201 (a) (1)—(5)" for "section 3201 (a) (1)—(4)".

§ 3204. Regular Army: commissioned officers on active list.

The authorized strength of the Regular Army in commissioned officers on the active list is the sum of—

(1) the numbers authorized by sections 3205, 3206, and 3207 of this title;

(2) the number of permanent professors of the United States Military Academy authorized by section 4331 of this title and the registrar thereof; and

(3) the numbers in designated categories specifically authorized by law as additional numbers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 6, 1958, Pub. L. 85-600, § 1 (2), 72 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3204	No source.	No source.

The revised section is based on the laws establishing specific authorized strengths for the constituent parts of the general category of Regular Army commissioned officers. It is inserted to make it clear that the total authorized strength of the Regular Army in commissioned officers on the active list includes the additional numbers authorized for the Army Nurse Corps, the Women's Medical Specialist Corps, permanent professors of the United States Military Academy, and any numbers in designated categories specially authorized by law as additional numbers, excluded from the strength of 30,600 specified in section 3205 of this title.

AMENDMENTS

1958—Pub. L. 85-600 included the registrar of the Military Academy.

§ 3205. Regular Army: commissioned officers on active list, exclusive of certain categories.

(a) The authorized strength of the Regular Army in commissioned officers on the active list, exclusive of—

(1) members of the Army Nurse Corps;

(2) members of the Army Medical Specialist Corps;

(3) permanent professors and the registrar of the United States Military Academy; and

(4) members in designated categories specifically authorized by law as additional numbers;

is 49,500.

(b) Subject to subsection (a), the Secretary of Defense, with the approval of the President, shall estimate each year, for each of the five years following that year, the strength of the Regular Army in commissioned officers on the active list exclusive of officers in the categories listed in subsection (a) (1)—(4). (Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 6, 1958, Pub. L. 85-600, § 1 (3), 72 Stat. 522; Sept. 2, 1958, Pub. L. 85-861, § 1 (60), (65), 72 Stat. 1462, 1463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3205	10: 20j (b) (less last 13 words of 1st sentence); 10: 166k; 10: 481.	Apr. 16, 1947, ch. 38, § 112, 61 Stat. 46. Aug. 7, 1947, ch. 152, § 501, 61 Stat. 883. July 10, 1950, ch. 454, § 102 (b) (less last 13 words of 1st sentence), 64 Stat. 322.

The word "permanent" is inserted in clause (3) to make it clear that the professor of military hygiene, authorized by section 4331 of this title, who is detailed to that position but is not a permanent professor is not an additional number.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861, § 1 (65) (A), redesignated existing provisions as subsec. (a), and § 1 (60), (65) (B), substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps", and "49,500" for "30,600".

Pub. L. 85–600 included the registrar of the Military Academy in cl. (3).

Subsec. (b). Pub. L. 85–861, § 1 (65) (C), added subsec. (b).

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3204 of this title.

§ 3206. Regular Army: commissioned officers on active list; Army Nurse Corps.

The authorized strength of the Army Nurse Corps in commissioned officers on the active list of the Regular Army is such numbers as may be prescribed by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(4), 71 Stat. 376; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(A), (B), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3206 (a)	10: 166 (a) (less last sentence).	Apr. 16, 1947, ch. 38, § 101 (a) (less words of last sentence before proviso), 61 Stat. 41.
3206 (b)	10: 166 (a) (proviso of last sentence); 10: 166f (b) (1st 22 words of 1st sentence).	Apr. 16, 1947, ch. 38, § 107 (b) (1st 22 words of 1st sentence); restated May 16, 1950, ch. 186, § 3 (c) (b) (1st 22 words of 1st sentence), 64 Stat. 161.

In subsection (a), the figure "2,009" results from the allocation of the original figure 2,558 heretofore made between the Army and the Air Force under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). (See Joint Army and Air Force Adjustment Regulation No. 1-11-62, May 16, 1949.) This allocation has had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change the allocation, expired. 10: 166 (a) (1st 20 words of 1st sentence) is omitted as superseded by section 3067 of this title, which establishes the Army Nurse Corps in the Army Medical Service. 10: 166 (a) (1st sentence, less 1st 20 words) is omitted as superseded by section 3012 (e) of this title.

AMENDMENTS

1967—Pub. L. 90–130 substituted provisions empowering the Secretary to prescribe the authorized strength of the Army Nurse Corps for provisions setting 2500 as the authorized strength of the Corps and struck out provisions setting a limit of 5 on the number of colonels and 107 on the number of lieutenant colonels on the active list of the Regular Army in the authorized strength of the Army Nurse Corps.

1957—Subsec. (a). Pub. L. 85–155 substituted "2500" for "2,009, or 6/1,000 of the authorized strength prescribed by section 3203 of this title, whichever is greater".

Subsec. (b). Pub. L. 85–155 permitted not more than 5 officers in the regular grade of colonel, and not more than 107 in the regular grade of lieutenant colonel, and eliminated provisions which restricted officers in the grades of lieutenant colonel and major to not more than 7/1,000 and 16/1,000, respectively, of the authorized strength, and which empowered the Secretary of the Army to prescribe the authorized strength of the Army Nurse Corps in officers on the active list in the regular grade of captain.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3204 of this title.

§ 3207. Regular Army: commissioned officers on active list; Army Medical Specialist Corps.

The authorized strength of the Army Medical Specialist Corps in commissioned officers on the active list of the Regular Army is such numbers as may be prescribed by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(5), 71 Stat. 376; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(C), (D), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3207 (a)	10: 166a (a) (less 1st and last sentences).	Apr. 16, 1947, ch. 38, § 102 (a) (2d sentence; and last sentence, as applicable to strength), 61 Stat. 42; May 16, 1950, ch. 186, § 3 (a), 64 Stat. 160.
3207 (b)	10: 166a (a) (last sentence, as applicable to strength); 10: 166f (b) (less 2d and and last sentences, and less 1st 22 words of 1st sentence).	Apr. 16, 1947, ch. 38, § 107 (b) (less 2d and last sentences, and less 1st 22 words of 1st sentence); restated May 16, 1950, ch. 186, § 3 (c) (b) (less 2d and last sentences, and less 1st 22 words of 1st sentence), 64 Stat. 161.

In subsection (a), the figure "356" results from the allocation of the original figure 409 heretofore made between the Army and the Air Force under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). This allocation has had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change the allocation, expired. Although section 3 of the act of May 16, 1950, ch. 186, 64 Stat. 161, restated the 409 figure, it is clear from the Congressional committee reports on the act of May 16, 1950, that the figure 409 was intended to be a total applicable to both the Army and the Air Force.

In subsection (b), the words "and the remainder of such authorized commissioned strength shall be in permanent commissioned grades of captain to second lieutenant, inclusive" are omitted as covered by section 3291 of this title, which authorizes original appointments only in the grades of first lieutenant and second lieutenant, and by section 3304 of this title, which authorizes promotions of Regular Army officers within the Corps only to grades below lieutenant colonel. The words "on the active list" are inserted to conform to section 3206 (b) of this title. The word "regular" is substituted for the word "permanent".

AMENDMENTS

1967—Pub. L. 90–130 substituted provisions empowering the Secretary to prescribe the authorized strength of the Army Medical Specialist Corps for provisions setting 350 as the authorized strength of the Corps and struck out provisions setting a limit of 1 on the number of colonels and 20 on the number of lieutenant colonels on the active list of the Regular Army in the authorized strength of the Army Medical Specialist Corps.

1957—Pub. L. 85–155 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in the catchline.

Subsec. (a). Pub. L. 85–155 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" and "350" for "356, or 9/10,000 of the authorized strength prescribed by section 3203 of this title, whichever is greater".

Subsec. (b). Pub. L. 85–155 substituted "Army Medical Specialist Corps" for Women's Medical Specialist Corps", and "not more than 1 may be in the regular grade of colonel, and not more than 20 may be in the regular grade of lieutenant colonel" for "not more than 5 percent may be in the regular grade of major", and eliminated provisions which empowered the Secretary of the Army to prescribe the authorized strength of the Women's Medical Specialist Corps in officers on the active list in the regular grade of captain.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3204 of this title.

§ 3209. Regular Army: commissioned officers on active list; other branches; Women's Army Corps.

(a) Except for the Army Nurse Corps and the Army Medical Specialist Corps, the authorized

strength of each branch in commissioned officers on the active list of the Regular Army is that prescribed by the Secretary of the Army. However, the strength so prescribed—

(1) for the Judge Advocate General's Corps, may not be less than 15/1,000 of the authorized strength of the Regular Army in commissioned officers on the active list; and

(2) for the Corps of Engineers, may not be less than 788.

(b) The authorized strength of the Women's Army Corps in commissioned officers on the active list of the Regular Army is that prescribed by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 174; Sept. 2, 1958, Pub. L. 85–861, § 1(60), 72 Stat. 1462; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(E), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3209 (a)	10: 61–1 (less 1st sentence); 10: 156a (2d sentence); 10: 181 (26th through 34th words); 10: 181a (less 14th through 30th words, and less 2d and 3d provisos); 10: 506 (d) [uncodified: June 28, 1950, ch. 383, § 404 (f) (last sentence, less applicability to enlisted members), 64 Stat. 274].	June 28, 1950, ch. 383, § 308 (less 1st sentence), 64 Stat. 270; Aug. 21, 1954, ch. 783, § 8 (as applicable to § 308 of the Act of June 28, 1950), 68 Stat. 759. June 28, 1950, ch. 383, § 404 (f) (last sentence, less applicability to enlisted members), 64 Stat. 274. Aug. 4, 1947, ch. 459, § 101 (2d sentence), 61 Stat. 734.
3209 (b)	10: 316a (as applicable to commissioned officers).	June 3, 1916, ch. 134, § 11 (26th through 36th words); restated June 4, 1920, ch. 227, subch. I, § 11 (26th through 36th words), 41 Stat. 768. June 26, 1936, ch. 839 (less 16th through 31st words, and less 2d and 3d provisos), 49 Stat. 1974. Aug. 7, 1947, ch. 512, § 502 (d), 61 Stat. 884; June 12, 1948, ch. 449, § 104 (d) (2), 62 Stat. 358. June 12, 1948, ch. 449, § 102 (as applicable to commissioned officers), 62 Stat. 357.

The revised section consolidates the strength provisions applicable generally to the branches of the Army with those applicable specifically to the Medical Service Corps, the Judge Advocate General's Corps, the Women's Army Corps, and the Corps of Engineers.

In subsection (a), the general rule with respect to the branches of the Army does not enumerate particular branches, since those enumerated in 10: 506 (d) exhaust the general category. The words within the last parentheses of 10: 506 (d) are omitted as surplusage. The last sentence makes explicit, with respect to the general rule for branches, the effect of the words "any limitations provided by laws enacted after January 1, 1947", in view of the special rules enacted for the Army Nurse Corps and the Women's Medical Specialist Corps on April 16, 1947. 10: 61–1 (last sentence) is omitted as covered by section 3296 of this title.

In subsection (a) (2), the figure 788 results from adding to the figure 785, authorized by section 11 of the National Defense Act, as amended by the Act of June 26, 1936, ch. 839, 49 Stat. 1974, the spaces authorized by that act for the Chief of Engineers and two assistants. Section 8 of the act of April 3, 1939, ch. 35, 53 Stat. 558, though it did not specifically repeal section 11 of the National Defense Act, impliedly amended those provisions which prescribed an officer strength for the Corps of Engineers, by authorizing a strength of 795 officers, subject to a 30 percent increase or decrease from time to time as directed by the President. However, the 1939 act was specifically repeated by section 507 (d) (2) of the Officer Personnel Act of 1947, ch. 512, 61 Stat. 894. By referring to section 11 of the National Defense Act, as amended, section 404 (f) (last sentence) of the Army Organization Act of 1950, ch. 383, 64 Stat. 274, had the effect of reviving the officer strength provisions prescribed by the 1936 act, since these were the only figures contained in the National Defense Act as such. 5: 181a (last proviso) is omitted, since no limitation upon the commissioned strength of the Regular Army has appeared in any appropriation act after the Military Appropriation Act of 1940, 53 Stat. 596. The commissioned strength of the Regular Army is now as prescribed by section 3204 of this title.

In subsection (b), the words "on the active list" are inserted for clarity. 10: 316a (proviso) is omitted as executed.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out provision limiting the prescribed strength of the Women's Army Corps to not more than 2 percent of the authorized strength of the Regular Army in commissioned officers on the active list.

1958—Subsec. (a). Pub. L. 85–861 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps".

SUSPENSION OF RESTRICTIONS OF PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

§ 3210. Regular Army: strength in grade; general officers.

(a) Subject to section 3202 (a) of this title, the authorized strength of the Regular Army in general officers on the active list, exclusive of the number authorized for the Army Medical Department and the Chaplains, is 75/10,000 of the authorized strength of the Regular Army in commissioned officers on the active list, exclusive of the number of commissioned officers on the active list authorized for the Army Medical Department and the Chaplains. Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.

(b) The authorized strength of each of the following branches—

(1) the Medical Corps;

(2) the Dental Corps;

(3) the Veterinary Corps; and

(4) the Chaplains;

in general officers on the active list of the Regular Army is 5/1,000 of the authorized strength of the branch concerned in commissioned officers on the active list of the Regular Army. Not more than one-half of the authorized strength in general officers in such a branch may be in a regular grade above brigadier general;

(c) When the application of the percentages and ratios specified in this section results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(d) General officers on the active list of the Regular Army who are specifically authorized by law to hold any civil office under the United States, or any instrumentality thereof, are not counted in determining authorized strength under this section.

(e) The authorized strength of the Medical Service Corps in general officers on the active list of the Regular Army is one commissioned officer in the regular grade of brigadier general. (Aug. 10, 1956, ch. 1041, 70A Stat. 174; Sept. 2, 1958, Pub. L. 85–861, § 1(66), 72 Stat. 1463; Sept. 24, 1966, Pub. L. 89–603, § 1(2), 80 Stat. 846; June 4, 1968, Pub. L. 90–329, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3210 (a)	10: 506a (a) (words before 1st semicolon).	Aug. 7, 1947, ch. 512, § 503 (a), 61 Stat. 885.
3210 (b)	10: 506a (a) (less words before 1st semicolon, and less provisos).	June 28, 1950, ch. 383, § 308 (1st sentence, as applicable to strength), 64 Stat. 270.
3210 (c)	10: 61-1 (1st sentence, as applicable to strength); 10: 506a (a) (1st, 2d, and 3d provisos).	
3210 (d)	10: 506a (a) (4th proviso).	
3210 (e)	10: 506a (a) (last proviso).	

As enacted, section 503 (a) of the Officer Personnel Act of 1947 (10: 506a (a)), provided, subject to certain percentage limitations, for the following authorized strength of the Regular Army in general officers on the active list:

Medical Corps	16
Dental Corps	4
Veterinary Corps	1
The Chaplains	2
Army, exclusive of the above	334
Total	357

Under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)), allocations of those authorized strengths were made between the Army and the Air Force as follows:

	Army	*Air Force*
Medical Corps	12	4
Dental Corps	3	1
Veterinary Corps	1	0
The Chaplains	1	1
Army and Air Force, exclusive of the above	184	150
Total	201	156

After the enactment of the Officer Personnel Act of 1947, section 308 of the Army Organization Act of 1950 (10: 61-1) provided for an Assistant Judge Advocate General and three brigadier generals in the Judge Advocate General's Corps of the Army. The creation of these four general officer spaces served to increase the mentioned authorized strength figure from 357 to 361, and the figure 201 to 205. The opinion of the Judge Advocate General of the Army (JAGA 1948/5806, 2 Sept. 1948) is in accord with that conclusion.

The revised section reflects the authorized strength of the Regular Army in general officers on the active list resulting from the mentioned allocation to the Air Force and the addition of four general officer spaces in the Judge Advocate General's Corps.

That allocation, and those mentioned in the explanation of subsection (c), below, have had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change these allocations, expired.

The word "regular" is substituted for the word "permanent" throughout the revised section.

In subsection (c), 10: 506a (a) (1st proviso) is omitted, since there is no authority to appoint to a Regular grade above major general. 10: 506a (a) (last 65 words of 2d proviso) is omitted as executed by the declaration of a national emergency on December 16, 1950.

In subsection (c) (1), the figures "12" and "6" result from the allocation of the original figures "16" and "8".

In subsection (c) (2), the figures "3" and "2" result from the allocation of the original figures "4" and "2".

In subsection (c) (3), the figure "1" results from the allocation of the original figure "1". None was allocated to the Air Force.

In subsection (c) (4), the figure "1" results from the allocation of the original figures "2" and "1". (The major general was allocated to the Army, the brigadier general to the Air Force.)

In subsection (c) (5), the figures "188" and "94" result from the allocation of the original figures "334" and "167". The allocation of 188 corresponds to the allotment made by the Secretary of War between the Air Corps and the Army exclusive of the Air Corps, the Medical Department, and the Chaplains, under 10: 506a (a) (3d proviso). That proviso is omitted as executed.

In subsection (e), the words "by law to hold any civil office under the United States" are substituted for the words "by Acts of Congress to hold appointments in the Diplomatic or Consular Service of the Government or to hold any civil office under the Government".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-329 redesignated the "Army Medical Service" as the "Army Medical Department".

1966—Subsec. (e). Pub. L. 89-603 added subsec. (e).

1958—Subsec. (a). Pub. L. 85-861, § 1 (66) (A), substituted "Subject to section 3202 (a) of this title, the" for "The".

Subsecs. (c) and (d). Pub. L. 85-861, § 1 (66) (B), redesignated former subsecs. (d) and (e) as (c) and (d), and also repealed former subsec. (c), which prescribed the number of general officers authorized for the active list of the Regular Army.

§ 3211. Regular Army: strength in grade; promotion-list officers.

(a) Subject to subsection (b), the authorized strength of the Regular Army in officers in each regular grade on each of the promotion lists set forth in section 3296 of this title shall be as prescribed by the Secretary of the Army. A vacancy in any grade on a promotion list may be filled by an authorized appointment in any lower grade.

(b) Each strength prescribed by the Secretary under subsection (a) shall be stated as a percentage of the strength authorized for the particular list, and the schedule of percentages may be different for each list. No schedule for a list may authorize, with respect to a grade, a percentage that is higher than the sum of (1) the figure fixed for the grade according to the following table, and (2) the amounts, if any, by which the percentage fixed by the Secretary for higher grades are less than the figures fixed according to that table:

Grade	Column 1 Medical Corps, Dental Corps, Veterinary Corps, Chaplains, Judge Advocate General's Corps	Column 2 All other promotion lists
	Percent	*Percent*
Colonel	[1] 8	[1] 8
Lieutenant colonel	14	14
Major	19	19
Captain	23	23
First lieutenant	36	18
Second lieutenant	[2] —	18

[1] Colonels whose retirement is deferred under section 3921(b) of this title are not included within this percentage.

[2] None may be authorized by the Secretary for this category.

(Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85-861, § 1(67), 72 Stat. 1463; Nov. 8, 1967, Pub. L. 90-130, § 1(9)(F), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3211	10: 559 (b) (1) (1st 25 words); 10: 559 (b) (2) (1st sentence).	Aug. 7, 1947, ch. 512, § 505 (b) (1), (2) (1st sentence), 61 Stat. 888, 889; June 12, 1948, ch. 449, § 104 (d) (3), 62 Stat. 358; June 30, 1954, ch. 433, § 1 (a), 68 Stat. 357.
3211 (b)	10: 316c (c); 10: 559 (b) (1) (less 1st 25 words); 10: 941a (d) (81st through 105th words of last proviso of clause (3)).	June 12, 1948, ch. 449, § 104 (c), 62 Stat. 358. Aug. 7, 1947, ch. 512, § 514 (d) (81st through 105th words of last proviso of clause (3)), 61 Stat. 902.

Subsection (b) clarifies the joint effect of the scale of percentages and 10: 559 (b) (1) (3d proviso), by combining them into a single rule. The table restates in consolidated form the rules relating to the limitations applicable to the Secretary when setting authorized strengths for the several promotion lists. 10: 316c (c) (1st sentence) is omitted, since the grades in which persons may be originally appointed in the Women's Army Corps, Regular Army, are set forth in section 3288 of this title. The purpose of 10: 316c (c) (1st sentence) was to authorize appointments in higher grades only for a limited period under section 108 of the act of June 12, 1948, ch. 449, 62 Stat. 361 (10: 559o). 10: 559 (b) (1) (last proviso) is omitted as executed.

Footnote 1 is substituted for 10: 941a (d) (81st through 105th words of last proviso of clause (3).

Footnote 2 is substituted for 10: 559 (b) (1) (3d proviso).

Footnote 3 is substituted for 10: 559 (b) (1) (1st proviso).

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out former column 2 in table for Women's Army Corps, with percentage figures of 10 for lieutenant colonels, 19–31 for majors, 23–35 for captains, 18–30 for first lieutenants, and 18–30 for second lieutenants, redesignated former column 3 as column 2, and struck out footnote 3 relating to former column 2.

1958—Subsec. (a). Pub. L. 85–861 substituted "an authorized appointment" for "an appointment".

CROSS REFERENCES

Vacancy in commissioned grade, filling by appointment in lower grade, see section 3202 of this title.

Vacancy in officer grade in Regular Army, filling by appointment in higher grade, see section 3442 of this title.

§ 3212. Regular Army; Army Reserve; Army National Guard of United States: strength in grade; temporary increases.

The authorized strength in any regular or reserve grade, as prescribed by or under this chapter, is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section 541, 1211(a), 3036, 3298, 3299, 3365(a), 3366, or 4353 of this title. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85–861, § 1(68), 72 Stat. 1463; June 30, 1960, Pub. L. 86–559, § 1(6), 74 Stat. 265; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(G), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3212	10: 166f (b) (last sentence); 10: 506c (f) (last 43 words of 1st sentence); 10: 559 (b) (2) (less 1st sentence); 10: 559b (31st through 56th words of 1st sentence); 10: 559c (k) (as applicable to strength); 10: 559g (a) (5th sentence).	Apr. 16, 1947, ch. 38, § 107 (b) (last sentence); restated May 16, 1950, ch. 186, § 3 (c) (b) (last sentence), 64 Stat. 161. Aug. 7, 1947, ch. 512 §§ 505 (b) (2) (less 1st sentence); 506 (f) (last 43 words of 1st sentence), 508 (31st through 56th words of 1st sentence), 509 (k) (as applicable to strength), 513 (a) (5th sentence), 61 Stat. 889, 892, 894, 897, 901.

The revised section consolidates various provisions permitting "temporary" strengths in grade in excess of authorized strengths. The second sentence of the revised section clarifies the meaning of the word "temporary" heretofore used in this connection. 10: 631a (13 words before 1st proviso) is omitted from the revised section, since no provision of law prescribes strengths in regular enlisted grades. Reference is made to section 1211 (a) of this title to reflect the authority contained in that section.

AMENDMENTS

1967—Pub. L. 90–130 struck out reference to section 3304 of this title.

1960—Pub. L. 86–559 substituted "3366, 3383 (except for the grade of colonel), or 4353 of this title to the extent necessary to allow the appointment of reserve officers, in grades not above lieutenant colonel, to fill prescribed mobilization or active duty requirements" for "3366, or 4353 of this title", and inserted "or not to fill one of those requirements" after "not under those sections."

1958—Pub. L. 85–861 included the Army Reserve and the Army National Guard of United States in the catchline, permitted increases in strength in reserve grades, and inserted references to sections 541, 3365 (a) and 3366.

TERMINATION DATE OF 1960 AMENDMENT

Section 1(6) of Pub. L. 86–559 as amended by Pub. L. 88–620, § 1, Oct. 3, 1964, 78 Stat. 999, provided in part that the amendment of this section by Pub. L. 86–559 shall be effective only until July 1, 1965.

§ 3213. Regular Army: warrant officers on active list.

The authorized strength of the Regular Army in warrant officers on the active list is 9,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 176.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3213	10: 20j (b) (last 13 words of 1st sentence).	July 10, 1950, ch. 454, § 102 (b) (last 13 words of 1st sentence), 64 Stat. 322.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see section 3201 of this title.

§ 3214. Regular Army: enlisted members on active duty.

The authorized strength of the Regular Army in enlisted members on active duty, exclusive of officer candidates, is 837,000 less the number of members of the Army on active duty who are neither enlisted members of the Regular Army nor members of the Army in the categories listed in section 3201 (a) (1)—(5) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 176; Sept. 2, 1958, Pub. L. 85–861, § 1 (64), 72 Stat. 1463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3214	No source.	No source.

The revised section is inserted to make explicit in the law the authorized strength of the Regular Army in enlisted members on active duty, which has heretofore been implied from provisions relating to the strength of the Army in members on active duty. The implication is based on an opinion of the Judge Advocate General of the Army (JAGA 1951/1549, 14 Feb. 1951) that the authorized strength of the Regular Army in enlisted members on active duty is the authorized strength of the Regular Army in members on active duty, less the number of commissioned and warrant officers of the Regular Army on active duty. In stating those members excluded, reference is made only to officer candidates since there are no Regulars in the other categories listed in section 3201 (a) of this title. An express statement in the law of the authorized strength of the Regular Army in enlisted

members on active duty is desirable, since section 3215 (b) of this title expressly refers to that authorized strength.

AMENDMENTS

1958—Pub. L. 85-861 substituted "section 3201 (a) (1)—(5)" for "section 3201 (a) (1)—(4)".

§ 3215. Regular Army: Women's Army Corps; warrant officers on active list; enlisted members on active duty.

(a) The authorized strength of the Women's Army Corps of the Regular Army in warrant officers on the active list is as prescribed by the Secretary of the Army.

(b) The authorized strength of the Women's Army Corps of the Regular Army in enlisted members on active duty is as prescribed by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 176; Nov. 8, 1967, Pub. L. 90-130, § 1(9)(H), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3215 (a)	10: 316a (as applicable to warrant officers.	June 12, 1948, ch. 449, § 102 (less applicability to commissioned officers), 62 Stat. 357.
3215 (b)	10: 316a (as applicable to enlisted members).	

In subsection (a), the words "on the active list" are inserted for clarity and to conform to section 3213 of this title.

In subsections (a) and (b), the words "within the authorized * * * warrant, and enlisted strengths of the Regular Army" are omitted as surplusage.

In subsection (b), 10: 316a (proviso) is omitted as executed. The words "on active duty" are inserted for clarity.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130 struck out provision placing a 2 percent limit on the percentage which the prescribed authorized strength in warrant officers bears to the authorized strength of the Regular Army in warrant officers on the active list.

Subsec. (b). Pub. L. 90-130 struck out provisions placing a 2 percent limit on the percentage which the prescribed authorized strength of enlisted members on active duty bears to the authorized strength prescribed in section 3214 of this title.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see section 3201 of this title.

§ 3216. Corps of Engineers: enlisted members on active duty.

The authorized strength of the Corps of Engineers in enlisted members on active duty is as prescribed by the Secretary of the Army. However, it may not be less than 12,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 176.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3216	10: 181 (35th through 39th words) [Uncodified: June 28, 1950, ch. 383, § 404 (f) (last sentence, as applicable to enlisted members), 64 Stat. 274].	June 3, 1916, ch. 134, § 11 (37th through 41st words); restated June 4, 1920, ch. 227, subch. I, § 11 (37th through 41st words), 41 Stat 768. June 28, 1950, ch. 383, § 404 (f) (last sentence, as applicable to enlisted members), 64 Stat. 274.

The words "as prescribed by the Secretary of the Army. However, it may not be less than" are substituted for the last sentence of section 404 (f) of the Act of June 28, 1950, cited above.

§ 3217. Reserves: commissioned officers in active status.

The authorized strength of the Army in reserve commissioned officers in an active status is 275,000. However, the Secretary of the Army may prescribe a higher authorized strength to meet mobilization requirements or to permit increases otherwise required by or resulting from the operation of any law. (Added Pub. L. 85-861, § 1 (69) (A), Sept. 2, 1958, 72 Stat. 1463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3217	50: 1227 (a) (less 3d through last sentences).	Sept. 3, 1954, ch. 1257, § 307 (a) (less 3d through last sentences), 68 Stat. 1155.

The words "any law" are substituted for the words "of other laws or the provisions of this chapter".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3218. Reserves: strength in grade; general officers in active status.

The authorized strength of the Army in reserve general officers in an active status, exclusive of those serving as adjutants general or assistant adjutants general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, and those serving in the National Guard Bureau, is 207. (Added Pub. L. 85-861, § 1 (69) (A), Sept. 2, 1958, 72 Stat. 1463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3218	50: 1227 (a) (4th sentence).	Sept. 3, 1954, ch. 1257, § 307 (a) (4th sentence), 68 Stat. 1155.

The words "in the Army Reserve and the National Guard of the United States" are omitted as covered by the word "reserve".

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281 of this title.

§ 3219. Reserves: strength in grade; commissioned officers in grades below brigadier general in active status.

(a) Subject to subsection (b), the authorized strength of the Army in reserve commissioned officers in an active status in each grade named in that subsection is as prescribed by the Secretary of the Army. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(b) A strength prescribed by the Secretary under subsection (a) may not be higher than the percentage of the authorized strength fixed for the grade by the following table:

Grade:	*Percentage of authorized strength under sec. 3217 of this title*
Colonel	2
Lieutenant colonel	6
Major	13
Captain	35
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 3218 of this title)	44

(Added Pub. L. 85–861, § 1 (69) (A), Sept. 2, 1958, 72 Stat. 1464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3219 (a)	50: 1227 (a) (1st 27 words of 3d sentence, and last sentence).	Sept. 3, 1954, ch. 1257, § 307 (a) (3d and last sentences), 68 Stat. 1155.
3219 (b)	50: 1227 (a) (3d sentence, less 1st 27 words).	

In subsection (a), the word "authorized" is inserted before the word "appointment" to make it clear that this subsection does not itself authorize original appointments or promotions.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3220. Reserve officers: distribution.

The Secretary of the Army shall distribute the number of reserve commissioned officers authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. He shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organization and tables of distribution. He shall distribute the number who are not assigned to such units between—

(1) each special branch and the Women's Army Corps; and

(2) all other branches taken together.

(Added Pub. L. 85–861, § 1 (69) (A), Sept. 2, 1958, 72 Stat. 1464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3220	50: 1227 (b). 50: 1222 (h) (as applicable to 50: 1227 (b)).	Sept. 3, 1954, ch. 1257, §§ 302 (h) (as applicable to § 307 (b)), 307 (b), 68 Stat. 1154, 1155.

The words "the total numbers" and "authorized pursuant to section 1191 of this title", in 50: 1227 (b), are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3383 of this title.

§ 3221. Army Reserve.

(a) Whenever the authorized strength of the Army Reserve is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the Army Reserve, the authorized strength of the Army Reserve in members in each grade is that which the Secretary of the Army determines to be necessary to provide for mobilization requirements. The Secretary shall review these determinations at least once each year and revise them if he considers it necessary. However, no member of the Army Reserve may be reduced in his reserve grade, without his consent, as a result of such a determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 176.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3221 (a)	50: 923 (as applicable to 50: 922 (b)).	July 9, 1952, ch. 608, §§ 203 (as applicable to § 202 (b)), 215 (b) (as applicable to § 202 (b)), 66 Stat. 483, 486.
3221 (b)	50: 935 (b) (as applicable to 50: 922 (b)).	

In subsection (b), the words "authorized strength * * * in members in each grade" are substituted for the words "the numbers of officers and enlisted personnel authorized in the various ranks, grades, and ratings". The word "planned" is omitted as surplusage. The words "at least once each year" are substituted for the words "not less than once annually". The words "without his consent" are substituted for the word "involuntarily". The words "his reserve grade" are substituted for the words "permanent rank, grade, or rating".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3222. Army Reserve, exclusive of members on active duty.

The authorized strength of the Army Reserve, exclusive of members who are included in the strength of 837,000 authorized in section 3201 (a) of this title for members of the Army on active duty, is 980,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 176.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3222	10: 20j (d) (less last sentence).	July 10, 1950, ch. 454, § 102 (d) (less last sentence), 64 Stat. 322.

The exclusion clause is substituted for 10: 20j (d) (last 34 words of 1st sentence). The words "officers, warrant officers, and enlisted persons" are omitted as surplusage.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3201 of this title.

§ 3223. Army Reserve: warrant officers.

The Secretary of the Army may prescribe the authorized strength of the Army Reserve in warrant officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 176.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3223	10: 20j (d) (last sentence)	July 10, 1950, ch. 454, § 102 (d) (last sentence), 64 Stat. 322.

10: 20j (d) (last sentence) as relates to the authority to appoint warrant officers is omitted as covered by section 597 of this title.

§ 3224. Army National Guard of United States.

(a) Whenever the authorized strength of the Army National Guard of the United States is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the Army National Guard of the United States, the authorized strength of the Army National Guard of the United States in members in each grade is that which the Secretary of the Army determines to be necessary to provide for mobilization requirements. The Secretary shall review those determinations at least once each year and revise them if he considers it necessary. However, no member of the Army National Guard of the United States may be reduced in his reserve grade, without his consent, as a result of such a determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 177.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3224 (a)	50: 923 (as applicable to 50: 922 (a)).	July 9, 1952, ch. 608, §§ 203 (as applicable to § 202 (a)), 215 (b) (as applicable to § 202 (a)), 66 Stat. 483, 486.
3224 (b)	50: 935 (b) (as applicable to 50: 922 (a)).	

Subsection (a) is substituted for 50: 923 (as applicable to 50: 922 (a)).

In subsection (b), the words "authorized strength * * * in members of each grade" are substituted for the words "the numbers of officers and enlisted personnel authorized in the various ranks, grades, and ratings". The word "planned" is omitted as surplusage. The words "at least once each year" are substituted for the words "not less than once annually". The words "without his consent" are substituted for the word "involuntarily". The words "his reserve grade" are substituted for the words "permanent rank, grade, or rating".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3225. Army National Guard and Army National Guard of United States, exclusive of members on active duty.

The authorized strength of the Army National Guard and the Army National Guard of the United States, exclusive of members who are included in the strength of 837,000 authorized in section 3201 (a) of this title for members of the Army on active duty, is 600,000. The strength authorized by this section shall be allocated among the States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 177.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3225	10: 20j (c).	July 10, 1950, ch. 454, § 102 (c), 64 Stat. 322.

The exclusion clause is substituted for 10: 20j (c) (last 34 words).

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see section 3201 of this title.

§ 3230. Personnel detailed outside Department of Defense.

Members of the Army who are detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths under any law. (Added Pub. L. 85-861, § 1 (69) (B), Sept. 2, 1958, 72 Stat. 1464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3230	5:171s.	July 13, 1955, ch. 358, § 604, 69 Stat. 314.

The words "of the United States" are inserted for clarity. The word "strengths" is substituted for the word "numbers".

Chapter 333.—ENLISTMENTS

Sec.
3251. Definition.
3253. Army: persons not qualified.
3258. Regular Army: reenlistment after service as an officer.
3259. Army Reserve: transfer from Army National Guard of United States.
3260. Army Reserve: transfer to upon withdrawal as member of Army National Guard.
3261. Army National Guard of United States.

AMENDMENTS

1968—Pub. L. 90-235, § 2(a)(2)(C), Jan. 2, 1968, 81 Stat. 756, struck out item 3252, which read: "Temporary enlistments", item 3254, which read: "Army: during war or emergency", item 3255, which read: "Regular Army: recruiting campaigns", item 3256, which read: "Regular Army: qualifications, term, grade", item 3262, which read: "Extension of enlistment for members needing medical care or hospitalization", and item 3263, which read: "Voluntary extension of enlistment".

1958—Pub. L. 85-861, § 1 (71) (C), Sept. 2, 1958, 72 Stat. 1465, added item 3263.

CROSS REFERENCES

Appointment of enlisted men to cadetships at the Military Academy, see section 4342 of this title.

Articles of Military Code to be explained, see section 937 of this title.

Detail of members of Army as students, observers, and investigators, see section 4301 of this title.

Effect upon enlisted status of acceptance of appointment as cadet, see section 516 of this title.

Fraudulent or unlawful enlistment, punishment, see sections 883, 884 of this title.

General military law provisions, see section 501 et seq. of this title.

Oath of enlistment, see section 502 of this title.

§ 3251. Definition.

In this chapter "enlistment" means original enlistment or reenlistment. (Aug. 10, 1956, ch. 1041, 70A Stat. 177.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3251	No source.	No source.

The revised section is inserted for clarity.

§ 3252. Repealed. Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 177, provided that temporary enlistments could be made only in the Army without specification of component.

§ 3253. Army: persons not qualified.

In time of peace, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8. (Aug. 10, 1956, ch. 1041, 70A Stat. 177; Aug. 17, 1961, Pub. L. 87–143, § 1(1), 75 Stat. 364; Jan. 2, 1968, Pub. L. 90–235, § 2(a)(2)(A), 81 Stat. 756.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3253 (a)	10: 622.	R. S. 1118; Feb. 27, 1877, ch. 69 (17th par.), 19 Stat. 242; July 29, 1941, ch. 325, 55 Stat. 606.
3253 (b)	10: 623; 10: 624.	R. S. 1998; restated Aug. 22, 1912, ch. 336, § 1, 37 Stat. 356; Oct. 14, 1940, ch. 876, § 504 (9th clause), 54 Stat. 1172.
3253 (c)	10: 625.	Aug. 1, 1894, ch. 179, § 2, 28 Stat. 216; June 14, 1920, ch. 286, 41 Stat. 1077.

In subsection (a), the words "an armed force" are substituted for the words "the military service of the United States". The words "and no person" are omitted as surplusage. The last sentence is substituted for 10: 622 (proviso). The words "by regulations or otherwise" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. Since the authority to enlist deserters "in meritorious cases", granted to the Secretary by 10: 622, is equivalent to or broader than his authority to do so under 10: 624, the applicability of 10: 624 to 10: 622 is omitted as surplusage.

In subsection (b), the word "soldier" in 10: 623, is omitted as covered by the word 'person". The last sentence is substituted for 10: 624.

In subsections (b) and (c), the first 15 words and the proviso of section 2 of the act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10: 623 or 625. They are also omitted from the revised section, since the first 15 words are superseded by section 3256(a) of this title, and the proviso is executed.

In subsection (c), the words "(except an Indian)", in section 2 of the act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10: 625. They are also omitted from the revised section, since section 201 (b) of the Act of October 14, 1940, ch. 876, 54 Stat. 1138 (8 U. S. C. 601), provides that Indians are citizens and nationals of the United States. The words "may be accepted for original" are substituted for the words "shall be enlisted for the first".

AMENDMENTS

1968—Pub. L. 90–235 struck out provisions formerly set out as subsec. (a) disqualifying insane persons, intoxicated persons, deserters and convicted felons from Army service, and provisions formerly set out as subsec. (b) disqualifying from reenlistment in the Army persons whose service during their last term of enlistment was not honest and faithful, and redesignated as entire section provisions formerly set out as subsec. (c).

1961—Subsec. (c). Pub. L. 87–143 substituted "a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8" for ", or has made a legal declaration of intention to become, a citizen of the United States".

ENLISTMENTS BETWEEN JUNE 30, 1955, AND JULY 24, 1957

Pub. L. 85–116, § 3, July 24, 1957, 71 Stat. 311, provided that: "Enlistments made under the Act of June 30, 1950, as amended (69 Stat. 297), after June 30, 1955, and before the date of enactment of this Act [July 24, 1957] are considered to have been made under a suspension of (1) that portion of section 2 of the Act of August 1, 1894 (28 Stat. 216), as amended, which read: 'In time of peace no person who is not a citizen of the United States or who has not made legal declaration of his intention to become a citizen of the United States, shall be enlisted for the first enlistment in the Army.' or (2) section 3253 (c) of title 10, United States Code [subsection (c) of this section], as the case may be."

ENLISTMENTS BETWEEN JULY 24, 1957 AND JULY 1, 1959

Pub. L. 85–116, § 2, July 24, 1957, 71 Stat. 311, provided that subsection (c) of this section does not apply to enlistments made under the act of June 30, 1950 on and after July 24, 1957, and before July 1, 1959.

CROSS REFERENCES

Nationality and naturalization, see section 1401 et seq. of Title 8, Aliens and Nationality.

Naturalization through service in armed forces, see sections 1439, 1440 of Title 8.

Persons effecting unlawful enlistment, punishment, see section 884 of this title.

Separation for various reasons, see section 3811 et seq. of this title.

§§ 3254 to 3256. Repealed. Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

Section 3254, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, provided for temporary enlistments in the Army during war or emergency.

Section 3255, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, provided for recruiting campaigns to obtain enlistments in the Regular Army.

Section 3256, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, set forth the qualifications for and term of enlistments in the Regular Army and the grade in which such enlistments were made.

MEMBERS OF ARMY AND AIR FORCE SERVING UNDER ENLISTMENTS FOR UNSPECIFIED PERIODS ON JAN. 2, 1968; CONTINUANCE IN STATUS; DISCHARGE.

Section 3(c) of Pub. L. 90–235 provided that: "Members of the Army or the Air Force who, on the effective date of this Act [Jan. 2, 1968], are serving under enlistments for unspecified periods under sections 3256 (b) and 8256(b) of title 10, United States Code, shall continue in that status and shall be discharged therefrom in accordance with laws applicable to such discharges on the day before the effective date of this Act."

§ 3258. Regular Army: reenlistment after service as an officer.

Any former enlisted member of the Regular Army who has served on active duty as a Reserve officer of the Army, or who was discharged as an enlisted member to accept a temporary appointment as an officer of the Army, is entitled to be reenlisted in the Regular Army in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sen-

tence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Army prescribes for exceptional circumstances) after termination of that service. However, if his service as an officer terminated by a general discharge, he may, under regulations to be prescribed by the Secretary of the Army, be so reenlisted. (Aug. 10, 1956, ch. 1041, 70A Stat. 179; Aug. 8, 1958, Pub. L. 85-603, § 1 (1), 72 Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3258	10: 631a (less last proviso).	July 14, 1939, ch. 267, § 1 (less last proviso); restated May 29, 1954, ch. 249, § 19 (b) (less last proviso), 68 Stat. 166.

The words "former" and "as an enlisted member" are inserted for clarity. The words "credit for service" are substituted for the words "of service". The words "in his grade" are substituted for the words "in the appropriate enlisted grade". The words "he applies" are substituted for the words "application * * * shall be made". The words "Hereafter" and "while on active duty" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-603 limited entitlement to be reenlisted in enlisted grade to those officers whose service terminated by an honorable discharge and those relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and provided that persons whose service terminated by a general discharge, may, under regulations to be prescribed by the Secretary of the Army, be so reenlisted.

CROSS REFERENCES

Service credit: regular enlisted members; service as an officer to be counted as enlisted service, see section 3684 of this title.

§ 3259. Army Reserve: transfer from Army National Guard of United States.

Under such regulations as the Secretary of the Army may prescribe and with the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, an enlisted member of the Army National Guard of the United States may be transferred in grade to the Army Reserve. Upon transfer, he is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if his service has been honorable. (Aug. 10, 1956, ch. 1041, 70A Stat. 179.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3259	50: 1116 (less last 15 words of 1st sentence, as applicable to enlistments).	July 9, 1952, ch. 608, § 706 (less last 15 words of 1st sentence, as applicable to enlistments), 66 Stat. 503.

The words "at any time", in 50: 1116 (1st sentence), and "of any person" and "from the National Guard of the United States or from the Air National Guard of the United States", in 50: 1116 (2d sentence), are omitted as surplusage. The words "highest regular or reserve grade ever held by him in the Army" are substituted for the words "highest permanent grade previously held in the Army or any component thereof", since "permanent" grades are held only as a Regular or Reserve and there are no "non-permanent" grades held in a component.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title; title 32 section 323.

§ 3260. Army Reserve: transfer to upon withdrawal as member of Army National Guard.

Unless discharged from his enlistment as a Reserve, an enlisted member of the Army National Guard of the United States who ceases to be a member of the Army National Guard becomes a member of the Army Reserve. An enlisted member who so becomes a member of the Army Reserve ceases to be a member of the Army National Guard of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 179.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3260	50: 1117 (as applicable to enlistments).	July 9, 1952, ch. 608, § 707 (as applicable to enlistments), 66 Stat. 503.

The words "enlistment as a Reserve" are substituted for the words "enlistment as a * * * Reserve enlisted member".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3261. Army National Guard of United States.

(a) Except as provided in subsection (c), to become an enlisted member of the Army National Guard of the United States, a person must—

(1) be enlisted in the Army National Guard;

(2) subscribe to the oath set forth in section 304 of title 32; and

(3) be a member of a federally recognized unit or organization of the Army National Guard in the grade in which he is to be enlisted as a Reserve.

(b) Under regulations to be prescribed by the Secretary of the Army, a person who enlists or reenlists in the Army National Guard, or whose term of enlistment or reenlistment in the Army National Guard is extended, shall be concurrently enlisted or reenlisted, or his term of enlistment or reenlistment shall be concurrently extended, as the case may be, as a Reserve of the Army for service in the Army National Guard of the United States.

(c) A member of the Army Reserve who is enlisted in the Army National Guard in his reserve grade, and is a member of a federally recognized unit or organization thereof, becomes a member of the Army National Guard of the United States and ceases to be a member of the Army Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 179; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(20), 72 Stat. 1565; Oct. 4, 1961, Pub. L. 87-378, § 3, 75 Stat. 808.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3261 (a)	50: 952 (proviso).	July 9, 1952, ch. 608, §§ 228 (proviso), 705 (less (a)), 66 Stat. 488, 503.
3261 (b)	50: 1115 (less (a)).	

In subsection (a), the words "To become an enlisted member of * * * a person must" are substituted for the words "That no person shall become an enlisted member * * * hereunder, unless he first". The words "in the grade in which he is to be enlisted as a Reserve" are substituted for the words "in the same grade" for clarity.

In subsections (a) and (b), the word "duly" is omitted as surplusage.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87-378, § 3(1), substituted "subsection (c)" for "subsection (b)."

Subsec. (b). Pub. L. 87-378, § 3(2), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 87-378, § 3(2), redesignated former subsec. (b) as (c).

1958—Subsec. (b). Pub. L. 85-861 substituted "becomes a member" for "becomes a memeber".

EFFECTIVE DATE OF 1961 AMENDMENT

Section 6 of Pub. L. 87-378 provided that: "The amendments made by sections 3, 4, and 5 of this Act [to this section and section 8261 of this title, and section 302 of Title 32] shall not affect any enlistment, reenlistment, or appointment entered into or made before the effective date of this Act [October 4, 1961]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Reserve components, qualifications, see section 510 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 510 of this title.

§§ 3262, 3263. Repealed. Pub. L. 90-235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

Section 3262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 180; Sept. 2, 1958, Pub. L. 85-861, § 1(71), 72 Stat. 1464, provided for extension of enlistment of members of the Army needing medical care or hospitalization.

Section 3263, added Pub. L. 85-861 § 1(71)(B), Sept. 2, 1958, 72 Stat. 1465, amended Pub. L. 87-649 § 14c(4), Sept. 7, 1962, 76 Stat. 501, provided for voluntary extension of enlistments in the Army.

Chapter 335.—APPOINTMENTS IN THE REGULAR ARMY

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AMENDMENTS

1967—Pub. L. 90-130, § 1(10)(C), (E), Nov. 8, 1967, 81 Stat. 375, eliminated item 3304 which read: "Commissioned officers; Army Nurse Corps and Army Medical Specialist: promotion to lieutenant colonel or colonel", and struck out "other than officers in Army Nurse Corps and Army Medical Specialist Corps" following "Commissioned officers" in item 3305.

1958—Pub. L. 85-861, § 1 (79) (B), Sept. 2, 1958, 72 Stat. 1468, added item 3314.

1957—Pub. L. 85-155, title I, § 101 (9), (15), (17), Aug. 21, 1957, 71 Stat. 377, 379, substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in item 3291, "Army Medical Specialist" for "Women's Medical Specialist Corps" and "promotion to lieutenant colonel or colonel" for "promotion to first lieutenant, captain, major, or lieutenant colonel" in item 3304, and "Commissioned officers other than officers in Army Nurse Corps and Army Medical Specialist Corps" for "Commissioned officers" in item 3305.

§ 3281. Commissioned officer grades.

The commissioned grades in the Regular Army are:

(1) Major general.

(2) Brigadier general.

(3) Colonel.

(4) Lieutenant colonel.

(5) Major.

(6) Captain.

[1] Section catchline amended without amending analysis.

(7) First lieutenant.

(8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3281	10: 506 (a) (last 24 words).	Aug. 7, 1947, ch. 512, § 502 (a) (last 24 words), 61 Stat. 884.

CROSS REFERENCES

Rank: commissioned officers of Army, Navy, Air Force, and Marine Corps, see section 741 of this title.

§ 3282. General officers: title of office.

An officer holding an appointment as a general officer in the Regular Army may be called a general officer of the Regular Army. In addition, a general officer of the Regular Army in the Medical Corps, Dental Corps, Veterinary Corps, Judge Advocate General's Corps, or the Chaplains, may be called a general officer of that branch. (Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3282	10: 506 (b) (less 2d sentence).	Aug. 7, 1947, ch. 512, § 502 (b) (less 2d sentence), 61 Stat. 884.

The words "may be called" are substituted for the words "shall be known as" and "may be specifically referred to". The words "of that branch" are substituted for the enumeration of branches.

§ 3283. Commissioned officers: appointment without specification of branch; transfer between branches.

(a) Appointments in commissioned grades in the Regular Army shall be made without specification of branch except in each of the special branches, in the Women's Army Corps, and as professors or registrar of the United States Military Academy.

(b) Commissioned officers appointed in the Regular Army without specification of branch shall be assigned, and may be transferred and reassigned, by the Secretary of the Army to branches other than the special branches and the Women's Army Corps, according to their professional qualifications and the needs of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 181; Aug. 6, 1958, Pub. L. 85-600, § 1 (4), 72 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3283 (a)	10: 506 (b) (2d sentence); 10: 506 (c) (1st sentence).	Aug. 7, 1947, ch. 512, § 502 (b) (2d sentence), (c) (less proviso), 61 Stat. 884; June 12, 1948, ch. 449, § 104 (d) (1), 62 Stat. 358.
3283 (b)	10: 506 (c) (less 1st sentence and less proviso).	

Subsection (a) is substituted for 10: 506 (b) (2d sentence) and 506 (c) (1st sentence). The words "in each of the special branches" are substituted for the enumeration of branches in 10: 506 (b) (2d sentence) and for the words "each of the several corps of the Army Medical Service, as chaplains", in 10: 506 (c).

In subsection (b), the words "other than the special branches and the Women's Army Corps" are substituted for 10: 506 (c) (words between 3d and 4th parentheses). The word "their" is substituted for the words "of the officers concerned". The words "of the Army" are substituted for the words "of the branches, arms, and services". The words "from time to time" and "arms, and services" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-600 included the registrar of the Military Academy within the exception.

CROSS REFERENCES

Detailing members of Army from one branch for duty with another, see section 3065 of this title.

Promotion lists, determination of place upon transfer, see section 3296 of this title.

§ 3284. Commissioned officers: appointment, how made.

Appointments in commissioned grades in the Regular Army shall be made by the President, by and with the advice and consent of the Senate. (Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3284	10: 506 (a) (less last 24 words); 10: 506c (a).	Aug. 7, 1947, ch. 512, §§ 502 (a) (less last 24 words), 506 (a), 61 Stat. 883, 890.

The words "In addition to the officers permanently appointed in general officer grades above that of major general (authorized by other provisions of law)", in 10: 506 (a), are omitted as surplusage, since no appointments are authorized in the Regular Army above the grade of major general. The words "additional" and "subject to the conditions and limitations set forth", in 10: 506c (a), are omitted as surplusage. The words "Within the authorized active list commissioned officer strength of the Regular Army", in 10: 506c (a), are omitted, since unless otherwise specified, all appointments must be within the authorized strength.

CROSS REFERENCES

Temporary appointments, see section 3447 of this title.

§ 3285. Commissioned officers: original appointment; qualifications.

To be eligible for original appointment in a commissioned grade in the Regular Army, except in the Medical Corps or the Dental Corps, and except as provided in section 4353 (b) of this title, a person must—

(1) be a citizen of the United States;

(2) be at least 21 years of age;

(3) be of good moral character;

(4) be physically qualified for active service; and

(5) have such other qualifications as the Secretary of the Army may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181; Sept. 2, 1958, Pub. L. 85-861, § 1 (72), 72 Stat. 1465.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3285	10: 506c (b).	Aug. 7, 1947, ch. 512, § 506 (b), 61 Stat. 890.

The first 10 words and the words "a person must" are substituted for 10: 506c (b) (1st 14 words). The words "except under section 3294 (a) of this title" are inserted, since that section is an exception to the general provisions of the revised section. (See opinion of the Judge Advocate General of the Army (1948/2124, 1 Mar. 1948).) The word "military" is omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-861 substituted "except in the Medical Corps or the Dental Corps, and except as provided in section 4353 (b) of this title" for "except under section 3294 (a) of this title".

§ 3286. Commissioned officers: original appointment; age limitations.

(a) A person may not be originally appointed in a commissioned grade in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialists Corps, if on the date of his appointment he has already passed his—

(1) thirty-fourth birthday, for a person appointed as a chaplain;

(2) thirty-second birthday, for a person appointed in the Judge Advocate General's Corps or the Veterinary Corps;

(3) thirtieth birthday, for a person appointed in the Medical Service Corps; or

(4) twenty-seventh birthday, for all other persons.

However, each maximum age is increased by the period credited to the appointee under section 3287 (a) of this title, other than that credited under clause (2) (A) or (B) of that section.

(b) Notwithstanding subsection (a), a person may not be originally appointed in a commissioned grade in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, if he is above the age that would permit him to complete 20 years of active commissioned service in the armed forces before his fifty-fifth birthday. (Aug. 10, 1956, ch. 1041, 70A Stat. 181; Sept. 2, 1958, Pub. L. 85-861, § 1 (73), 72 Stat. 1465.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3286 (a)	10: 506c (e) (less provisos).	Aug. 7, 1947, ch. 512, § 506 (e), 61 Stat. 891.
3286 (b)	10: 506c (e) (provisos).	

In subsection (a), the word "originally" is substituted for the word "initially". The words "if on the date of his appointment he has already passed his" are substituted for the words "when the length of time from date of birth to date of appointment exceeds". The words "and persons appointed with view to assignment in" are omitted as superseded by section 3292 of this title. In clause (4), the word "other" is substituted for the words "except those hereinafter specifically mentioned". The exception as to section 3291 of this title is inserted, since the source statute did not apply to the appointment of a nurse or woman medical specialist under that revised subsection. The exception as to section 3294 (a) of this title is inserted, since the source statute did not apply to the appointment of doctors and dentists under that revised section. (See opinion of the Judge Advocate General of the Army (1948/2124, 1 Mar. 1948).)

In subsection (b), the first eight words are substituted for 10: 506c (e) (1st 22 words of 1st proviso). The words "the period of active commissioned service in the Army after" are substituted for the words "by the number of years, months, and days, of active Federal service * * * as a commissioned officer in the Army of the United States or any component thereof subsequent to". The words "after the appointee became 21 years of age" are substituted for the words "by such person after attaining the age of twenty-one years". 10: 506c (e) (last proviso) is omitted as executed.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 substituted "except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps" for "except under section 3291 or 3294 (a) of this title", eliminated appointments in the Medical Corps and Dental Corps from cl. (2), and inserted provisions permitting increase of maximum age by the period credited to the appointee under section 3287(a) of this title, other than that permitted under clause (2) (A) or (B) of that section.

Subsec. (b). Pub. L. 85-861 substituted provisions prohibiting appointment of a person in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, if he is above the age that would permit him to complete 20 years of active commissioned service before his fifty-fifth birthday for provisions which authorized increase of maximum age.

§ 3287. Commissioned officers: original appointment; service credit.

(a) For the purpose of determining grade, position on a promotion list, seniority in his grade in the Regular Army, and eligibility for promotion, a person originally appointed in a commissioned grade in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, may, in the discretion of the Secretary of the Army, be credited at the time of his appointment—

(1) with the active commissioned service in the Army that he performed after December 6, 1941, after becoming 21 years of age, and before his appointment; and

(2) with one of the following periods, if applicable:

(A) Three years, if he is appointed as a chaplain, in the Judge Advocate General's Corps, or in the Veterinary Corps.

(B) Three years, if he is appointed in the Medical Service Corps and if he holds the degree of doctor of philosophy or a comparable degree recognized by the Surgeon General in a science allied to medicine.

(C) If he was a commissioned officer on active duty on July 20, 1956, a period of not more than 8 years, computed by—

(i) taking the period of commissioned service that may be credited to him in computing his basic pay, but not more than the period computed by subtracting 27 years from his age on the date of his appointment; and

(ii) subtracting the period of active commissioned service in the Army that he performed after December 6, 1941, after becoming 21 years of age, and before his appointment, but not more than the difference in age computed under subparagraph (i).

(D) The number of days, months, and years by which the appointee's age exceeds 27 years, but not more than two years.

(b) Notwithstanding any other provision of law, a person who was a cadet at the United States Military Academy or the United States Air Force Academy, or a midshipman at the United States Naval Academy, may not be originally appointed in a commissioned grade in the Regular Army before his classmates at that academy are graduated and appointed as officers. A person who was a cadet or midshipman at, but was not graduated from, one of those academies may not be credited, upon original appointment as a commissioned officer of the Regular Army, with longer service than that credited to

any member of his class at that academy whose service in the Army has been continuous since graduation.

(c) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy who is originally appointed as a second lieutenant in the Regular Army is not entitled to any service credit under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 182; Sept. 2, 1958, Pub. L. 85-861, § 1 (74), 72 Stat. 1466.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3287 (a)	10: 506c (c) (1st sentence).	Aug. 7, 1947, ch. 512, § 506 (c), (f) (last 23 words of last sentence), 61 Stat. 890; June 30, 1954, ch. 433, § 1 (b), 68 Stat. 357. Aug. 4, 1947, ch. 459, § 103 (last 67 words), 61 Stat. 735.
3287 (b)	10: 506c (c) (words of 2d sentence before last semicolon).	
3287 (c)	10: 506c (c) (words of 2d sentence after last semicolon); 10: 156e (last 68 words).	
3287 (d)	10: 506c (c) (less 1st and 2d sentences).	
3287 (e)	10: 506c (f) (last 23 words of last sentence).	

All references to the inclusion of certain corps within the Regular Army are omitted since under sections 3063 and 3064 of this title they are branches of the Army and not of the Regular Army.

In subsection (a), the word "originally" is substituted for the word "initially". The words "in a commissioned grade" are substituted for the words "commissioned an officer". The words "active commissioned service in the Army after * * * that he performed after becoming 21 years of age and before" are substituted for the words "an amount of service equivalent to the total period of active Federal service performed after attaining the age of twenty-one years as a commissioned officer in the Army of the United States or any component thereof subsequent to * * * and prior to".

In subsections (a) and (b), the words "except a person appointed under section 3294 (a) of this title" are inserted, since the service credit provisions of the revised section do not apply to appointments made under that section.

In subsection (c), the word "originally" is inserted for clarity. The words "in a commissioned grade" are substituted for the words "commissioned an officer". The words "an amount * * * equal to" are omitted as surplusage. 10: 156e (last 68 words) is omitted as covered by 10: 506c (c) (words of 2d sentence after last semicolon).

In subsection (d), the words "in a commissioned grade" are substituted for the words "commissioned an officer". The words "No * * * may" are substituted for the words "Any * * * shall not". The word "formerly" is omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-861 amended section generally, by, among other changes, making the provisions relating to crediting of service permissive, in the discretion of the Secretary of the Army, instead of mandatory, inserting provisions authorizing crediting of not more than 8 years of service for persons who were commissioned officers on active duty on July 20, 1956, permitting crediting of the number of days, months, and years by which the appointee's age exceeds 27 years, but not more than 2 years, prohibiting original appointment of persons who were cadets at the Air Force Academy or midshipmen at the Naval Academy before their classmates are graduated and appointed as officers, and denying service credit to graduates of the Air Force Academy and Naval Academy who are originally appointed as second lieutenants in the Regular Army.

SERVICE CREDIT FOR CERTAIN SPECIALISTS APPOINTED BEFORE JULY 20, 1958

Section 18 of Pub. L. 85-861 provided that, in place of any applicable period of service under subsec. (a) (2) of this section, each of not more than 200 persons who were originally appointed before July 20, 1958, in commissioned grades in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, and who were outstanding specialists in a critical field according to criteria prescribed by the Secretary of the Army and approved by the President, could, in the discretion of the Secretary, be credited at the time of his appointment with a period of service, not to exceed eight years, equal to the number of days, months, and years by which his age exceeded 27 years. The name of each such person who was appointed during the period covered by the report, the grade to which appointed, and the justification therefor had to be reported to the Committees on Armed Services of the Senate and the House of Representatives before July 16, 1958, and the names and grades of the remainder, and the justification for their appointment, had to be so reported before July 16, 1959.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3286, 3290, 3888, 3927 of this title.

§ 3288. Commissioned officers: original appointment; determination of grade.

A person originally appointed as a commissioned officer in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, is appointed in the grade that is held by the junior officer on the applicable promotion list who is not a deferred officer, or an officer considered but not recommended for promotion under section 518 of the Officer Personnel Act of 1947 (61 Stat. 910), and who has the same or the next longer service. (Aug. 10, 1956, ch. 1041, 70A Stat. 183; Aug. 21, 1957, Pub. L. 85-155, title I, § 101 (7), 71 Stat. 376; Sept. 2, 1958, Pub. L. 85-861, § 1 (75), 72 Stat. 1466.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3288	10: 506c (d) (1st sentence).	Aug. 7, 1947, ch. 512, § 506 (d) 1st sentence), 61 Stat. 891.

The exception as to section 3294 is inserted, since the grades in which persons are appointed under that section are not limited by this revised section. The tenth through twentieth words are substituted for 10: 506c (d) (1st 14 words). The words "at least" are substituted for the word "more". The words "who have no service credit and those who are credited", "shall be appointed in the grade of", and "who are credited" are omitted as surplusage.

REFERENCES IN TEXT

Section 518 of the Officer Personnel Act of 1947 (61 Stat. 910), referred to in the text, means section 518 of act Aug. 7, 1947, ch. 512, title V, 61 Stat. 910, which was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

AMENDMENTS

1958—Pub. L. 85-861 amended section generally by substituting provisions requiring a person originally appointed as a commissioned officer in the Regular Army, except in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, to be appointed in the grade that is held by the junior officer on the applicable promotion list who is not a deferred officer, or an officer considered but not recommended for promotion under section 518 of the Officer Personnel Act of 1947, and who has the same or the next longer service, for provisions which required appointment as second lieutenants of persons with less than three years of service, as first lieutenants for persons with at least three but less than seven years of service, and as captains for persons with at least seven years of service.

1957—Pub. L. 85-155 inserted a reference to section 3291 of this title.

§ 3289. Commissioned officers; Medical Corps: original appointment; professional examination.

No person may be originally appointed as a first lieutenant in the Regular Army in the Medical Corps until he passes an examination of his professional fitness before an examining board composed of at least three officers of the Medical Corps designated by the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 183.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3289	10: 93.	Apr. 23, 1908, ch. 150, § 4, 35 Stat. 67.

The words "may be originally appointed" are substituted for the words "shall receive an appointment". The words "in the Regular Army" are inserted, since the source statute, when enacted, applied only to members of that component. The words "until he passes an examination" are substituted for the words "unless he shall have been examined and approved". The words "of his professional fitness" are inserted to distinguish the examination required by the revised section from the required physical examination.

§ 3290. Commissioned officers; Medical Service Corps: original appointment; additional qualifications, grade.

An original appointment in the Regular Army in the Medical Service Corps may be made only in the grade of second lieutenant, except as provided in section 3287 (c) of this title, and from the following persons:

(1) Members of the Regular Army.

(2) Reserves not in an inactive status.

(3) Graduates of an accredited school of pharmacy or optometry, or of a school or college who hold a degree in a science allied to medicine or any other degree approved by the Surgeon General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 183.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3290	10: 156e (less last 68 words).	Aug. 4, 1947, ch. 459, § 103 (less last 67 words), 61 Stat. 735.

The words "in the Regular Army in the Medical Service Corps" are substituted for the words "in the Medical Service Corps, Regular Army", since under section 3064 of this title, the Medical Service Corps is a branch of the Army, and not of the Regular Army. The exception to 10: 481 is omitted as inapplicable. The references to 10: 505—505d and 552c are omitted as executed. The reference to 10: 552a is omitted as repealed by section 507 (d) (2) of the Officer Personnel Act of 1947, 61 Stat. 894. The exception as to section 3287 (c) of this title is inserted, since 10: 506a (c) was enacted after 10: 156e. The words "and except as hereinafter provided for transfer thereto" are omitted as executed. 10:156e (31 words before proviso) is omitted as covered by sections 3285 and 3286 of this title. The words "Reserves not in an inactive status" are substituted for the words "or its active Reserve".

CROSS REFERENCES

Medical Service Corps: organization; chief and assistant chiefs, see section 3068 of this title.

§ 3291. Commissioned officers: Army Nurse Corps and Army Medical Specialist Corps: original appointment; additional qualifications, grade.

(a) An original appointment in the Regular Army in the Army Nurse Corps or the Army Medical Specialist Corps may be made in the grade of—

(1) second lieutenant, from persons who have performed less than three years of service creditable for promotion under subsection (c), who on the date of nomination have not passed their twenty-seventh birthday, and who are not qualified for appointment in the grade of first lieutenant under clause (2);

(2) first lieutenant, from persons who have performed less than seven years of service creditable for promotion under subsection (c), and who on the date of nomination have not passed their thirtieth birthday; and

(3) captain, from persons who have performed at least seven years of service creditable for promotion under subsection (c), and who on the date of nomination have not passed their thirty-ninth birthday.

The maximum ages specified in clauses (1) and (2) of this subsection are increased by the period of active commissioned service in the armed forces after December 7, 1941, but not by more than five years.

(b) To be eligible for appointment in the Army Nurse Corps under this section, a person must be a graduate of a hospital or university school of nursing and a registered nurse.

(c) For the purpose of determining years of service creditable for promotion, a person appointed under subsection (a) shall be credited at the time of appointment with all active commissioned service in the armed forces performed after becoming 21 years of age and before appointment. However, not more than fourteen years of service may be so credited. A person appointed as a commissioned officer under subsection (a) (2) who has not performed at least three years of active commissioned service in the armed forces after December 7, 1941, shall, for the same purposes, be credited with that amount of service. (Aug. 10, 1956, ch. 1041, 70A Stat. 183; Aug. 21, 1957, Pub. L. 85–155, title I, § 101 (8), 71 Stat. 376; Sept. 30, 1966, Pub. L. 89–609, § 1(4), 80 Stat. 852.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3291 (a)	10: 166 (c) (less last sentence); 10: 166a (c) (less last sentence.)	Apr. 16, 1947, ch. 38, §§ 101 (c), 102 (c); restated May 27, 1953, ch. 71, §§ 1, 2, 67 Stat. 36.
3291 (b)	10: 166 (c) (last sentence); 10: 166a (c) (last sentence).	

In subsection (a), the words "by the President, by and with the advice and consent of the Senate" are omitted as covered by section 3284 of this title. The words "citizens of the United States who have attained the age of twenty-one years" are omitted as covered by section 3285 of this title. The words "have not passed their twenty-seventh [thirtieth] birthday" are substituted for the words "not more than twenty-seven [thirty] years of age".

In subsection (b), the words "and who possesses such physical and other qualifications as may be prescribed by the Secretary of the Army" are omitted as covered by section 3284 of this title.

AMENDMENTS

1966—Subsec. (a)(1)—(3). Pub. L. 89-609, § 1(4)(A), substituted "persons" for "women" in clauses (1)—(3).

Subsec. (b). Pub. L. 89-609, § 1(4)(B), substituted "person" for "woman".

Subsec. (c). Pub. L. 89-609, § 1(4)(C), struck out "her" preceding "appointment" in two instances and "that she" preceding "performed after".

1957—Pub. L. 85-155 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in the catchline.

Subsec. (a). Pub. L. 85-155 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps", inserted "from women who have performed less than three years of service creditable for promotion under subsection (c)" in clause (1), and "from women who have performed less than seven years of service creditable for promotion under subsection (c)" in clause (2), and added clause (3).

Subsec. (b). Pub. L. 85-155 substituted "university school of nursing" for "university training school".

Subsec. (c). Pub. L. 85-155 added subsec. (c).

WAIVER OF MALE AGE LIMITATIONS

Section 2 of Pub. L. 89-609 provided that: "For two years following the effective date of this Act [Sept. 30, 1966] the Secretary of the Army may waive the provisions of section 3291(a), title 10, United States Code [subsec. (a) of this section], which establish maximum ages for appointment in the Regular Army in the Army Nurse Corps or Army Medical Specialists Corps, with respect to male persons who are otherwise qualified for appointment."

CROSS REFERENCES

Age limitations generally, see section 3286 of this title.

Army Nurse Corps: chief; appointment, see section 3069 of this title.

Service credit generally, see section 3287 of this title.

Army Medical Specialist Corps: organization; chief and assistant chiefs, see section 3070 of this title.

§ 3292. Commissioned officers; Judge Advocate General's Corps: original appointment; additional qualifications, grade.

Original appointments in commissioned grades in the Regular Army in the Judge Advocate General's Corps may be made from the following:

(1) Officers of the Regular Army in other branches.

(2) Reserve commissioned officers assigned to the Judge Advocate General's Corps.

(3) Qualified civilian graduates of accredited law schools.

Commissioned officers of the Regular Army in other branches may be originally appointed in the Judge Advocate General's Corps in the grades of first lieutenant through colonel. (Aug. 10, 1956, ch. 1041, 70A Stat. 184.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3292	10:65.	June 24, 1948, ch. 625, § 247, 62 Stat. 643; Aug. 21, 1954, ch. 783, §§ 1, 8 (as applicable to § 247 of the Act of June 24, 1948, ch. 625), 68 Stat. 759.

The word "original" is substituted for the word "permanent". The words "first lieutenant through colonel" are substituted for the enumeration of grades. The words "Reserve commissioned officers assigned to the Judge Advocate General's Corps" are substituted for the words "Reserve judge advocates". The words "Within the authorized strength of the Judge Advocate General's Corps" are omitted, since unless otherwise specified, all appointments must be within the authorized strength. The words "by the President, by and with the advice and consent of the Senate" are omitted as covered by section 3284 of this title. 10: 65 (last sentence of last par.) is omitted as covered by section 3287 of this title. 10: 65 (last 18 words of 1st par.) is omitted, except as applicable to officers of the Regular Army in other branches who are originally appointed in the Regular Army in the Judge Advocate General's Corps, since the grades in which persons may be originally appointed in the Regular Army are those set forth in section 3288 of this title. Appointments in general officer grades are covered by section 3037 of this title.

CROSS REFERENCES

Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties, see section 3037 of this title.

§ 3293. Commissioned officers; Chaplains: original appointment; examination.

No person in civil life may be originally appointed as a chaplain in the Regular Army unless he has passed an examination prescribed by the President as to his moral, mental, and physical qualifications. (Aug. 10, 1956, ch. 1041, 70A Stat. 184.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3293	10:232.	Mar. 2, 1899, ch. 352, § 7, 30 Stat. 979.

The words "in the Regular Army" are inserted, since the source statute historically applied only to the Regular component. The word "originally" is inserted for clarity. The word "satisfactorily" is omitted as surplusage. Only so much of the third proviso of section 7 of the Act of March 2, 1899, ch. 352, 30 Stat. 979, as relates to chaplains is contained in 10: 232. The applicability of the third proviso to judge advocates is also omitted from the revised section as covered by sections 3285, 3286, and 3292 of this title. The applicability of the third proviso to paymasters is similarly omitted, since the Finance Corps is not a continuation of the Pay Department (see opinion of the Judge Advocate General of the Army (SPJAG 168, 27 Mar. 1942)). The last proviso of section 7 of that act is omitted as executed; and the remainder as superseded by sections 3063, 3064 and 3504 of this title.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1 (2) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Chaplains, see section 3073 of this title.

§ 3294. Commissioned officers; Medical and Dental Corps: original appointment

(a) Original appointments in the Regular Army may be made in the grades of first lieutenant through colonel in the Medical Corps or Dental Corps, as the needs of the Army require. These appointments may be made only from qualified doctors of medicine, osteopathy, or dentistry, as the case may be, who are citizens of the United States and who have such other qualifications as the Secretary of the Army may prescribe. In addition, to be eligible for appointment in the Medical

Corps under this section, a doctor of osteopathy must—

(1) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(2) be licensed to practice medicine, surgery, or osteopathy in a State or Territory or in the District of Columbia;

(3) under regulations to be prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for appointment under this section in the grade for which that person is applying; and

(4) have such other qualifications as the Secretary of the Army prescribes after considering the recommendation, if any, of the Surgeon General.

(b) For the purposes of determining grade, position on a promotion list, seniority in his grade in the Regular Army, and eligibility for promotion, an officer appointed under subsection (a) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. However, a doctor of medicine or osteopathy who has completed an internship of one year, or the equivalent, may not be credited with less than five years. (Aug. 10, 1956, ch. 1041, 70A Stat. 184; Sept. 2, 1958, Pub. L. 85-861, § 1 (77), 72 Stat. 1467.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3294 (a)	10: 91a (1st and 2d sentences); 10: 121a (1st and 2d sentences).	Aug. 5, 1947, ch. 494, § 201, 61 Stat. 777.
3294 (b)	10: 91a (less 1st and 2d sentences); 10: 121a (less 1st and 2d sentences).	

In subsection (a), the words "Notwithstanding sections 3285, 3286, and 3287 of this title" are inserted, since this section is an exception to those sections. (See opinion of the Judge Advocate General of the Army (1948/2124, 1 Mar. 1948).) The words "Subject to any limitation of the commissioned strength of the Army prescribed by law", in 10: 91a and 121a, are omitted, since unless otherwise specified all appointments must be within the authorized strength. The words "the President, by and with the advice and consent of the Senate", in 10: 91a and 121a, are omitted as covered by section 3284 of this title. The words "in the Regular Army" are substituted for the word "permanent", in 10: 91a and 121a, since historically the source statute applied only to the Regular component. The words "in grades of captain through colonel" are substituted for the words "with rank not above that of colonel", in 10: 91a and 121a. The words "as the needs of the Army require" are substituted for the words "in such numbers as the needs of the service may require", in 10: 91a and 121a, since appointments in the grade of first lieutenant must be made under sections 3285, 3286, and 3287 of this title. (See JAGA 1948/2124, cited above.)

In subsection (b), the words "An officer appointed under subsection (a)" are substituted for the words "The doctors of medicine [dentists] so appointed", in 10: 91a and 121a.

AMENDMENTS

1958—Pub. L. 85-861 eliminated words "additional method authorized as exception to general procedure" from the catchline.

Subsec. (a). Pub. L. 85-861 authorized appointments in the grade of lieutenant in the Medical Corps and Dental Corps, and permitted appointment of certain osteopaths.

Subsec. (b). Pub. L. 85-861 substituted provisions relating to crediting of service for persons appointed under subsection (a) for purposes of determining grade, position on a promotion list, seniority in grade, and eligibility for promotion and requiring doctors of medicine or osteopathy who have completed an internship of one year, or the equivalent, to be credited with at least five years of service, for provisions which required officers appointed under subsection (a) to be credited for promotion with the minimum number of years of service required for promotion of officers of the corps to the grade in which they are appointed.

ADJUSTMENT OF SERVICE CREDIT FOR MEDICAL AND DENTAL OFFICERS APPOINTED BEFORE MAY 1, 1956

Section 19 of Pub. L. 85-861 provided that: "The Secretary concerned may convene boards of officers to review the records and compute the service of each officer of the Medical Corps or the Dental Corps of the Army or the Navy, and each medical or dental officer of the Air Force, appointed before May 1, 1956, including those reserve or temporary officers who were on active duty on that date, or who entered on active duty after that date, in order to adjust the service credited to each such officer to reflect the service authorized to be credited to officers appointed under the Act of April 30, 1956, chapter 223 (70 Stat. 119), or under section 3294, 3444, 5574, 5578, or 8294 of title 10, United States Code. When that adjustment is made, such officers shall be given precedence for promotion purposes or advanced to a lineal position in accordance with their adjusted dates of rank, except that no officer of the Navy may be given an adjusted date of rank in the grade of captain which is earlier than July 1, 1955. All officers of the Navy with the adjusted date of rank of July 1, 1955, in the grade of captain shall retain the precedence among themselves that they held on May 1, 1956, and shall be junior to all other officers assigned that date of rank. If, as a result of readjustment of service credit under this section—

"(1) an officer of the Army or the Air Force is made eligible for promotion, he shall be considered for promotion by the next selection board considering officers of his grade and category; and

"(2) an officer of the Navy attains lineal position equivalent to an officer who is serving in the next higher grade, or who is on a promotion list to that grade, he may be promoted thereto on the recommendation of a board of officers convened under this subsection, and, except as otherwise provided in this section, may be assigned a lineal position in the higher grade appropriate to his adjusted service credit."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3444, 3888, 3927 of this title.

§ 3295. Commissioned officers: original appointment; determination of place on promotion list.

The name of each person who is originally appointed in a commissioned grade in the Regular Army and whose name is to be carried on a promotion list, other than a person appointed in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, shall be placed on the applicable promotion list immediately below the junior officer of the same grade on that list who is not a deferred officer, or an officer considered but not recommended for promotion under section 518 of the Officer Personnel Act of 1947 (61 Stat. 910), and who has the same or the next longer service. (Aug 10, 1956, ch. 1041, 70A Stat. 184; Sept. 2, 1958, Pub. L. 85-861, § 1 (78), 72 Stat. 1467.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3295	10: 506c (d) (less 1st sentence).	Aug. 7, 1947, ch. 512, § 506 (d) (less 1st sentence), 61 Stat. 891.

The words "originally appointed in a commissioned grade in the Regular Army" are substituted for the words "so appointed". The words "if any" and "junior" are inserted for clarity.

REFERENCES IN TEXT

Section 518 of the Officer Personnel Act of 1947 (61 Stat. 910), referred to in the text, means section 518 of act Aug. 7, 1947, ch. 512, title V, 61 Stat. 910, which was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

AMENDMENTS

1958—Pub. L. 85-861 amended section generally by substituting provisions requiring the name of each person who is originally appointed in a commissioned grade and whose name is to be carried on a promotion list, other than a person appointed in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, to be placed on the applicable promotion list immediately below the junior officer of the same grade on that list who is not a deferred officer, or an officer considered but not recommended for promotion under section 518 of the Officer Personnel Act of 1947, and who has the same or the next longer service, for provisions which required the name of each person originally appointed in a commissioned grade to be placed on the applicable promotion list immediately below the junior officer of the same grade having the same or next longer service.

§ 3296. Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion.

(a) The names of all commissioned officers in grades below brigadier general on the active list of the Regular Army, except those in special categories otherwise excluded under law, and professors and the registrar of the United States Military Academy, shall be carried on promotion lists in descending order of grade and rank in the Regular Army. These officers may be called "promotion-list officers".

(b) A separate promotion list shall be maintained for commissioned officers of the Regular Army in each of the following:

(1) The Chaplains.

(2) The Women's Army Corps.

(3) Each of the several branches of the Army Medical Department.

(c) The names of all promotion-list officers not on a list maintained under subsection (b) shall be carried on the Army promotion list.

(d) If a promotion-list officer is transferred from one branch to another whose officers are carried on a different promotion list, his name shall be placed upon the promotion list to which he is transferred among the officers of his grade in accordance with seniority as determined under section 3574 (b) of this title.

(e) Unless specifically provided otherwise, upon the promotion of a promotion-list officer, his name shall be placed at the foot of the list of officers of his grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 184; Aug. 21, 1957, Pub. L. 85-155, title I, § 101 (10), 71 Stat. 377; Aug. 6, 1958, Pub. L. 85-600, § 1 (5), 72 Stat. 522; June 4, 1968, Pub. L. 90-329, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3296 (a)	10: 559 (a); 10: 559 (d) (1).	Aug. 7, 1947, ch. 512, § 505 (a), (c) (1), (3)—(8), (d) (1), (3) (last sentence), (4), 61 Stat. 888; June 12, 1948, ch. 449, § 104 (d) (4), 62 Stat. 358. June 12, 1948, ch. 449, § 104 (e), (f), 62 Stat. 359.
3296 (b)	10: 559 (c) (3)—(8); 10: 559j.	
3296 (c)	10: 559 (c) (1).	
3296 (d)	10: 559 (d) (3) (last sentence).	
3296 (e)	10: 559 (d) (4).	

In subsection (a), the words "permanent" and "as hereinafter prescribed", in 10: 559 (a), are omitted as surplusage. 10: 559 (a) (last sentence) is omitted since the term defined therein was not used in the source statute. The words "in descending order of grade and rank in the Regular Army" are substituted for 10: 559 (d) (1) (1st sentence). 10: 559 (d) (1) (less 1st sentence) is omitted as surplusage.

Subsection (b) is substituted for 10: 559 (c) (3)—(8). 10: 559j (1st par.) is omitted as executed. 10: 559j (less 1st par.) is omitted as covered by the language of revised subsection (a).

In subsection (d), the words "promotion-list" are inserted for clarity. The words "arm, or service" are omitted as obsolete. The words "his name shall be placed" are substituted for the words "shall have his name entered". The words "to which he is transferred" are substituted for the word "new". The word "relative" is omitted as surplusage.

In subsection (e), the word "promotion" is substituted for the word "appointment". The words "his grade" are substituted for the words "grade in which appointed". The words "in any grade" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (b) (3). Pub. L. 90-329 redesignated the "Army Medical Service" as the "Army Medical Department".

1958—Subsec. (a). Pub. L. 85-600 included the registrar of the Military Academy within the enumeration of officers excepted.

1957—Subsec. (a). Pub. L. 85-155, § 101 (10) (A), eliminated words "those of the Army Nurse Corps and the Women's Medical Specialist Corps," which followed "except".

Subsec. (b) (3). Pub. L. 85-155, § 101 (10) (B), eliminated words ", except the Army Nurse Corps and the Women's Medical Specialist Corps" which followed "Army Medical Service".

PROMOTION LIST POSITION OF CERTAIN OFFICERS OF ARMY NURSE CORPS OR ARMY MEDICAL SPECIALIST CORPS

Section 102 of Pub. L. 85-155 provided that: "Where two or more officers of the Army Nurse Corps or the Army Medical Specialist Corps have the same regular grade and the same date of rank, their relative position on the applicable promotion list shall be determined as prescribed by the Secretary of the Army."

CROSS REFERENCES

Rank, commissioned officers in regular grades below brigadier general, see section 3574 of this title.

Regular Army: strength in grade; promotion-list officers, see section 3211 of this title.

Transfer between branches, see section 3283 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3211 of this title.

§ 3297. Selection boards.

(a) Under such regulations as he may prescribe, the Secretary of the Army shall detail selection boards, to meet at times prescribed by him, to recommend promotion-list officers and brigadier generals of the Regular Army for promotion in the Regular Army. Each board shall be composed of at least five officers of the Regular Army who hold a regular or temporary grade above lieutenant colonel,

and who are senior in regular grade to, and who outrank, any officer considered by that board. However, a selection board considering promotion-list officers of the Women's Army Corps under section 3300 (a) or (b) of this title may include officers of the Regular Army in that corps whose regular or temporary grades are above major, and a selection board considering promotion-list officers of the Army Nurse Corps or the Army Medical Specialist Corps may include promotion-list officers who are in the same corps as the officers being considered by that board and whose regular or temporary grades are above major.

(b) No selection board may serve longer than one year and no member may serve on two consecutive boards for promotions to the same grade, if the second board considers any officer considered but not recommended for promotion by the first.

(c) Each member of a selection board must swear that he will perform his duties without prejudice or partiality, having in view the special fitness of officers and the efficiency of the Army.

(d) Except as otherwise provided by law, promotion-list officers and brigadier generals of the Regular Army may be promoted to the regular grades of captain through major general only when recommended by a selection board. A recommendation for promotion must be made by the majority of the total membership of the board. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.

(e) Not later than 10 days after a board first meets, any officer eligible for consideration by that board is entitled to send a letter, through official channels, calling attention to matters of record in the Department of the Army concerning himself that he considers important. The letter may not contain any reflection upon the character, conduct, or motives of any officer, or criticism of any officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85–155, title I, § 101 (11), 71 Stat. 377; July 12, 1960, Pub. L. 86–616, § 1(1), 74 Stat. 368.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3297 (a)	10: 559a (a) (2); 10: 559a (a) (4).	Aug. 7, 1947, ch. 512, § 507 (a) (less (6) and (7)), (c), 61 Stat. 892, 893; June 12, 1948, ch. 449, § 104 (d) (5), 62 Stat. 358.
3297 (b)	10: 559a (a) (3).	
3297 (c)	10: 559a (a) (8).	
3297 (d)	10: 559a (a) (1); 10: 559a (a) (5).	
3297 (e)	10: 559a (c).	

In subsection (a), the words "shall detail selection boards, to meet at times prescribed by him" are substituted for 10: 559a (a) (2) (1st 12 words of 1st sentence, and 2d sentence). The last 17 words of the first sentence are inserted for clarity, because of revised subsection (c). The words "who hold a regular or temporary grade * * * and who are senior in regular grade to, and who out-rank", are substituted for the words "holding commissions in a grade * * * either in the Regular Army or under temporary appointment in the Army of the United States" and "Board members must be senior in permanent grade and temporary rank". The last sentence is substituted for 10: 559a (a) (4) (proviso).

In subsection (b), 10: 559a (a) (3) (1st 17 words) is omitted as surplusage. The word "promotion" is substituted for the words "that grade".

In subsection (d), the words "regular grades of captain through major general" are substituted for the enumeration of grades and the words "permanently * * * in the Regular Army", in 10: 559a (a) (1).

In subsection (e), the words "is entitled to send" are substituted for the words "shall have the right to forward". The words "a board first meets" are substituted for the words "the convening of said board". The word "letter" is substituted for the words "written communication". The words "in the consideration of his case" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (d). Pub. L. 86–616 authorized a board that is to recommend officers for promotion whom it considers to be the best qualified to recommend only those officers whom it also considers to be fully qualified.

1957—Subsec. (a). Pub. L. 85–155 inserted provisions relating to officers on a selection board considering promotion-list officers of the Army Nurse Corps or the Army Medical Specialist Corps.

ESTABLISHMENT OF BOARDS FOR CONTINUATION ON THE ACTIVE LIST OF COLONELS OR LIEUTENANT COLONELS

Section 10 of Pub. L. 86–616 provided that:

"(a) Not more than once in each fiscal year, the Secretary of the Army and the Secretary of the Air Force may convene one or more boards, each consisting of at least five officers of the Regular Army or the Regular Air Force, as the case may be, in a grade above colonel, to review the records of, and recommend for continuation on the active list, officers of that component on the active list in the regular grade of colonel or lieutenant colonel who have at least 20 years of service computed under section 3927 (a) or 8927(a) of title 10, United States Code, whichever applies, and who have been considered more than twice but not recommended for promotion to the next higher regular grade.

"(b) A board convened under this section shall recommend officers for continuation on the active list in the number specified by the Secretary. The Secretary may specify separate numbers for particular categories of officers. However, except with respect to the first board convened under this section in the Army and in the Air Force, the number specified by him for officers in any category must be at least 80 percent of the officers in that category being considered. An officer may be considered for continuation on the active list under this section only once while serving in the regular grade of colonel and only once while serving in the regular grade of lieutenant colonel.

"(c) Except as provided by section 1 of the Act of April 23, 1930, ch. 209, as amended, if the Secretary approves the report of a board, he shall, not later than the first day of the seventh calendar month beginning after he approves that report, retire each officer who is considered but not recommended for continuation.

"(d) A member of the Army or the Air Force who is retired under this section is entitled to retired pay computed under formula A of section 3991 or 8991, respectively, of title 10.

"(e) This section does not apply to—

"(1) members of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps;

"(2) Air Force nurses or medical specialist; or

"(3) female members of the Air Force who are not designated under section 8067 (a)—(d) or (g)—(i) of title 10.

"(f) This section is not effective after June 30, 1965."

§ 3298. Commissioned officers: promotion to first lieutenant; effect of failure of promotion.

(a) A promotion-list officer in the grade of second lieutenant shall be promoted to the regular grade of first lieutenant upon completing three years of service with which he is entitled to be credited for promotion. If a promotion-list officer in that grade is found to be not fully qualified, he shall be discharged under section 3814 of this title.

(b) Vacancies in the grade of first lieutenant on a promotion list may be filled by promoting second lieutenants on that list with less than three years of service, in order of seniority, under regulations prescribed by the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(12), 71 Stat. 377; Nov. 8, 1967, Pub. L. 90–130, § 1(10)(A), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3298 (a)	10: 559b (1st sentence, less 31st through 56th words; and 2d sentence).	Aug. 7, 1947, ch. 512, § 508 (less 30th through 56th words of 1st sentence), 61 Stat. 894.
3298 (b)	10: 559b (less 1st and 2d sentences).	

In subsection (a), the last 16 words of the first sentence are substituted for 10: 559b (words within parentheses). The words "If a promotion-list officer in that grade" are substituted for the words "Second lieutenants". The words "shall have their commissions revoked" are omitted as surplusage.

In subsection (b), the words "may be filled by promoting * * * with less than" are substituted for the words "may * * * be promoted and appointed in the grade of first lieutenant before completion". The words "in order of seniority" are substituted for the words "but no officer in the grade of second lieutenant will be promoted under the provisions of this section ahead of any officer in that grade whose name appears above his on the promotion list concerned". The words "Whenever there are" are omitted as surplusage. 10: 559b (last sentence) is omitted as executed.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out provision creating an exception from the coverage of subsec. (b) in the case of officers of the Army Nurse Corps and the Army Medical Specialist Corps.

1957—Subsec. (b). Pub. L. 85–155 excepted officers of the Army Nurse Corps and the Army Medical Specialist Corps.

CROSS REFERENCES

Strength in grade; temporary increases, see section 3212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3212 of this title.

§ 3299. Commissioned officers: promotion to captain, major, or lieutenant colonel.

(a) Promotion-list officers shall be promoted to the regular grades of captain, major, and lieutenant colonel, under subsections (b) and (c), or eliminated from the active list under section 3303 of this title.

(b) Without regard to vacancies, each promotion-list officer whose regular grade is first lieutenant, captain, or major shall be considered by a selection board for promotion to the next higher regular grade, far enough in advance of the date on which he will complete 7, 14, or 21 years of service with which he is entitled to be credited for promotion, as the case may be, that, if recommended, he may be promoted on the date on which he will complete that service.

(c) Having in view the number of actual and anticipated vacancies on a promotion list in the regular grade of captain, major, or lieutenant colonel, the Secretary of the Army may direct a selection board to consider and recommend officers on that list for promotion to the next higher regular grade without regard to length of service. However, no officer may be considered for promotion under this section more than two years before the date on which it is anticipated that he will be promoted if recommended, and unless the same board considers all officers above him on that list who are not on a recommended list.

(d) The names of promotion-list officers recommended for promotion under this section shall be carried on permanent recommended lists of their grade and promotion list in the same order among themselves as on the applicable promotion list, and they shall be promoted in that order. A promotion may be made whenever there is a vacancy; but it is not mandatory that the authorized numbers be maintained in any grade on any promotion list.

(e) Whenever an officer is promoted under subsection (b), all officers in the same grade and on the same promotion list whose names are on the recommended list above that of the officer who must be promoted because of length of service shall be promoted at the same time and shall retain among themselves their existing seniority.

(f), (g) Repealed. Pub. L. 90–130, § 1(10)(B), Nov. 8, 1967, 81 Stat. 375.

(h) A promotion-list officer who has been twice considered and not recommended for promotion to any one regular grade may not again be considered for promotion under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 186; Aug. 21, 1957, Pub. L. 85–155, title I, § 101 (13), 71 Stat. 377; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (21), 72 Stat. 1565; Nov. 8, 1967, Pub. L. 90–130, § 1 (10) (B), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3299 (a)	10: 559c (a).	Aug. 7, 1947, ch. 512, § 509 (a)—(d), (f), (j), (k) (less applicability to strength), 61 Stat. 894, 895, 896, 897; June 12, 1948, ch. 449, § 104 (d) (6), 62 Stat. 358. Aug. 7, 1947, ch. 512, § 509A. added June 12, 1948, ch; 449, § 104 (d) (7), 62 Stat. 358.
3299 (b)	10: 559c (b).	
3299 (c)	10: 599c (c); 10: 559c (d) (less proviso).	
3299 (d)	10: 559c (f).	
3299 (e)	10: 559c (j); 10: 559c (d) (proviso).	
3299 (f)	10: 559c-1.	
3299 (g)	10: 559c (k) (less applicability to strength).	

In subsection (a), the words "After January 1, 1949" are omitted as executed. The words "except as provided in subsection (f)" are substituted for 10: 559c (a) (proviso). The words "and appointed in" are omitted as surplusage.

In subsection (b), the words "Without regard to" are substituted for the words "Irrespective of the existence of any". The words "next higher regular grade" are substituted for the words "permanent grade of captain, major, and lieutenant colonel". The words "with which he is entitled to be credited for promotion" are substituted for 10: 559c (b) (words within parentheses). The words "such officer", "by the selection board", "to and appointed in such grade", and "length of" are omitted as surplusage.

In subsection (c), the words "Having in view" are substituted for the words "Based upon", in 10: 559c (c). The words "to the next higher regular grade" are substituted for the words "to such grades", in 10: 559c (c). The words "in permanent grade of first lieutenant, captain, and major, respectively" and "of such officers", in 10: 559c (c), are omitted as surplusage. The words "However, no * * * may" are substituted for the words "in no instance shall any", in 10: 559c (d). The words "for promotion under this section" are substituted for the words "by any selection board for promotion to the grade of captain, major, or lieutenant colonel", in 10: 559c (d).

The word "promoted" is substituted for the words "appointed in that grade". The last 20 words of the last sentence are substituted for 10: 559c (d) (last sentence, less proviso).

In subsection (d), the words "of their grade and promotion list in the same order among themselves as on the applicable promotion list" are substituted for 10: 559c (f) (last 11 words of 1st sentence, and 2d sentence). The last eight words of the first sentence and the first 11 words of the last sentence are substituted for 10: 559c (f) (last sentence) and 10: 559c (j) (1st sentence). The words "Promotions and appointments to fill vacancies may be made at any time", in 10: 449c (j), are omitted as surplusage.

In subsection (e), 10: 559c (k) (1st 7, and 56th through 110th, words) is omitted as relating only to authorized strength. The words "is promoted under subsection (b)" are substituted for 10: 559c (k) (11th through 55th words). The words "promoted at the same time" are substituted for the words "simultaneously appointed in that grade".

In subsection (f), the words "to fill vacancies in that grade" are substituted for the words "when a vacancy exists in the number of lieutenant colonels authorized". The words "and only when" are substituted for 10: 559c-1 (1st 12 words of last sentence). The words "and appointed in" and "for that grade" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130 struck out reference to subsections (f) and (g) of this section.

Subsec. (c). Pub. L. 90-130 struck out provision prohibiting the promotion under subsection (c) of officers of the Army Nurse Corps and the Army Medical Specialist Corps.

Subsec. (f). Pub. L. 90-130 struck out subsec. (f) which provided for the promotion of promotion-list officers of the Women's Army Corps to the regular grade of lieutenant colonel only to fill vacancies in that grade and on that promotion list and only when recommended by a selection board under regulations prescribed by the Secretary.

Subsec. (g). Pub. L. 90-130 struck out subsec. (g) which provided for the promotion to the regular grade of lieutenant colonel promotion-list officers of the Army Nurse Corps and the Army Medical Specialist Corps in accordance with section 3304 of this title.

Subsec. (h). Pub. L. 90-130 excepted officers covered by subsec. (f) of this section from the applicability of subsec. (h).

1958—Subsec. (h). Pub. L. 85-861 made subsection inapplicable to officers covered by subsection (f) of this section.

1957—Subsec. (a). Pub. L. 85-155, § 101 (13) (A), substituted "subsections (f) and (g)" for "subsection (f)".

Subsec. (c). Pub. L. 85-155 § 101 (13) (B), prohibited promotion of officers of the Army Nurse Corps or of the Army Medical Specialist Corps under this subsection.

Subsec. (g). Pub. L. 85-155, § 101 (13) (C), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h). Pub. L. 85-155, § 101 (13) (C), redesignated former subsec. (g) as (h).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Strength in grade; temporary increases, see section 3212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3212, 3300, 3303 of this title.

§ 3300. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure.

(a) When promotion-list officers in the regular grade of first lieutenant, captain, or major are to be considered, under section 3299 of this title, by a selection board for promotion to the next higher regular grade to fill existing or anticipated vacancies, the Secretary of the Army may direct the board to—

(1) consider officers in the specified grade in the order of their seniority on the promotion list concerned;

(2) recommend those who are fully qualified for promotion;

(3) pass over those not so qualified; and

(4) continue this procedure until the number of officers specified by him is recommended.

(b) When a promotion-list officer in the regular grade of first lieutenant, captain, or major must be considered under section 3299 of this title for promotion because of length of service, or because he is on a promotion list above an officer who must be considered for that reason, the Secretary may—

(1) furnish the board a list of officers to be considered for promotion to the grade concerned; and

(2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

(c) Instead of the procedures set forth in subsection (a) or (b), the Secretary may furnish to the board a list of promotion-list officers to be considered and may direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration for the first time. (Aug. 10, 1956, ch. 1041, 70 A Stat. 186; July 12, 1960, Pub. L. 86-616, § 1(2), 74 Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3300 (a)	10: 559c (e) (1).	Aug. 7, 1947, ch. 512, § 509 (e), 61 Stat. 895.
3300 (b)	10: 559c (e) (2).	
3300 (c)	10: 559c (e) (3).	

In subsection (a), the words "to the next higher regular grade" are substituted for the words "to the grade of captain, major, and lieutenant colonel, respectively". The words "specified grade" are substituted for the words "in the grade of first lieutenant, captain, or may (as the case may be)". The words "by him" are inserted for clarity. The words "in his discretion", "as their names appear", "to the grade concerned", "fully", and "for promotion to such grade" are omitted as surplusage.

In subsections (a) and (b), the words "may follow the procedure described in paragraph (3) of this subsection" are omitted as covered by the language of revised subsection (c).

In subsection (b), the words "under section 3299 of this title" are substituted for the words "by a selection board". The words "to the grade of captain, major, and lieutenant colonel, respectively", "completion of", "of that list", "in his discretion", "from among", "those and only those", and "to that grade" are omitted as surplusage.

In subsections (b) and (c), the word "promotion-list" is inserted for clarity.

In subsection (c), the words "The board shall recommend those officers whom it considers" are substituted for the words "the officers to be selected". The last sentence is substituted for 10: 559c (e) (3) (last sentence). 10: 559c (e) (3) (1st 14 words of 1st sentence) and the words "for promotion to the grade concerned", "select and", "from among those listed", "to that grade",

and "of those listed for consideration" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (c). Pub. L. 86-616 inserted words "for the first time" following "those listed for consideration."

CROSS REFERENCES

Selection boards, see section 3297 of this title.

§ 3302. Commissioned officers; Medical, Dental, and Veterinary Corps: promotion to captain, major, or lieutenant colonel; professional examination.

(a) No commissioned officer of the Medical Corps or the Veterinary Corps whose regular grade is below lieutenant colonel may be promoted in the Regular Army until he passes an examination of his professional fitness before an examining board composed of at least three commissioned officers of the Regular Army in the Medical Corps selected by the Secretary of the Army. No commissioned officer of the Dental Corps whose regular grade is below lieutenant colonel may be promoted in the Regular Army until he passes an examination of his professional fitness before an examining board composed of one commissioned officer of the Regular Army in the Medical Corps, and two commissioned officers of the Regular Army in the Dental Corps, selected by the Secretary. The examination shall be prescribed by the Secretary and shall be held at such time before the right to promotion accrues as may be in the best interest of the Army.

(b) If an officer of the Medical, Dental, or Veterinary Corps in the regular grade of first lieutenant or captain is found disqualified for promotion by the examining board, the Secretary shall detail a board of review to consider the findings of the examining board.

(c) A board of review shall be composed in the same manner as an examining board, except that its members must be senior in rank to the officer examined, and must not have served on the examining board that examined him.

(d) If the board of review concurs in the findings of the examining board, the officer shall be honorably discharged with one year's pay. If it does not concur in the findings, the officer shall be considered qualified and shall be promoted.

(e) An officer of the Medical, Dental, or Veterinary Corps in the regular grade of major who fails his first examination for promotion shall be suspended from promotion and reexamined as soon as practicable after one year from the date of his first examination. While he is so suspended from promotion, his name shall be removed from the recommended list and the years of service with which he is entitled to be credited for promotion purposes shall be reduced, if necessary, as provided in section 3303 (b) of this title.

(f) If on reexamination such a major is found qualified, his name shall be restored to the recommended list and he is eligible for promotion. If he is found disqualified for promotion, he shall be treated in the manner provided for deferred officers under section 3303 (d) of this title.

(g) While an officer is suspended from promotion under subsection (e), his right to promotion passes successively to the officers below him who are in the same grade and on the same promotion list, and who are or may become eligible for promotion.

(h) If the needs of the Army require that an officer entitled to promotion upon examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted, subject to examination as soon as practicable. However, if he is thereafter examined and found disqualified for that promotion, and if the proceedings are approved by the Secretary, he shall be treated as if he had been examined before promotion and had failed.

(i) If an officer who is found qualified for promotion under this section dies in line of duty after the occurrence of a vacancy that would entitle him to that promotion because of his seniority and before promotion, the President may issue, or have issued, an appropriate commission in the name of that officer. A commission issued under this subsection shall issue as of the date of the vacancy, and the officer's name shall be carried on the records of the Department of the Army as if he had served in the grade and branch in which posthumously commissioned, from the date of the vacancy to the date of his death. No person is entitled to any bonus, gratuity, pay, or allowance because of this subsection. (Aug. 10, 1956, ch. 1041, 70A Stat. 187.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3302 (a)	10: 101; 10: 125; 10: 143a; 10: 555a (less 1st 34 words).	Apr. 23, 1908, ch. 150, § 5, 35 Stat. 67.
3302 (b)	10: 102 (1st 79 words of 1st sentence).	Mar. 3, 1909, ch. 252 (proviso under "Medical Department"), 35 Stat. 737.
3302 (c)	10: 102 (1st sentence, less 1st 79 words).	June 3, 1916, ch. 134, § 24c (less 1st 34 words); added June 4, 1920, ch. 227, § 24 (6th par., less 1st 34 words); restated Aug. 7, 1947, ch. 512, § 507 (d) (1) (less 1st 34 words), 61 Stat. 894.
3302 (d)	10: 102 (less 1st sentence).	
3302 (e)	10: 103 (less 59th through 93d words, and less last 78 words).	
3302 (f)	10: 103 (last 78 words).	
3302 (g)	10: 103 (59th through 93d words).	Oct. 6, 1917, ch. 101, 40 Stat. 397.
3302 (h)	10: 556a (as applicable to professional examination).	Feb. 2, 1901, ch. 192, § 32 (as applicable to professional examination), 31 Stat. 756.
3302 (i)	10: 490; 10: 491.	Mar. 3, 1925, ch. 484, §§ 3, 4, 43 Stat. 1256.

In subsection (a), the words "at least" are substituted for the words "not less than", in 10: 101. The words "before * * * accrues" are substituted for the words "anterior to the accruing of", in 10: 101. The second sentence is substituted for 10: 125. The act of October 6, 1917, ch. 101 (less 1st proviso), 40 Stat. 397, is not contained in 10: 125. It is also omitted from the revised section either as executed or as covered by ch. 335 and sections 3067, 3209, and 3211 of this title; and by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). 10: 555a (less 1st 34 words) is executed in the revised section by references to the Dental and Veterinary Corps.

In subsection (b), the first 29 words are substituted for the words "but if he should be found disqualified for promotion for any other reason, a second examination shall not be allowed, but". The words "to consider the findings of the examining board" are inserted for clarity.

In subsections (b) and (f), so much of 10: 102 and 103, respectively, as relate to retirement for physical disability, are omitted as superseded by chapter 61 of this title.

In subsection (c), the first 22 words are substituted for the words "to consist of three officers of the Medical Corps superior".

In subsection (d), the words "If it does not concur in the findings" are substituted for the words "If the action of the examining board is disapproved by the board of review". The words "reported disqualified for promotion" and "from the service" are omitted as surplusage.

In subsection (e), the words "fails his first examination" are substituted for the words "at his first examination * * * has been or shall hereafter be found disqualified". The words "his first examination" are substituted for the words "the completion of the examination that resulted in his suspension". The words "to the grade of lieutenant colonel" and "the expiration of" are omitted as surplusage.

The last sentence of subsection (e) is inserted, and the last sentence of subsection (f) is subtituted for 10: 103 (last 61 words). 10: 555a preserved only the requirement of a professional examination for the promotion of officers of the Medical, Dental, and Veterinary Corps, and not the consequences of failure of such an examination, since the Officer Personnel Act of 1947 was intended to provide the exclusive means for the removal of officers for failure of promotion.

In subsection (f) the words, "such a major" are substituted for the word "he." The words "his name shall be restored to the recommended list" are inserted to reflect the last sentence of subsection (e). The words "is eligible for promotion" are substituted for the words "shall again become eligible thereto". The words "and if he is not found disqualified by reason of such physical disability" and "for any other reason" are omitted as surplusage.

Subsection (g) is substituted for 10: 103 (59th through 93d words).

In subsection (h), the words "If the needs of the Army" are substituted for the words "When the exigencies of the service". The words "the officer may be promoted" are substituted for the words "the President is hereby authorized to promote such officer". The words "and had failed" are inserted for clarity. The words "who would be", "remain", and "in the same manner" are omitted as surplusage.

Subsection (i) is limited to officers of the Medical, Dental, or Veterinary Corps, since they are the only officers required by law to be "examined" for promotion in the sense of the source statute. The words "before promotion" are substituted for the words "before the issue or acceptance of a commission therefor". The words "in which posthumously commissioned" are substituted for the words "shown in such commission". The word "after having been examined" and "with rank", in 10: 490, are omitted as surplusage. The last sentence is substituted for 10: 491.

EX. ORD. NO. 10262. SUSPENSION OF PROFESSIONAL EXAMINATIONS FOR PROMOTION OF MEDICAL, DENTAL, AND VETERINARY OFFICERS

Ex. Ord. No. 10262, June 28, 1951, 16 F.R. 6333, provided:

By virtue of the authority vested in me by section 507 (b) of the Officer Personnel Act of 1947 (61 Stat. 893), it is hereby ordered as follows:

The operation of all provisions of law requiring professional examinations for promotion in the Regular Army of officers of the Medical, Dental, and Veterinary Corps, and in the United States Air Force of officers designated as medical, dental, and veterinary officers thereof, are hereby suspended for the duration of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note preceding section 1 of Appendix to Title 50, War and National Defense].

CROSS REFERENCES

Retirement of deferred officers not recommended for promotion, see section 3913 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3913 of this title.

§ 3303. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel.

(a) In this subtitle, "deferred officer" means a promotion-list officer considered for promotion to the grade of captain, major, or lieutenant colonel under section 3299 of this title, but not recommended for promotion.

(b) The years of service with which a deferred officer is entitled to be credited for promotion purposes shall be reduced so that one year after the date on which he would have been promoted had he been recommended by a selection board he will not have more than 7, 14, or 21 years of service, if in the grade of first lieutenant, captain, or major, as the case may be.

(c) A deferred officer shall be considered again by the next selection board considering officers of his grade and promotion list. If recommended by this board, his name shall be placed on the applicable recommended list with the other officers recommended by the board, in the same order among themselves as on the promotion list, but below officers placed on that list by an earlier board. If a deferred officer is promoted upon the recommendation of the next board considering officers of his grade, his first failure does not count as a failure of selection when he is thereafter considered for promotion to another regular grade.

(d) A deferred officer who is not recommended by the next selection board considering officers of his grade and promotion list shall—

(1) if he is eligible, be retired under section 3913 of this title;

(2) if he is not eligible for retirement under section 3913 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date when he would have been retired under section 3913 of this title if he were eligible; or

(3) if he is not eligible for retirement under section 3913 of this title or any other provision of law, be honorably discharged on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Army, but not later than the first day of the seventh calendar month after the Secretary approves the report of that board, with severance pay computed by multiplying his years of service, but not more than 12, computed under section 3927(a) of this title, by two months' basic pay of the grade in which he is serving on the date of his discharge.

However, no person is entitled to severance pay under this section in an amount that is more than $15,000.

(e) For the purposes of subsection (d) (3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 188; July 12, 1960, Pub. L. 86–616, § 1(3), 74 Stat. 386; June 28, 1962, Pub. L. 87–509, § 4(a), 76 Stat. 121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3303 (a)	10: 559c (g) (1st sentence).	Aug. 7, 1947, ch. 512, §§ 509 (g), (h) (less 16th through 53d words, and less proviso, of last sentence), 514 (e) (less clause (1)), 61 Stat. 896, 906.
3303 (b)	10: 559c (g) (less 1st sentence).	
3303 (c)	10: 559c (h) (less last sentence).	
3303 (d)	10: 559c (h) (last sentence, less 16th through 53d words and proviso); 10: 941a (e) (less clause (1), and less 46th through 65th words of clause (3)).	
3303 (e)	10: 941a (e) (46th through 65th words of clause (3)).	

In subsection (a), the word "promotion-list" is inserted for clarity. The words "section 3299 of this title" are

substituted for the words "by any selection board * * * under the provisions of this section".

In subsection (b), the words "after the date" are substituted for the words "subsequent to the time". The word "promoted" is substituted for the words "appointed in the next higher grade". The words "The years of service with which a deferred officer is entitled to be credited * * * shall be reduced" are substituted for the words shall suffer a reduction in his years of service, if necessary". The words "he will not have more than 7, 14, or 21" are substituted for the words "he shall not have for promotion purposes more than seven * * * fourteen * * * and twenty-one". The words "by a selection board" are inserted for clarity. 10: 559c (g) (1st 26, and last 40, words of last sentence) are omitted as covered by revised subsection (c).

In subsection (c), the words "in the same order" are substituted for the words "with the same precedence". The first 18 words of the last sentence are substituted for 10: 559c (h) (1st 18 words of 2d sentence). The words "his first failure" are substituted for the words "his failure in the grade from which promoted". The words "to another regular grade" are inserted for clarity. The words "in any grade", "a second time", "designated for", "the names of", and "in any sense" are omitted as surplusage.

In subsection (d), 10: 559c (h) (25 words before proviso of last sentence) is omitted as covered by clauses (1)—(3). Clause (1) is inserted to reflect section 3913 of this title. The words "is not eligible for retirement under section 3913 of this title" are substituted for the words "he has not completed twenty 'years' service' or more". The last 21 words of clause (2) are substituted for 10: 941a (e) (2) (last 22 words). The words "on the date of elimination" and "in effect on that date including any provision of law providing for voluntary retirement on his own application", in 10: 941a (e) (2), are omitted as surplusage. The words "on the date when he would have been retired under section 3913 of this title if he were eligible" are substituted for the words "on the date of elimination", in 10: 941a (e) (3), since the date of "elimination" is determined by the date of retirement under section 3913 of this title. The words "under section 3913 of this title or" are inserted for clarity. The words "but not more than 12" are substituted for 10: 941a (e) (3) (proviso). The words "computed under section 3927 (a) of this title" are substituted for the words "(computed at the rate applicable on the date of his elimination)". The words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "equal to that sum of money" and "(permanent or temporary)" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (d). Pub. L. 87-509 limited the maximum amount of severance pay to not more than $15,000.

1960—Subsec. (d). Pub. L. 86-616 substituted "such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Army, but not later than the first day of the seventh calendar month after the Secretary approves the report of that board" for "the date he would have been retired under section 3913 of this title if he were eligible" in cl. (3).

CROSS REFERENCES

Elimination from active list under this section upon removal from recommended list by President or failure of confirmation by Senate, see section 3308 of this title.

Retirement of deferred officers not recommended for promotion, see section 3913 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3299, 3308, 3913 of this title.

§ 3304. Repealed. Pub. L. 90-130, § 1(10)(C), Nov. 8, 1967, 81 Stat. 375.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 189; Aug. 21, 1957, Pub. L. 85-155, title I, § 101(14), 71 Stat. 378, covered the promotion of officers in the Army Nurse Corps and the Army Medical Specialists Corps to colonel and lieutenant colonel, set out the requirements of officers on the promotion lists, and provided for the procedure to be followed in determining the order of promotion.

§ 3305. Commissioned officers: promotion to colonel.

(a) Having in view the number of actual and anticipated vacancies in any promotion list in the regular grade of colonel and the number of officers desired in that grade on that promotion list, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of lieutenant colonel, in order of seniority in regular grade, to be considered by those boards. The Secretary may not furnish the name of any officer to the board unless he furnishes to it the names of all officers above that officer on that promotion list who are not on a recommended list. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of colonel. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

(b) Whenever the Secretary considers that the number of officers in the regular grade of colonel in any of the branches on the Army promotion list is or may become seriously unbalanced, he may direct that, of the officers recommended, prescribed numbers be recommended for service in specified branches.

(c) The names of officers recommended for promotion to the regular grade of colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to that grade in the same order among themselves as on the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in that grade for that list. A vacancy in that grade may be filled at any time. It is not mandatory that the authorized numbers be maintained in the grade of colonel on any promotion list.

(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of colonel, to the number directed to be recommended, may be prescribed by the Secretary.

(e) No officer may be considered for promotion to the regular grade of colonel more than two years before the date on which it is anticipated that he will be promoted if recommended.

(f) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the regular grade of colonel. (Aug. 10, 1956, ch. 1041, 70A Stat. 189; Aug. 21, 1957, Pub. L. 85-155, title I, § 101 (16), 71 Stat. 379; Nov. 8, 1967, Pub. L. 90-130, § 1 (10) (D), (E), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3305 (a)	10: 559d (a); 10: 559d (b) (less provisos).	Aug. 7, 1947, ch. 512, § 510, 61 Stat. 897.
3305 (b)	10: 559d (b) (provisos).	
3305 (c)	10: 559d (c).	
3305 (d)	10: 559d (d) (1st 63 words of 1st sentence).	
3305 (e)	10: 559d (d) (1st sentence, less 1st 63 words).	
3305 (f)	10: 559d (d) (less 1st sentence).	

In subsection (a), the words "Having in view" are substituted for the words "Based upon", in 10: 559d (b). The words "in the regular grade of lieutenant colonel" are substituted for the words "of that promotion list". The last 13 words of the first sentence, and the second sentence, are substituted for 10: 559d (b) (1st 28 words of 2d sentence) and the words "and the names of additional such officers in the order that their names appear next below his on that promotion list", in 10: 559d (b). The third sentence is substituted for 10: 559d (b) (3d sentence). The fourth sentence is substituted for the words "whose name is not carried on the recommended list for promotion to the grade of colonel", in 10: 559d (b). 10: 559d (a) (last 18 words) is omitted as executed. 10: 559d (a) (less last 18 words) is omitted as surplusage. The words "and until June 30, 1948, in addition thereto may include the names of any officers in permanent grade below that of colonel who served during the current war in any general officer grade under temporary appointment", in 10:559d (b), are omitted as executed. The words "select and", "the names of", "furnished for consideration", "selected and", and 10: 559d (b) (1st 7 words of 3d sentence) are omitted as surplusage.

In subsection (b), the word "considers" is substituted for the words "in the opinion of". The words "any of the branches on" are substituted for the words "each of the several branches included in". The words "prescribed * * * recommended" are substituted for the words "specified * * * selected". The words "in his discretion" and "to be selected and" are omitted as surplusage. 10: 559d (b) (last proviso) is omitted as inapplicable to the Army.

In subsection (c), the last 18 words of the first sentence are substituted for 10: 559d (c) (2d and 3d sentences). The words "A vacancy in that grade may be filled" are substituted for the words "Promotion appointments to fill vacancies in the grade of colonel in the Regular Army may be made". The words "of any promotion list", "selected and", "a permanent recommended list of officers of that promotion list for promotion to that grade", and 10: 559d (c) (1st 12 words of 2d sentence) are omitted as surplusage.

In subsection (d), the words "who are named" are substituted for the words "which the Secretary of the Army names". The words "directed to be recommended" are substituted for the words "which he directs such selection board to select from among those so named". The word "prescribed" is substituted for the words "as desired by".

In subsection (e), the words "for promotion to the regular grade of colonel" are substituted for the words "by any selection board". The word "promoted" is substituted for the words "appointed in that grade". The word "recommended" is substituted for the word "selected". The words "or selected" are omitted as surplusage.

In subsection (f), the words "in the regular grade" are substituted for the words "under permanent appointment in the grade of * * * in the Regular Army". The words "nominated for promotion" are substituted for the words "nominated or appointed". The words "After June 30, 1949" are omitted as executed.

AMENDMENTS

1967—Pub. L. 90–130, § 1(10)(E), struck out "other than officers in Army Nurse Corps and Army Medical Specialist Corps" following "Commissioned officers" in the section catchline.

Subsec. (a). Pub. L. 90–130, § 1(10)(D), struck out provision prohibiting the promotion of officers of the Army Nurse Corps and Army Medical Specialist Corps under this section.

1957—Pub. L. 85–155, § 101(16)(A), excluded officers in the Army Nurse Corps and Army Medical Specialist Corps from the catchline.

Subsec. (a). Pub. L. 85–155, § 101(16)(B), prohibited promotion of officers of the Army Nurse Corps or Army Medical Specialist Corps under this section.

§ 3306. Commissioned officers: promotion to brigadier general.

(a) Having in view the number of actual and anticipated vacancies in the regular grade of brigadier general and the number of officers desired in that grade, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of colonel, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of brigadier general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in or with specified branches. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

(b) The names of officers recommended for promotion to the regular grade of brigadier general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

(c) If an officer is recommended for promotion to the regular grade of brigadier general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of brigadier general, to the number directed to be recommended, may be prescribed by the Secretary.

(e) No officer may be considered for promotion to the regular grade of brigadier general more than one year before the date on which it is anticipated that he will be promoted if recommended.

(f) An officer must complete at least one year of service in the regular grade of colonel before being nominated for promotion to the regular grade of brigadier general.

(g) This section does not apply to the appointment of chiefs or assistant chiefs of branches. (Aug. 10, 1956, ch. 1041, 70A Stat. 190.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3306 (a)	10: 559e (b); 10: 559e (c) (3d sentence, and 1st 26 words of last sentence).	Aug. 7, 1947, ch. 512, § 511, 61 Stat. 898.
3306 (b)	10: 559e (c) (less 3d and last sentences).	
3306 (c)	10: 559e (c) (last sentence, less 1st 26 words).	
3306 (d)	10: 559e (d) (1st 60 words of 1st sentence).	
3306 (e)	10: 559e (d) (1st sentence, less 1st 60 words).	
3306 (f)	10: 559e (d) (less 1st sentence).	
3306 (g)	10: 559e (a).	

In subsection (a), the words "Having in view" are substituted for the words "Based upon", in 10: 559e (b). The last 13 words of the first sentence are substituted for 10: 559e (b) (1st 25th words of 3d sentence) and the words "the names of additional such officers in the order that their names appear next below theirs on the applicable promotion lists", in 10: 559e (b). The second sentence is substituted for 10: 559e (b) (1st 18 words of 4th sentence) and 10: 559e (c) (1st 26 words of last sentence).

The third sentence is substituted for the words "whose names are not carried on the recommended list for promotion to the grade of brigadier general", in 10: 559e (b). 10: 559e (b) (last 37 words of 3d sentence) is omitted as executed. The fourth sentence is substituted for 10: 559e (b) (last 67 words of 1st sentence). The words "select and", "in order to insure that the Army will have adequate numbers of officers in the grade of brigadier general with experience qualifying them for service in or with the several branches, arms, and services", "in his discretion", "selected and", and "arms or services", in 10: 559e (b), are omitted as surplusage.

In subsection (b), the words "in the order" are substituted for the words "arranged among themselves according to precedence". The words "selected and" and 10: 559e (c) (1st 14 words of 2d sentence) are omitted as surplusage.

In subsection (c), the words "selected and", "by any selection board", and "in that grade" are omitted as surplusage. The words "and by and with the advice and consent of the Senate" are omitted as covered by section 3284 of this title.

In subsection (d), the words "who are named" are substituted for the words "which the Secretary of the Army names". The words "directed to be recommended" are substituted for the words "which he directs such selection board to select from among those so named". The word "prescribed" is substituted for the words "as desired by".

In subsection (e), the words "for promotion to the regular grade of brigadier general" are substituted for the words "by any selection board". The word "promoted" is substituted for the words "appointed in that grade". The word "recommended" is substituted for the word "selected". The words "or selected" are omitted as surplusage.

In subsection (f), the words "in the regular grade" are substituted for the words "under permanent appointment in the grade of * * * in the Regular Army". The words "nominated for promotion" are substituted for the words "nominated or appointed". The words "After June 30, 1949" are omitted as executed.

In subsection (g), the words "After August 7, 1947" and 10: 559e (a) (last 19 words) are omitted as executed. 10: 559e (a) (5th through 30th words) is omitted as covered by the language of the revised section. The language of the revised subsection executes the reference to 10: 559g.

CROSS REFERENCES

Chief of branch, failure of appointment as not affecting eligibility for promotion under this section, see section 3036 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3036 of this title.

§ 3307. Commissioned officers: promotion to major general.

(a) Having in view the number of actual and anticipated vacancies in the regular grade of major general and the number of officers desired in that grade, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of brigadier general, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of major general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in or with specified branches. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

(b) The names of officers recommended for promotion to the regular grade of major general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

(c) If an officer is recommended for promotion to the regular grade of major general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of major general, to the number directed to be recommended, may be prescribed by the Secretary.

(e) No officer may be considered for promotion to the regular grade of major general more than one year before the date on which it is anticipated that he will be promoted if recommended.

(f) An officer must complete at least one year of service in the regular grade of brigadier general before being nominated for promotion to the regular grade of major general.

(g) This section does not apply to the appointment of chiefs or assistant chiefs of branches. (Aug. 10, 1956, ch. 1041, 70A Stat. 191.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3307 (a)	10: 559f (b); 10: 559f (c) (3d sentence and 1st 26 words of last sentence).	Aug. 7, 1947, ch. 512, § 512, 61 Stat. 900.
3307 (b)	10: 559f (c) (less 3d and last sentences).	
3307 (c)	10: 559f (c) (last sentence, less 1st 26 words).	
3307 (d)	10: 559f (d) (1st sentence, less last 34 words).	
3307 (e)	10: 559f (d) (last 34 words of 1st sentence).	
3307 (f)	10: 559f (d) (less 1st sentence).	
3307 (g)	10: 559f (a).	

In subsection (a), the words "Having in view" are substituted for the words "Based upon", in 10: 559f (b). The last 13 words of the first sentence are substituted for 10: 559f (b) (first 22 words of 3d sentence) and the words "the names of additional such officers in the order that their names appear next below his on the general officers' seniority list", in 10: 559f (b). The second sentence is substituted for 10: 559f (b) (1st 18 words of 4th sentence) and 10: 559f (c) (first 26 words of last sentence). The third sentence is substituted for the words "whose names are not carried on the recommended list for promotion to the grade of major general" in 10: 559f (b). 10: 559f (b) (last 37 words of 3d sentence) is omitted as executed. The fourth sentence is substituted for 10: 559f (b) (last 67 words of 1st sentence). The words "select and", "in order to insure that the Army will have adequate numbers of officers in the grade of major general with experience qualifying them for service in or with the several branches, arms, and services", "in his discretion", "selected and", and "arms or services", in 10: 559f (b), are omitted as surplusage.

In subsection (b), the words "in the order" are substituted for the words "arranged among themselves according to precedence". The words "selected and" and 10: 559f (c) (1st 14 words of 2d sentence) are omitted as surplusage.

In subsection (c), the words "selected and", "by any selection board", and "in that grade" are omitted as surplusage. The words "and by and with the advice and consent of the Senate" are omitted as covered by section 3284 of this title.

In subsection (d), the words "who are named" are substituted for the words "which the Secretary of the Army names". The words "directed to be recommended" are substituted for the words "which he directs such selection board to select from among those so named". The word "prescribed" is substituted for the words "as desired by".

In subsection (e), the words "for promotion to the regular grade of major general" are substituted for the words "by any selection board". The word "promoted" is substituted for the words "appointed in that grade". The words "or selected" are omitted as surplusage.

In subsection (f), the words "in the regular grade" are substituted for the words "under permanent appointment in the grade * * * in the Regular Army". The words "nominated for promotion" are substituted for the words "nominated or appointed". The words "After June 30, 1949" are omitted as executed.

In subsection (g), the words "After August 7, 1947" and 10: 559f (a) (last 19 words) are omitted as executed. 10: 559f (a) (5th through 30th words) is omitted as covered by the language of the revised section. The language of the revised subsection executes the reference to 10: 559g.

CROSS REFERENCES

Chief of branch, failure of appointment as not affecting eligibility for promotion under this section, see section 3036 of this title.

§ 3308. Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate.

The President may remove from a recommended list for promotion to any grade the name of any promotion-list officer or brigadier general of the Regular Army who in his opinion is not qualified for promotion. If an officer's name is so removed, or if the Senate does not consent to his appointment, he continues to be eligible as if he had not been considered for promotion and may be recommended by the next selection board considering officers of his grade. If he is promoted on the recommendation of that board, he has the same date of rank and place on the promotion list that he would have had if he had been promoted as a result of his original selection. If the second board considers but does not recommend an officer who would be subject to elimination for second failure of selection for promotion to the grade concerned, or if he again fails of promotion because his name is removed from the recommended list by the President or because the Senate does not consent to his appointment, he shall be eliminated from the active list under section 3303 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 192.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3308	10: 559a (a) (6), (7).	Aug. 7, 1947, ch. 512, § 507 (a) (6), (7), 61 Stat. 893.

The words "any promotion-list officer or brigadier general" are substituted for the words "officer recommended * * * by any selection board". The words "so removed" are substituted for the words "removed from the recommended list for any grade by the President". The words "does not consent to the appointment" are substituted for the words "the appointment does not have its consent". The words "by the next selection board considering officers of his grade" are substituted for the words "and the next succeeding selection board may select and recommend the officer concerned for promotion". The words "on the recommendation of that board" are inserted for clarity. The words "If * * * or if he again fails of promotion" are substituted for the words "however, should any officer, having once been selected for promotion to any grade under section 559c of this title, fail of promotion to such grade either". The first 28 words of the last sentence are substituted for the words "by being considered but not selected by the next succeeding selection board". The word "because" is substituted for the words "by virtue of having". The words "because the Senate does not consent to his appointment" are substituted for the words "on account of advice by the Senate that the appointment does not have its consent". The words "after nomination by the President for any grade, cannot be appointed because of advice", "that grade by the selection board which had recommended him", "and thereupon his name shall again be placed on the recommended list", "fail of promotion to such grade either (a) by virtue of having his name removed from the recommended list by the President, or (b) on account of advice by the Senate that the appointment does not have its consent, again fail of promotion to the next higher grade", and "he shall be deemed to have twice failed of selection" are omitted as surplusage. 10: 559a (a) (7) is omitted as superseded by section 1372 of this title.

§ 3309. Commissioned officers: physical examination for promotion.

(a) The President may prescribe a system of physical examination for all commissioned officers of the Regular Army in grades below brigadier general to determine their fitness for promotion in the Regular Army. Each examination shall be given before the right to promotion accrues.

(b) If the needs of the Army require that an officer entitled to promotion upon physical examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted subject to examination as soon as practicable. However, if he is thereafter examined and found physically disqualified for that promotion, and if the proceedings are approved by the Secretary of the Army, he shall be treated as if he had been examined before promotion and had failed.

(c) If a commissioned officer fails to pass the physical examination and is reported unfit for promotion, the officer next below him on a recommended list for promotion who has passed the examination and is otherwise qualified shall be promoted. (Aug. 10, 1956, ch. 1041, 70A Stat. 192.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3309 (a)	10: 556 (less last sentence); 10: 555a (1st 34 words).	Oct. 1, 1890, ch. 1241, § 3, 26 Stat. 562; Oct. 12, 1949, ch. 681, § 531 (b) (10), 63 Stat. 838.
3309 (b)	10: 556a (less applicability to professional examination).	Feb. 2, 1901, ch. 192, § 32 (less applicability to professional examination), 31 Stat. 756.
3309 (c)	10: 556 (last sentence).	June 3, 1916, ch. 134, § 24c (1st 34 words); added June 4, 1920, ch. 227, subch. I, § 24 (1st 34 words of 6th par.). restated Aug. 7, 1947, ch; 512, § 507 (d) (1) (1st 34 words), 61 Stat. 894.

In subsection (a), the words "commissioned" and "Regular" are inserted, since historically the source statute applied only to commissioned officers of the regular component. The words "in grades below" are substituted for the words "which examination shall be required for promotion to all grades below". The words "except as provided in section 556a of this title" are omitted as covered by revised subsection (b). The words "given before * * * accrues" are substituted for the words "conducted * * * at such time anterior to the accruing of". The words "as may be in the best interests of the service" are omitted as surplusage. The first and last provisos of section 3 of the act of October 1, 1890, ch. 1241, 26 Stat. 562, are not

contained in 10: 556. They are also omitted from the revised section as executed. Insofar as that act originally applied to professional examination, it is superseded by section 3302 of this title. 10: 55a (1st 34 words) is omitted as covered by the language of the revised subsection.

In subsection (b), the words "If the needs of the Army" are substituted for the words "When the exigencies of the service". The words "the officer may be promoted" are substituted for the words "the President is hereby authorized to promote such officer". The words "and had failed" are inserted for clarity. The words "who should be", "remain", and "in the same manner" are omitted as surplusage.

In subsection (c), the words "a recommended list for promotion" are substituted for the words "the list". The words "and is otherwise qualified" are inserted to limit the applicability of the subsection to qualified officers. The words "be promoted" are substituted for the words "receive the promotion".

§ 3310. Warrant officers: original appointment; qualifications.

Original appointments as warrant officers in the Regular Army shall be made from persons who have served on active duty at least one year in the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 192.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3310	10: 591 (Uncodified: June 3, 1916, ch. 134, § 4a (less 3d and last sentences); added June 4, 1920, ch. 227, subch. I, § 4 (3d par., less 3d and last sentences), 41 Stat. 761).	June 3, 1916, ch. 134, § 4a (less 3d and last sentences), added June 4, 1920, ch. 227; subch. I, § 4 (3d par., less 3d and last sentences), 41 Stat. 761. Aug. 21, 1941, ch. 384, § 2; restated May 29, 1954, ch. 249, § 19 (c), 68 Stat. 166.

The first sentence of section 4a of the act of June 3, 1916, cited above, is omitted as superseded by section 3213 of this title. The second sentence, less first nine words, of section 4a of that act, is omitted as superseded by 10: 591.

CROSS REFERENCES

Permanent appointments of regular warrant officers, W-1, by warrant, see section 555 of this title.

§ 3311. Officers: female; limitations on appointment.

Except for those appointed as commissioned officers in the Medical Corps, Dental Corps, Medical Service Corps, Veterinary Corps, Army Nurse Corps, or Army Medical Specialist Corps, women may be appointed as officers in the Regular Army only in the Women's Army Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 192; Sept. 2, 1958, Pub. L. 85-861, § 1 (60), 72 Stat. 1462.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3311	10: 81-2 (less 1st and last provisos); 10: 316c (a); 10: 591-1 (a).	June 24, 1952, ch. 457 (less 1st and last provisos), 66 Stat. 156. June 12, 1948, ch. 449, §§ 104 (a), 105 (a), 62 Stat. 357, 360.

The revised section is inserted to make it explicit that women may be appointed as commissioned officers in the Regular Army only in the several corps of the Army Medical Service and the Women's Army Corps, and as warrant officers in the Regular Army only in the Women's Army Corps. The rule has heretofore been implied from provisions authorizing their appointment in the Regular Army in those corps, stated in the source credits set forth above and those for section 3291 of this title, and is based on an opinion of the Judge Advocate General of the Army (JAGA 1953/8456, 2 Nov. 1953). An express statement of the limitation is desirable, since otherwise all sections relating to appointment, promotion, retirement, etc., of officers of the Regular Army, other than in the corps set forth in the revised section, would require the specific exception of women from their application. This permits the elimination, in this subtitle, of distinctions between the applicability of laws relating to the Regular Army to men and women except where the context requires otherwise. The words "by the President, by and with the advice and consent of the Senate" are omitted as covered by section 3284 of this title. The words "citizens of the United States", in 10: 316c (a), are omitted as covered by section 3285 of this title. The words "who possess such qualifications as may be prescribed by the Secretary of the Army" are omitted as covered by section 3285 of this title. The applicability of 10: 81-2 (less 1st and last provisos) to the appointment of female Reserves in the Medical Corps, Dental Corps, Medical Service Corps, and the Veterinary Corps, is omitted, since, under section 3064 of the title, appointments with specification of branch are made only in the case of commissioned officers of the Regular Army appointed in the special branches.

AMENDMENTS

1958—Pub. L. 85-861 substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps".

SEPARATION FROM SERVICE

Ex. Ord. No. 10240, Apr. 27, 1951, 16 F. R. 3689, set out as a note under section 3818 of this title, prescribed the regulations governing separation of women from the Regular Army.

CROSS REFERENCES

Regular female members, termination of appointment, see section 3818 of this title.

§ 3312. Officers: acceptance of promotion.

(a) An officer who is promoted in the Regular Army is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous. (Aug. 10, 1956, ch. 1041, 70A Stat. 193.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3312 (a) 3312 (b)	10: 558 (less last sentence, and less applicability to reserve components and temporary appointments). 10: 558 (last sentence, less applicability to reserve components and temporary appointments).	Oct. 14, 1942, ch. 604 (less applicability to reserve components and temporary appointments), 56 Stat. 787.

In subsection (a), the words "is considered" are substituted for the words "shall be deemed". The words "is entitled" are substituted for the words "and shall receive". The words "to them" are substituted for the words "to receive the pay and allowances of the higher grade". The words "that date" are substituted for the words "an earlier date". The words "after December 7, 1941" are omitted as executed. The words "to a higher grade at any time", "for all purposes", and "to a higher grade" are omitted as surplusage.

In subsection (b), the words "An officer need not take" are substituted for 10: 558 (1st 29 words of last sentence). The words "since last taking it" are substituted for the words "after the taking of such an oath". The words "to a higher grade" are omitted as surplusage.

CROSS REFERENCES

Reserve officers, see section 3394 of this title.

Temporary appointments, see section 3451 of this title.

§ 3313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency.

In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 193.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3313	10: 559a (b); 10: 941a (f).	Aug. 7, 1947, ch. 512, §§ 507 (b), 514 (f), 61 Stat. 893, 906.

The word "may" is substituted for the words "is authorized, in his discretion", in 10: 559a (b) and 941a (f). The words "any provision of law" are substituted for the words "all or any part or parts of the several provisions of law", in 10: 559a (b) and 941a (f). The words "relating to" are substituted for the words "pertaining to", in 10: 559a (b), and "prescribing", in 10: 941a (f). The word "commissioned" is inserted, since the source statute was limited in applicability to those officers.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1 (3) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10617. SUSPENSION OF CERTAIN RETIREMENT PROVISIONS

Ex. Ord. No. 10617, June 28, 1955, 20 F.R. 4671.

By virtue of the authority vested in me by subsection (f) of section 514 of the Officer Personnel Act of 1947, it is ordered as follows:

The operation of those provisions of paragraph 3, subsection (d), section 514 of the Officer Personnel Act of 1947 which are applicable to the mandatory retirement of colonels of the Regular Army is hereby suspended until termination of the emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note prec. section 1 of Title 50, Appendix], or until June 30, 1957, or until a date specified by the Secretary of the Army, whichever is earliest, with respect to any colonel of the Regular Army who holds a temporary grade higher than that of colonel and whom the Secretary of the Army, in his discretion, selects for retention on the active list in the public interest.

DWIGHT D. EISENHOWER

CROSS REFERENCES

Permanent regular warrant officers, see section 565 of this title.

§ 3314. Commissioned officers: promotion not to be delayed by another appointment.

The promotion to a higher regular grade of a commissioned officer of the Regular Army who is on a recommended list awaiting promotion may not be withheld or delayed because of the original appointment of any other person to a commissioned grade in the Regular Army. This section does not apply to appointments in the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. (Added Pub. L. 85-861, § 1 (79) (A), Sept. 2, 1958, 72 Stat. 1467.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3314	10 App.: 506c-7 (as applicable to 10 App.: 506c-9). 10 App.: 506c-9.	July 20, 1956, ch. 646, §§ 106 (as applicable to § 108), 108, 70 Stat. 583, 584.

The word "commissioned" is inserted since the source statute applies only to commissioned officers. The word "original" is inserted since the source statute does not apply to promotions. The words "on a recommended list awaiting promotion" are substituted for the words "otherwise eligible for promotion" for clarity. The words "under sections 506c-2 to 506c-9 of this title", in 10 App.: 506c-9, are omitted as surplusage. The words "or delayed" are inserted for clarity.

Chapter 337.—APPOINTMENTS AS RESERVE OFFICERS

Sec.
3351. Officers: Army National Guard of United States.
3352. Officers; Army Reserve: transfer from Army National Guard of United States.
3353. Commissioned officers: appointment; service credit.
3354. Commissioned officers: appointment of warrant officers and enlisted members of Army National Guard of United States; status.
3357. Commissioned officers; Army Reserve: for service in Army Nurse Corps or Army Medical Specialist Corps.
3359. Commissioned officers: original appointment; determination of grade.
3360. Commissioned officers: promotion service.
3362. Commissioned officers: selection boards.
3363. Commissioned officers: selection boards; general procedure.
3364. Commissioned officers: selection for promotion; order of promotion; zone of consideration list; declination of promotion.
3365. Commissioned officers: promotion of second lieutenants not assigned to units.
3366. Commissioned officers: promotion of first lieutenants, captains, and majors; mandatory consideration.
3367. Commissioned officers: promotion of first lieutenants, captains, and majors to fill vacancies.
3368. Commissioned officers: promotion of first lieutenants, captains, and majors not assigned to units; second consideration.
3369. Commissioned officers: Army Reserve; first promotion of officers not assigned to units after transfer from unit or from Army National Guard of United States.
3370. Commissioned officers: promotion to grade of colonel to fill vacancies.
3371. Commissioned officers: promotion of brigadier generals and colonels not assigned to units.
3375. Commissioned officers: generals ceasing to occupy commensurate positions.
3378. Commissioned officers: promotion of officers removed from active status.
3380. Commissioned officers: election to continue on active duty after promotion.
3382. Commissioned officers: Army Reserve; promotion of second lieutenants assigned to units.
3383. Commissioned officers: Army Reserve; promotion to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies in units.
3384. Commissioned officers: Army Reserve; promotion to grade of brigadier general or major general to fill vacancies in units.
3385. Commissioned officers: Army National Guard of United States; promotion upon Federal recognition.
3386. Commissioned officers: promotion upon release from active duty.
3388. Commissioned officers: Army Reserve; effect of entering upon active duty while eligible for promotion.
3389. Commissioned officers: promotion to higher reserve grade after temporary appointment.
3390. Commissioned officers: Army National Guard of United States; procedure for promotion to higher reserve grade after temporary appointment.
3392. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.
3393. Commissioned officers: sea or foreign service not to be required for promotion.

Sec.
3394. Officers: acceptance of promotion.
3395. During war.

AMENDMENTS

1967—Pub. L. 90-130, § 1(11)(D), (F), Nov. 8, 1967, 81 Stat. 375, 376, substituted "grade of colonel to fill vacancies" for "field grade in certain cases" in item 3370, and eliminated item 3391 which read: "Commissioned officers: officers of Army Nurse Corps, Army Medical Specialist Corps, and Women's Army Corps not to be promoted above certain grades."

1964—Pub. L. 88-647, title III, § 301(6), Oct. 13, 1964, 78 Stat. 1071, eliminated item 3355 which read: "Commissioned officers; Army Reserve: appointment; R.O.T.C. graduates."

1960—Pub. L. 86-559, § 1(19), June 30, 1960, 74 Stat. 271, substituted "declination of promotion" for "officers not assigned to units" in item 3364, and eliminated words "not assigned to units" which followed "majors" in items 3366 and 3367, and "officers not assigned to units;" which preceded "promotion" in item 3370.

1958—Pub. L. 85-861, § 1 (80) (F), (G), (H), Sept. 2, 1958, 72 Stat. 1479, struck out "Army Reserve" following "Commissioned officers" and inserted "status" following "United States" in item 3354, substituted "Commissioned officers" for "Female commissioned officers" and "Army Medical Specialist Corps" for "Women's Medical Corps" in item 3357, and added items 3353, 3359, 3360, 3362—3371, 3375, 3378, 3380, 3382—3386 and 3388—3393.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007 of this title.

§ 3351. Officers: Army National Guard of United States.

(a) Upon being federally recognized, an officer of the Army National Guard shall be appointed as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard. However, an officer of the Army Reserve who is federally recognized as an officer of the Army National Guard becomes an officer of the Army National Guard of the United States and ceases to be an officer of the Army Reserve. The acceptance of an appointment as a Reserve for service as a member of the Army National Guard of the United States by an officer of the Army National Guard does not vacate his office in the Army National Guard.

(b) When an officer of the Army National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Army National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Army National Guard of the United States is ordered to active duty, any officer of the Army National Guard who is not a Reserve of the Army may be appointed by the President as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard. (Aug. 10, 1956, ch. 1041, 70A Stat. 193.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3351 (a)	50: 1113 (less (a)); 50: 1115 (a) (last 39 words).	July 9, 1952, ch. 608, §§ 703 (less (a)), 704 (2d sentence), 705 (a) (last 39 words), 713 (less (a)), 66 Stat. 502-504.
3351 (b)	50: 1114 (2d sentence).	
3351 (c)	50: 1123 (less (a)).	

In subsection (a), the words "as a Reserve" are substituted for the words "as Reserve officers of the appropriate Armed Force of the United States" and "as a Reserve officer of the Armed Force of the United States concerned", in 50: 1113 (b). The words "federally recognized appointments" and "in the same grade and branch", in 50: 1113 (b), are omitted as surplusage. The words "those officers who do not hold appointments as Reserve officers of the appropriate Armed Force of the United States", in 50: 1113 (b), are omitted as covered by the second sentence of the revised subsection.

In subsection (c), the words "active duty" are substituted for the words "active military service of the United States". The words "and branch" are omitted as surplusage. The words "of the Army National Guard of the United States" are inserted for clarity.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3352. Officers; Army Reserve: transfer from Army National Guard of United States.

(a) Under such regulations as the Secretary of the Army may prescribe, and with the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, an officer of the Army National Guard of the United State may be transferred in grade to the Army Reserve. Notwithstanding any other provision of this chapter or section 593 of this title, an officer who is transferred under this section shall be advanced to the highest temporary, regular, or reserve grade ever held by him in the Army, unless the Secretary determines that it is not in the best interests of the service.

(b) Unless discharged from his appointment as a Reserve, an officer of the Army National Guard of the United States whose Federal recognition as a member of the Army National Guard is withdrawn becomes a member of the Army Reserve. An officer who so becomes a member of the Army Reserve ceases to be a member of the Army National Guard of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85-861, § 1 (80) (A), 72 Stat. 1468; June 30, 1960, Pub. L. 86-559, § 1 (7), 74 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3352 (a)	50: 1116 (less last 15 words of 1st sentence, and less applicability to enlistments).	July 9, 1952, ch. 608, §§ 706 (less last 15 words of 1st sentence, and less applicability to enlistments), 707 (less applicability to enlistments), 66 Stat. 503.
3352 (b)	50: 1117 (less applicability to enlistments).	

In subsection (a), the words "at any time", "of any person", and "from the National Guard of the United States or from the Air National Guard of the United States" are omitted as surplusage. The words "highest regular or reserve grade ever held by him in the Army" are substituted for the words "highest permanent grade previously held in the Army or any component thereof", since "permanent" grades are held only in a component and there are no "non-permanent" grades held in a component.

In subsection (b), the words "appointment as a Reserve" are substituted for the words "appointment or * * * as a Reserve officer or". The words "whose Federal

recognition as a member * * * is withdrawn" are substituted for the words "ceases to hold a status as a federally recognized member".

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559 authorized officers transferred under this section to be advanced to the highest temporary grade ever held in the Army.

1958—Subsec. (a). Pub. L. 85–861 substituted "Notwithstanding any other provision of this chapter or section 593 of this title, an officer who is transferred under this section shall be advanced to the highest regular or reserve grade ever held by him in the Army, unless the Secretary determines that it is not in the best interests of the service" for "Upon transfer, he is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if his service has been honorable".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Reserve components: members; limitations on separation inapplicable to transfers under this section, see section 1163 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 280, 593, 1163 of this title; title 32 section 323.

§ 3353. Commissioned officers: appointment; service credit.

(a) For the purposes of chapters 337 and 363 of this title, a person who is appointed as a reserve commissioned officer of the Army may be credited, upon his appointment, with service in an active status that reflects his combined years of experience and education and such other qualifications as the Secretary of the Army may by regulation prescribe.

(b) A person covered by subsection (a) who is appointed with a view to assignment or designation in one of the following categories shall be credited, upon his appointment, and for the purposes of subsection (a), with at least the following service in an active status:

(1) Medical Corps—four years.

(2) Dental Corps—three years.

(3) Veterinary Corps—three years.

(4) Judge Advocate General's Corps—three years.

(5) Chaplains—three years.

(c) A person covered by subsection (a) who is appointed with a view to assignment as a medical service officer, and who holds a degree of doctor of philosophy, or a comparable degree, in a science that the Secretary determines is allied to medicine may be credited upon his appointment, and for the purposes of subsection (a), with at least three years of service in an active status.

(d) The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives by March 1 of each year on the number, categories, and grades of the reserve officers (other than in the Medical Corps or Dental Corps) originally appointed in the reserve grade of captain or above during the preceding calendar year. (Added Pub. L. 85–861, § 1(80)(B), Sept. 2, 1958, 72 Stat. 1468, and amended Pub. L. 86–559, § 1(8), June 30, 1960, 74 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3353 (a)	50: 1191 (less last sentence).	Sept. 3, 1954, ch. 1257, § 201, 68 Stat. 1150; June 30, 1955, ch. 247, § 1 (a) 69 Stat. 218.
3353 (b)	50: 1191 (last sentence, less last 67 words).	
3353 (c)	50: 1191 (last 67 words of last sentence).	

In subsection (a), the words "For the purposes of chapters 337 and 363 of this title, a person who is appointed as a reserve commissioned officer of the Army" are substituted for 50: 1191 (1st 28 words of 1st sentence).

In subsection (b), the words "A person covered by subsection (a)" are substituted for the words "Any such person". The words "and for the purposes of subsection (a)" are substituted for the words "for the purpose of this chapter only". The words "for the purpose of or" are omitted as surplusage.

In subsection (c), the first 19 words are substituted for the words "and a person * * * if appointed for assignment as an officer * * * in a comparable assignment in another Armed Force". The words "may be" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559, § 1(8)(A), eliminated words "and is not already a commissioned officer of an armed force" which followed "a reserve commissioned officer of the Army."

Subsec. (d). Pub. L. 86–559, § 1(8)(B), added subsec. (d).

SERVICE CREDIT FOR RESERVE OFFICERS APPOINTED IN A SPECIAL BRANCH OR THE WOMEN'S ARMY CORPS BEFORE JULY 1, 1955

Section 22 of Pub. L. 85–861, as amended by Pub. L. 86–559, § 4, June 30, 1960, 74 Stat. 281, provided that: "A person who was appointed before July 1, 1955, as a reserve officer of the Army in the lowest grade of a special branch or the Women's Army Corps, or who was transferred to a special branch of that corps in the lowest grade of that branch or corps before that date, may, for the purposes of chapter 337 of title 10, United States Code [this chapter], be credited with the amount of service in an active status prescribed in section 3353 of title 10, United States Code [this section], as a minimum amount of service for that branch of the Women's Army Corps, as the case may be."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360, 3853 of this title.

§ 3354. Commissioned officers: appointment of warrant officers and enlisted members of Army National Guard of United States; status.

(a) Notwithstanding any other provision of law, a warrant officer or enlisted member of the Army National Guard of the United States may without affecting that status or vacating his warrant or enlisted grade in the Army National Guard, be appointed as a reserve officer of the Army in the grade of first lieutenant or second lieutenant.

(b) A member of the Army National Guard of the United States who is appointed in a commissioned grade under this section is not in an active status as a commissioned officer unless he is on active duty as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 1 (80) (C), 72 Stat. 1468.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3354	50: 1118.	July 9, 1952, ch. 608, § 708, 66 Stat. 503.

The words "commissioned" and "and ratings" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85–861, § 1(80)(C)(i) eliminated "Army Reserve" which followed "Commissioned officers", and added "; status" following "United States" in the catchline.

Subsec. (a). Pub. L. 85–861, § 1(80)(C)(ii), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 85–861, § 1(80)(C)(iii), added subsec. (b).

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 280 of this title.

§ 3355. Repealed. Pub. L. 88–647, title III, § 301(5), Oct. 13, 1964, 78 Stat. 1071.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(22), 72 Stat. 1565, related to the appointment of graduates of the Reserve Officers' Training Corps as reserve commissioned officers. See section 2106 of this title.

§ 3357. Commissioned officers; Army Reserve: for service in Army Nurse Corps or Army Medical Specialist Corps.

To be eligible for an appointment as a reserve officer for service in the Army Reserve in the Army Nurse Corps or the Army Medical Specialist Corps, a person must be at least 21 years of age. (Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 1 (60), (80) (D), 72 Stat. 1462, 1468.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3357	10: 376.	Apr. 16, 1947, ch. 38, § 116; restated July 9, 1952, ch. 608, § 805 (b), 66 Stat. 506.

The words "To be eligible * * * a person must be a woman at least 21 years of age" are substituted for the words "appointments of * * * may be made * * * from female * * * who have attained the age of twenty-one years". The words "in such grades and under such regulations as may be prescribed by the Secretary of the Army * * * citizens of the United States * * * who possess such physical and other qualifications as may be prescribed by the Secretary of the Army", and 10: 376 (proviso) are omitted as covered by section 591 of this title. The word "Section" is omitted, since section 3067 of this title establishes the Army Medical Service in the Army, and establishes its various corps as special branches of the Army; and section 3064 of this title provides that the special branches of the Army shall consist of Regular Army officers appointed therein, and other members assigned thereto by the Secretary.

AMENDMENTS

1958—Pub. L. 85–861, § 1(80)(D)(i), substituted "Commissioned officers" for "Female commissioned officers" and "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" in the catchline, and § 1(60), (80)(D)(ii) substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" and eliminated "a woman" which preceeded "at least 21 years of age".

§ 3359. Commissioned officers: original appointment; determination of grade.

Based upon the service credited under section 3353 of this title, the commissioned grade in which a person credited with service under that section is originally appointed as a reserve officer of the Army is:

(1) For persons with less than three years of service—second lieutenant.

(2) For persons with at least three, but less than seven, years of service—first lieutenant.

(3) For persons with at least seven, but less than 14, years of service—captain.

(4) For persons with at least 14, but less than 21, years of service—major.

(5) For persons with at least 21 years of service—lieutenant colonel.

(6) For persons with at least 23 years of service—lieutenant colonel or colonel, as the Secretary of the Army determines.

(Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1469.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3359	50: 1225 (a).	Sept. 3, 1954, ch. 1257, § 305 (a), 68 Stat. 1154.

The words "Based upon the service credited under section 3353 of this title" are inserted for clarity.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360 of this title.

§ 3360. Commissioned officers: promotion service.

(a) To be eligible under this chapter for (1) consideration for promotion, (2) examination for Federal recognition, or (3) promotion, a reserve commissioned officer must be in an active status.

(b) For the purposes of sections 3363, 3364, 3365, 3366 (a) (column 2), 3367, 3370, 3371 (a), 3382, 3819, and 3820 (c) of this title, an officer's years of service are computed by adding—

(1) all service that he has, or is credited by the Secretary of the Army with having, in his current grade in the Army, or in the discretion of the Secretary of the Army, any other armed force, while in an active status or on the active list;

(2) for a person who was on active duty (other than for training) before September 3, 1945, all service while on active duty (other than for training) before January 1, 1949, in the Army or, in the discretion of the Secretary, any other armed force, in a temporary grade equal to or higher than his current reserve grade; and

(3) for a person originally appointed in a grade below colonel, all service credited under section 3353 of this title or section 22 of the Act enacting

this section, that exceeds the minimum years of service prescribed by section 3359 of this title for the grade in which he is appointed.

No service may be counted more than once. For a person credited with service under section 3353 of this title or section 22 of the Act enacting this section, no service before appointment or transfer may be counted under clause (1) or (2).

(c) For the purposes of section 3369 of this title, an officer's years of service are the greater of—

(1) the sum of (A) his years of service as a commissioned officer of any component of the armed forces or of the Army without specification of component, (B) his years of service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States, and (C) the years of service credited to him under section 3353 of this title or section 22 of the Act enacting this section; and

(2) the number of years by which his age exceeds 25 years.

No service may be counted more than once. For a person credited with service under section 3353 of this title or section 22 of the Act enacting this section, no service before appointment may be counted. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1469, and amended Pub. L. 86–559, § 1(9), June 30, 1960, 74 Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3360 (a)	50: 1192 (a).	Sept. 3, 1954, ch. 1257, §§ 202 (a), 302 (f), (g) (as applicable to promotion), 305 (b), 68 Stat. 1150, 1153, 1154; June 30, 1955, ch. 247, § 6, 69 Stat. 221.
3360 (b)	50: 1222 (f).	
	50: 1225 (b).	
3360 (c)	50: 1222 (g) (as applicable to promotion).	

In subsections (b) and (c), the introductory clause is inserted to confine the applicability of the formulas set forth in those revised subsections to the revised sections of this chapter that are based on sections of the source statutes containing the words "promotion service" or "total years of service", as the case may be.

REFERENCES IN TEXT

Section 22 of the Act enacting this section, referred to in the text, means section 22 of Pub. L. 85–861, which is set out as a note under section 3353 of this title.

AMENDMENTS

1960—Subsec. (c). Pub. L. 86–559 included within cl. (1)(B), an officer's years of service in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3363, 3364, 3365, 3367, 3370, 3371, 3382, 3819, 3820 of this title; title 32 section 810.

§ 3362. Commissioned officers: selection boards.

(a) The Secretary of the Army, or such authority as he directs, shall convene selection boards to consider reserve commissioned officers under this chapter.

(b) Each board shall be composed of at least five members who are seniors in regular or reserve grade to, and who outrank, any officer considered by that board. Five members of a board constitute a quorum. So far as practicable, at least one-half of the members of the board must be reserve officers.

(c) A board may not serve longer than one year and a member may not serve on two consecutive boards for promotions to the same grade, if the second board considers any officer considered but not recommended by the first.

(d) Each member of a board must swear that he will perform his duties without prejudice or partiality, having in view the special fitness of officers and the efficiency of the Army.

(e) A recommendation for promotion must be made by the majority of the total membership of the board. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.

(f) An officer eligible for consideration for promotion by a board under this chapter is entitled to send a letter, through official channels, calling attention to any matter of record in the armed forces concerning himself that he considers important to his case. The letter may not criticize any officer or reflect on his character, conduct, or motives. A letter sent under this subsection may not be considered by a selection board unless it is received by the time the board convenes.

(g) The Secretary of the Army shall prescribe regulations to carry out this chapter. (Added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1470, and amended Pub. L. 86–559, § 1(10), June 30, 1960, 74 Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3362 (a)	50: 1193 (a).	Sept. 3, 1954, ch. 1257, §§ 203, 303 (e) (as applicable to promotion), 68 Stat. 1150, 1154.
3362 (b)	50: 1193 (b).	
	50: 1193 (d) (1st sentence).	
3362 (c)	50: 1193 (c).	
3362 (d)	50: 1193 (d) (less 1st and last sentences).	
3362 (e)	50: 1193 (d) (last sentence).	
3362 (f)	50: 1193 (e).	
3362 (g)	50: 1223 (e) (as applicable to promotion).	

In subsection (a), the words "and other boards of officers appointed under this chapter" are omitted, since only selection boards are mentioned in this revised chapter. The words "to consider reserve commissioned officers" are inserted for clarity. The words "competent" and "appointed and" are omitted as surplusage.

In subsection (b), the words "are senior in regular or reserve grade to, and who outrank" are substituted for the words "shall be senior in permanent grade and temporary rank to".

In subsection (c), the words "board upon which he served" are omitted as surplusage.

In subsection (d), the words "his duties" are substituted for the words "the duties imposed on him as a member of such board". The words "officer who is appointed"

are omitted as surplusage. The words "or affirm" are omitted as covered by the word "oath" as defined in section 1 of title 1.

In subsection (f), the words "is entitled to send" are substituted for the words "shall have the right to forward". The word "letter" is substituted for the words "written communication". The last sentence is substituted for 50: 1193 (e) (last 15 words of 1st sentence). The words "to his consideration" are omitted as surplusage.

In subsection (g), the words "not inconsistent with the provisions hereof" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (e). Pub. L. 86–559 authorized a board that is to recommend officers for promotion whom it considers to be the best qualified to recommend only those officers whom it also considers to be fully qualified.

CROSS REFERENCE

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3364 of this title.

§ 3363. Commissioned officers: selection boards; general procedure.

(a) Except as provided in section 3383 (b) of this title and section 309 of title 32, an officer in the reserve grade of second lieutenant may not be promoted or federally recognized in the next higher reserve grade until he completes three years of service computed under section 3360 (b) of this title.

(b) An officer in a reserve grade above second lieutenant may not be considered for promotion, or examined for Federal recognition in the next higher reserve grade, until he completes the following number of years of service computed under section 3360 (b) of this title :

(1) First lieutenant—two years.
(2) Captain—four years.
(3) Major—four years.
(4) Lieutenant colonel—three years.
(5) Colonel—two years.
(6) Brigadier general—two years.

This subsection does not apply to the adjutant general or assistant adjutants general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia.

(c) An officer may not be considered by a selection board for promotion under this chapter more than two years before the date on which it is anticipated that he will be promoted if recommended by the selection board.

(d) A promotion under this chapter may be made effective before, on, or after the date on which it is made. The officer concerned is entitled to pay, allowances, and any other benefits provided by law for the grade to which he is promoted from the effective date of the promotion.

(e) The Secretary of the Army may delay the promotion of a reserve commissioned officer who is under investigation or against whom proceedings of a court-martial or board of officers are pending, until the investigation or proceedings are completed.

(f) On the basis of the results of an investigation or proceedings of a court-martial or board of officers, the Secretary may remove from a recommended list the name of any officer whom he considers to be not qualified for promotion. An officer in an active status whose name is so removed from a recommended list, shall be treated, for the purposes of section 3368 of this title, as if he had been considered but not recommended for promotion.

(g) Promotions of reserve commissioned officers of each special branch and the Women's Army Corps shall be made from reserve commissioned officers assigned to that branch or corps, as the case may be. Promotions of reserve commissioned officers in any other branch shall be made from reserve commissioned officers who are not assigned to a special branch or the Women's Army Corps. (Added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1470, and amended Pub. L. 86–559, § 1(11), June 30, 1960, 74 Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3363 (a)	50: 1226 (a).	Sept. 3, 1954, ch. 1257, §§ 302 (h) (as applicable to § 303 (c)), 303 (less (a) and (e)), 306, 68 Stat. 1154, 1155; June 30, 1955, ch. 247, § 7, 69 Stat. 221.
3363 (b)	50: 1226 (less (a)).	
3363 (c)	50: 1223 (d).	
3363 (d)	50: 1223 (b).	
3363 (e)	50: 1223 (f).	
3363 (f)	50: 1223 (g).	
3363 (g)	50: 1223 (c). 50: 1222 (h) (as applicable to 50: 1223 (c)).	

In subsection (b), the last sentence is substituted for the words "other than an adjutant general or assistant adjutant general of a State, Territory, or the District of Columbia".

In subsection (c), the words "before the date on which it is anticipated that he will be promoted" are substituted for the words "prior to the anticipated date of his promotion". The words "under this chapter" and "if recommended by the selection board" are inserted for clarity.

In subsection (d), the words "under this chapter" are substituted for the words "To carry out the provisions of this subchapter". The words "the grade to which he is promoted" are substituted for the words "the higher grade". The words "the effective date of the promotion" are substituted for the words "such effective date".

In subsection (g), reference in 50: 1222 (h) to special branches "enumerated in the Army Organization Act of 1950" is omitted, since those branches are enumerated in section 3064 of this title.

AMENDMENTS

1960—Subsec. (f). Pub. L. 86–559 eliminated words "who is not assigned to a unit organized to serve as a unit, and" which followed "officer in an active status."

CROSS REFERENCE

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360, 3364, 3383, 3384 of this title; title 32 section 309.

§ 3364. Commissioned officers: selection for promotion; order of promotion; zone of consideration list; declination of promotion.

(a) When officers are considered for promotion under section 3366, 3367, 3370, or 3371 of this title, the names of reserve officers assigned to each special branch, except the Judge Advocate General's Corps, and to the Women's Army Corps shall be placed on a separate zone of consideration list for, or be considered for promotion for service in, that branch or corps. The names of all other reserve officers shall be placed on a zone of consideration list, or considered for promotion, without regard to the branch to

which they are assigned. The convening officer shall refer each list to a selection board for consideration.

(b) Except as provided in subsection (d), an officer in an active status who is assigned to a special branch or the Women's Army Corps, and who is recommended for promotion under section 3366, 3367, or 3370 of this title, may not be promoted before an officer of the same reserve grade and the same branch or corps who is in an active status, who has more service computed under section 3360 (b) of this title, who has been recommended for promotion, and who is not assigned to a unit organized to serve as a unit.

(c) Except as provided in subsection (d), an officer who is not assigned to a special branch or the Women's Army Corps, and who is recommended for promotion under section 3366, 3367, or 3370 of this title, may not be promoted before an officer of the same reserve grade in an active status who is not assigned to a special branch or the Women's Army Corps, who has more service computed under section 3360 (b) of this title, who has been recommended for promotion, and who is not assigned to a unit organized to serve as a unit.

(d) For the purposes of subsections (b) and (c)—

(1) the Secretary shall, by regulation, prescribe the order of promotion of officers having the same amount of service computed under section 3360 (b) of this title;

(2) the promotion of an officer who is otherwise eligible for promotion may not be withheld because of a delay in the promotion, under section 3362, 3363, 3368, or 3380 of this title, of an officer with more service computed under section 3360 (b) of this title; and

(3) an officer who has completed the service in grade prescribed in section 20 of the Act enacting this section may be promoted before an officer who has not completed that service.

(e) Notwithstanding any other provision of this title, a reserve commissioned officer who has been in an inactive status may not be considered for promotion until at least one year after the date on which he is returned to an active status.

(f) An officer of an Army Reserve unit organized to serve as a unit may decline a promotion under section 3366 or 3367 of this title if the Secretary of the Army, or an officer designated by him, approves that action as being in the best interests of the Army.

(g) An officer of the Army National Guard of the United States may decline a promotion under section 3366 or 3367 of this title if the governor or other appropriate authority of the State, Territory, Puerto Rico, the Canal Zone, or the commanding general of the District of Columbia National Guard, whichever is concerned, approves that action.

(h) If an officer declines a promotion under subsection (f) or (g), his name shall be retained on the appropriate promotion list for a period of not more than three years from the date he was selected for promotion to the grade concerned unless—

(1) in the case of an officer of the Army Reserve, he is appointed to the grade for which he was selected or his name is removed from that list under another provision of law; and

(2) in the case of an officer of the Army National Guard of the United States, he is appointed to the next higher grade to fill a vacancy in the Army National Guard and is federally recognized in that grade or his name is removed from the promotion list under another provision of law.

The Secretary of the Army may, in his discretion, extend the period for which a declination is in effect in the case of any officer of the Army National Guard who is an officer of an Alaska Scout Battalion or of a unit engaged in air defense activities on a tactical site that is under the control of the Army or the Air Force.

(i) At the end of the period during which his name is carried on the appropriate promotion list under subsection (h), or at any earlier time if he requests the promotion, an officer of the Army Reserve whose name is retained on the promotion list under that subsection shall be promoted to the grade concerned and shall be transferred from his unit unless, upon his promotion, he fills a vacancy in that unit.

(j) At the end of the period during which his name is carried on the appropriate promotion list under subsection (h), or at any earlier time if he requests the promotion, an officer of the Army National Guard of the United States whose name is retained on the promotion list under that subsection shall, effective as of the last day of the period his name is so retained, or as of the date of his request, as the case may be, have his Federal recognition terminated, be transferred to the Army Reserve, and be promoted to the grade concerned. However, an officer may not be transferred and promoted under this subsection before the expiration of that period unless the governor or other appropriate authority of the State, Territory, Puerto Rico, the Canal Zone, or the commanding general of the District of Columbia National Guard, whichever is concerned, approves that action. (Added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1471, and amended Pub. L. 86–559, § 1(12), June 30, 1960, 74 Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3364 (a)	50: 1237 (a). 50: 1222 (h) (as applicable to 50: 1237 (a)).	Sept. 3, 1954, ch. 1257, §§ 302 (h) (as applicable to § 314 (less (b)), 314 (less (b)), 68 Stat. 1154, 1158; June 30, 1955, ch. 247, § 8, 69 Stat. 222.
3364 (b)	50: 1237 (c) (less clause (2)). 50: 1222 (h) (as applicable to 50: 1237 (c) (less clause (2)).	
3364 (c)	50: 1237 (c) (clause (2)). 50: 1222 (h) (as applicable to 50: 1237 (c) (clause (2)).	
3364 (d)	50: 1237 (d).	

In subsections (a), (b), and (c), reference in 50: 1222 (h) to the special branches "enumerated in the Army Organization Act of 1950" is omitted, since the branches are enumerated in section 3064 of this title.

REFERENCES IN TEXT

Section 20 of the Act enacting this section, referred to in subsec. (d) (3), means section 20 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1559, which was repealed by Pub. L. 86–559, § 3, June 30, 1960, 74 Stat. 281.

AMENDMENTS

1960—Pub. L. 86-559, § 1 (12) (A), substituted "declination of promotion" for "officers not assigned to units" in the catchline.

Subsecs. (e)—(j). Pub. L. 86-559, § 1(12) (B), added subsecs. (e)—(j).

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 3360, 3367, 3370 of this title.

§ 3365. Commissioned officers: promotion of second lieutenants not assigned to units.

(a) Without regard to vacancies, each second lieutenant of the Army Reserve who is in an active status and who is not assigned to a unit organized to serve as a unit, and each reserve second lieutenant who is on active duty (other than for training) shall, if he is found qualified for promotion by the Secretary of the Army or an officer designated by him, be promoted to the reserve grade of first lieutenant effective as of the date on which he completes three years of service computed under section 3360 (b) of this title.

(b) If an officer of the Army National Guard of the United States is found qualified for promotion under this section, section 3390 of this title applies in place of the examination for Federal recognition in the reserve grade of first lieutenant. (Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1472.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3365 (a)	50: 1231. 50: 1271 (less 1st 35 words of 2d sentence, as applicable to 50: 1231).	Sept. 3, 1954, ch. 1257, §§ 308, 331 (as applicable to § 308), 68 Stat. 1155, 1164.
3365 (b)	50: 1271 (1st 35 words of 2d sentence, as applicable to 50: 1231).	

In subsection (a), the words "Without regard to vacancies" are substituted for the words "regardless of a vacancy in the grade of first lieutenant", in 50: 1231.

Subsection (b) is substituted for the words "in lieu of examination for Federal recognition", in 50: 1271.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3212, 3360 of this title.

§ 3366. Commissioned officers: promotion of first lieutenants, captains, and majors; mandatory consideration.

(a) Without regard to vacancies, each officer of the Army Reserve in the reserve grade of first lieutenant, captain, or major, who is in an active status, who is not assigned to a unit organized to serve as a unit, and who, while holding that grade, has not been considered by a selection board under this section or section 3367 of this title, and each reserve officer in such a grade who is on active duty (other than for training), and who has not been so considered, shall be considered for promotion to the next higher reserve grade far enough in advance of the date on which he will complete the service prescribed in columns 2 and 3 of the following table that, if recommended, he may be promoted effective on the date on which he will complete that service:

Column 1	Column 2	Column 3
Current reserve grade	Years of service computed under sec 3360(b) of this title	Years of service computed under sec. 3360(c) of this tite
First lieutenant	4	6
Captain	7	12
Major	7	17

(b) Without regard to vacancies, each officer of an Army Reserve unit organized to serve as a unit, and each officer of the Army National Guard of the United States, who holds the reserve grade of first lieutenant, captain, or major and who has not been considered by a selection board under this section or section 3367 of this title, for promotion to the next higher reserve grade, shall be so considered far enough in advance of the date upon which he will complete the service prescribed in columns 2 and 3 of the table in subsection (a) that, if recommended, he may be promoted effective on the date on which he will complete that service.

(c) An officer recommended for promotion under this section may be promoted to fill a vacancy within the distribution of officers not assigned to units at any time. If not sooner promoted, he shall be promoted, effective as of the date on which he completes the service prescribed in columns 2 and 3 of the table in subsection (a), without regard to vacancies. Each officer of the Army National Guard of the United States who is recommended by a selection board for promotion under this section, and who, before the date on which he would be promoted under this section, is appointed to the next higher grade to fill a vacancy in the Army National Guard and is federally recognized in that grade, shall be promoted to that reserve grade effective as of the date on which he is so recognized. If he is not so appointed to the next higher grade in the Army National Guard and federally recognized in that grade, he shall, effective as of the date of his promotion under this section, have his Federal recognition terminated and be transferred to the Army Reserve. Each officer of an Army Reserve unit organized to serve as a unit who is promoted under this section shall, effective as of the date of that promotion, be transferred from his unit unless, upon his promotion, he fills a vacancy in that unit.

(d) If an officer in the reserve grade of first lieutenant, captain, or major becomes subject to this section upon transfer from an inactive status, upon transfer from the Army National Guard of the United States, or upon release from a unit of the Army Reserve, and after completing the service necessary for consideration under subsection (a),

he shall be considered by the next appropriate selection board. If recommended by that board, he shall be promoted on the later of the following dates—

(1) the date on which the board reports its recommendations; or

(2) the date on which he completes the service prescribed in column 2 of the table in subsection (a).

(e) A selection board considering officers under this section shall use one of the following methods of selection, as directed by the Secretary of the Army;

(1) Recommend those officers whose names have been referred to it whom it considers to be fully qualified for promotion, and report those whom it considers not to be so qualified.

(2) Recommend a number specified by him whom it considers to be the best qualified of those officers whose names have been referred to it.

If the method prescribed in clause (2) is used in considering officers for promotion to the grade of captain, major, or lieutenant colonel, the number recommended by the selection board must be at least 80 percent of those listed for consideration for the first time.

(f) A reserve officer whose name is on a zone of consideration list for consideration for promotion under this section and who is serving in, or has been recommended for promotion to, a temporary grade that is equal to or higher than the grade for which he is to be considered under this section, may not be considered under this section, but shall be considered to have been recommended for promotion and shall be promoted when he completes the service prescribed by column 2 of the table in subsection (a) for the grade concerned.

(g) Repealed. Pub. L. 90–130, § 1(11)(A), Nov. 8, 1967, 81 Stat. 375.

(h) If an officer of the Army National Guard of the United States is found qualified for promotion under this section, section 3390 of this title applies in place of the examination for Federal recognition in the grade for which found qualified. (Added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1472, and amended Pub. L. 86–559, § 1(13), June 30, 1960, 74 Stat. 267; Pub. L. 90–130, § 1(11)(A), Nov. 8, 1967, 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3366 (a)	50: 1233 (a). 50: 1271 (less 29th through 35th words of last sentence, as applicable to 50: 1233 (less (e))).	Sept. 3, 1954, ch. 1257, §§ 310 (less (e)), 314 (b) (as applicable to § 310), 331 (as applicable to § 310 (less (e))), 334, 68 Stat. 1156, 1158, 1164.
3366 (b)	50: 1233 (c).	
3366 (c)	50: 1233 (d).	
3366 (d)	50: 1237 (b) (as applicable to 50: 1233).	
3366 (e)	50: 1274.	
3366 (f)	50: 1233 (b).	
3366 (g)	50: 1271 (29th through 35th words of last sentence, as applicable to 50: 1233 (less (e))).	

In subsection (a), the words "Without regard to vacancies" are substituted for the words "Regardless of a vacancy in the next higher grade". The words "for promotion to the next higher reserve grade" are substituted for the words "by a selection board". The words "he will complete" are substituted for the words "he has". The table is substituted for the words "four, seven, or seven years of promotion service, respectively, and the total years of service required by section 1238 (a) of this title".

In subsection (b), the words "without regard to vacancies" are substituted for the words "regardless of a vacancy in the grade for which recommended".

In subsection (c), the words "becomes subject to this section" are substituted for the words "becomes a nonunit officer". The words "on the later of the following dates" are substituted for the words "whichever is later".

In subsection (d), the words "a number specified by him" are substituted for the words "a specified number". The words "for consideration" are omitted as surplusage. The words "must be at least 80 percent" are substituted for the words "shall * * * a minimum of 80 per centum".

In subsection (e), the words "by a selection board" are omitted as surplusage.

Subsection (g) is substituted for 50 : 1271 (29th through 35th words of last sentence).

AMENDMENTS

1967—Subsec. (g). Pub. L. 90–130 struck out subsec. (g) which excepted the promotion to a grade above major of reserve officers of the Army Nurse Corps, Army Medical Specialist Corps, or the Women's Army Corps from the applicability of this section.

1960—Pub. L. 86–559, § 1(13)(A), eliminated words "not assigned to units" which followed "majors" in the catchline.

Subsec. (a). Pub. L. 86–559, § 1(13)(B), substituted "who, while holding that grade, has not" for "who has not", inserted a reference to column 3, and inserted column 3.

Subsec. (b). Pub. L. 86–559, § 1(13)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–559, § 1(13) (D), (E), redesignated former subsec. (b) as (c), and amended such subsection by inserting words "within the distribution of officers not assigned to units" preceding "at any time", substituting "columns 2 and 3" for "column 2", and adding provisions relating to promotion of officers of the Army National Guard of the United States, transfer to the Army Reserve of officers not appointed to the next higher grade in the Army National Guard, and to transfer of officers of Army Reserve units organized to serve as units. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–559, § 1(13)(D), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 86–559, § 1(13) (D), (F), redesignated former subsec. (d) as (e), and amended such subsection by inserting words "for the first time" following "those listed for consideration." Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 86–559, § 1(13)(D), redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 86–559, § 1(13) (D), (G), redesignated former subsec. (f) as (g), and amended such subsection by substituting "major of reserve officers of the Army Nurse Corps, Army Medical Specialist Corps, or the Women's Army Corps" for "captain of reserve officers of the Army Nurse Corps or the Army Medical Specialist Corps, or to the promotion to a grade above major of reserve officers of the Women's Army Corps." Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 86–559, § 1(13)(D), redesignated former subsec. (g) as (h).

PROMOTION OF RESERVE COMMISSIONED OFFICERS HOLDING GRADES ON JULY 1, 1955

Section 20 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1595, which prohibited an officer from being considered for promotion for the first time under any one of sections 3366, 3367, 3370, and 3371 of this title, until he is within one year of completing the service prescribed for that grade, and prohibited promotion until he completes that service, was repealed by Pub. L. 86–559, § 3, June 30, 1960, 74 Stat. 281.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3212, 3360, 3364, 3368, 3846 of this title; title 32 section 310.

§ 3367. Commissioned officers: promotion of first lieutenants, captains, and majors to fill vacancies.

(a) Whenever the Secretary of the Army determines that, within the distribution of officers not assigned to units, there are existing or anticipated vacancies in the reserve grade of captain, major, or lieutenant colonel, he may convene a selection board to consider and recommend, for promotion to those grades, officers of the Army Reserve who are in an active status and who are not assigned to units organized to serve as units, reserve officers who are on active duty (other than for training), officers of any Army Reserve unit organized to serve as a unit, and officers of the Army National Guard of the United States. The Secretary shall prescribe for each zone of consideration list established under section 3364 of this title the minimum service, computed under section 3360(b) of this title, that an officer of the appropriate branch must have to be placed on that list. He shall require that each officer who has the prescribed service completed under that section, who is in an active status, and who is not assigned to a unit organized to serve as a unit, be placed on that list. Officers of any Army Reserve unit organized to serve as a unit, and officers of the Army National Guard of the United States, who have the prescribed service computed under that section, shall also be placed on that list. The Secretary shall prescribe the number to be recommended for promotion from each list.

(b) Subject to section 3380 of this title, an officer recommended for promotion under this section may be promoted whenever there is a vacancy, but it is not mandatory that the authorized number be maintained in any grade. Each officer of the Army National Guard of the United States who is recommended by a selection board for promotion under this section and who, before the date on which he would be promoted under this section, is appointed in the next higher grade to fill a vacancy in the Army National Guard and is federally recognized in that grade shall be promoted to that reserve grade effective as of the date on which he is so recognized. If he is not so appointed in the next higher grade in the Army National Guard and federally recognized in that grade, he shall, effective as of the date of the promotion under this section, have his Federal recognition terminated and be transferred to the Army Reserve. Each officer of an Army Reserve unit organized to serve as a unit who is promoted under this section shall, effective as of the date of that promotion, be transferred from his unit unless, upon his promotion, he fills a vacancy in that unit.

(c) A selection board considering officers under this section shall use one of the following methods, as directed by the Secretary of the Army:

(1) (A) Consider the officers referred to it in the order of their service computed under section 3360(b) of this title;

(B) recommend those who are fully qualified for promotion;

(C) pass over and report those not so qualified; and

(D) continue this procedure until the number of officers specified by him is recommended.

(2) Recommend a number specified by him whom it considers to be the best qualified of those officers referred to it.

If the method prescribed in clause (2) is used, the number recommended by the selection board must be at least 80 percent of the officers listed for consideration for the first time.

(d) Repealed. Pub. L. 90–130, § 1(11)(B), Nov. 8, 1967, 81 Stat. 375.

(e) If an officer of the Army National Guard of the United States is found qualified for promotion under this section, section 3390 of this title applies in place of the examination for Federal recognition in the grade for which found qualified. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1473, and amended Pub. L. 86–559, § 1(14), June 30, 1960, 74 Stat. 268; Pub. L. 90–130, § 1(11)(B), Nov. 8, 1967, 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3367 (a)	50: 1232 (a).	Sept. 3, 1954, ch. 1257, §§ 309, 314 (b) (less applicability to § 310), 331 (as applicable to § 309), 68 Stat. 1156, 1158, 1164.
	50: 1271 (less 29th through 35th words of last sentence, as applicable to 50: 1232).	
3367 (b)	50: 1232 (b).	
3367 (c)	50: 1237 (b) (less applicability to 50: 1233).	
3367 (d)	50: 1232 (c).	
3367 (e)	50: 1271 (29th through 35th words of last sentence, as applicable to 50: 1232).	

In subsection (a), the words "appoint and" and "or more", in 50: 1232 (a), are omitted as surplusage. The words "a selection board" are substituted for the words "one or more selection boards". The words "for promotion to those grades" are substituted for the words "to fill the vacancies".

In subsection (b), the words "Upon attaining the total years of service required by section 1238 (a) of this title" are omitted as surplusage.

In subsection (c), the words "must be at least 80 percent" are substituted for the words "shall * * * a minimum of 80 per centum".

Subsection (e) is substituted for 50: 1271 (29th through 35th words of last sentence).

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–130 struck out subsec. (d) which excepted the promotion to a grade above major of reserve officers of the Army Nurse Corps, Army Medical Specialist Corps, and the Women's Army Corps from the applicability of this section.

1960—Pub. L. 86–559, § 1(14)(A), eliminated words "not assigned to units" which followed "majors" in the catchline.

Subsec. (a). Pub. L. 86–559, § 1(14)(B), included officers of Army Reserve units organized to serve as units, and officers of the Army National Guard of the United States.

Subsec. (b). Pub. L. 86–559, § 1(14)(B), added provisions relating to promotion of officers of the Army National Guard of the United States, transfer to the Army Reserve of officers not appointed to the next higher grade in the Army National Guard, and to transfer of officers of Army Reserve units organized to serve as units.

Subsec. (c). Pub. L. 86-559, § 1(14)(C), inserted words "for the first time" following "listed for consideration."

Subsec. (d). Pub. L. 86-559, § 1(14)(D), substituted "major of reserve officers of the Army Nurse Corps, Army Medical Specialist Corps, or the Women's Army Corps" for "captain of reserve officers of the Army Nurse Corps or the Army Medical Specialist Corps, or to the promotion to a grade above major of reserve officers of the Women's Army Corps."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3364, 3366, 3368, 3846 of this title; title 32 section 310.

§ 3368. Commissioned officers: promotion of first lieutenants, captains, and majors not assigned to units; second consideration.

An officer in the reserve grade of first lieutenant, captain, or major who is considered, but not recommended, by a selection board under section 3366 or 3367 of this title shall, if he remains in an active status, be placed on the next zone of consideration list established under either of those sections for the consideration of officers of his branch and grade. If he is again considered under section 3366 of this title and is recommended for promotion, he shall be promoted one year after the date on which he would have been promoted if he had been recommended by the board that first considered him. However, if, upon second consideration under either section, he is not recommended for promotion, he may not thereafter be considered for promotion or examined for Federal recognition and shall be treated as prescribed in section 3846 of this title. (Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1474.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3368	50: 1234.	Sept. 3, 1954, ch. 1257, § 311, 68 Stat. 1157.

The last 12 words of the last sentence are inserted to reflect section 3846 of this title. The words "under either section" are inserted for clarity. The word "nonunit" is omitted since sections 3366 and 3367 cover only that kind of officer.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3363, 3364 of this title.

§ 3369. Commissioned officers: Army Reserve; first promotion of officers not assigned to unit after transfer from unit or from Army National Guard of United States.

A reserve officer in a grade named in the following table who, upon transfer from the Army National Guard of the United States or upon release from a unit in the Army Reserve, is in an active status and is not assigned to a unit organized to serve as a unit, or who is on active duty (other than for training) may not be promoted to a higher reserve grade for the first time after that transfer or release, or entrance on active duty, as the case may be, until he completes the following service:

Grade:	*Years of service computed under sec. 3360 (c) of this title*
First lieutenant	6
Captain	12
Major	17
Lieutenant colonel or higher	19

(Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958. 72 Stat. 1474.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3369	50: 1238 (c). 50: 1271 (as applicable to 50: 1238 (c)).	Sept. 3, 1954, ch. 1257, §§ 315 (c), 331 (as applicable to § 315 (c)), 68 Stat. 1159, 1164.

The table is substituted for the words "service prescribed in subsection (a) of this section", in 50: 1238 (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360, 3386 of this title.

§ 3370. Commissioned officers: promotion to grade of colonel to fill vacancies.

(a) Whenever the Secretary of the Army determines that, within the distribution of officers not assigned to units, there are existing or anticipated vacancies in the reserve grade of colonel, he may convene a selection board to consider and recommend, to fill those vacancies, reserve officers who are in an active status and who are not assigned to units organized to serve as units, subject to section 3390 of this title, reserve officers who are on active duty (other than for training), officers of any unit of the Army Reserve organized to serve as a unit, and officers of the Army National Guard of the United States.

(b) The Secretary shall prescribe for each zone of consideration list established under section 3364 of this title the amount of service computed under section 3360(b) of this title that an officer of the branch concerned must have to be placed on it for consideration under this section. So far as practicable, the amount of service prescribed shall correspond to that which an officer of the Regular Army in the same branch must have for consideration for promotion to the same grade. The Secretary shall require that each officer who is in an active status, who is not assigned to a unit organized to serve as a unit, and who has the prescribed service computed under that section, be placed on that list. Officers of any unit of the Army Reserve organized to serve as a unit, and any officer of the Army National Guard of the United States, who have the prescribed service computed under that section, shall also be placed on that list. He shall prescribe the number to be recommended for promotion from each list.

(c) A selection board considering officers under this section shall recommend the prescribed number of officers whom it considers to be the best qualified.

(d) Subject to section 3380 of this title, an officer recommended for promotion under this section may be promoted whenever there is a vacancy, but it is not mandatory that the authorized number be maintained in any grade. Each officer of the Army National Guard of the United States who is recommended for promotion under this section and who, before the date on which he would be promoted under this section, is appointed in the next higher grade to fill a vacancy in the Army National Guard and is federally recognized in that grade shall be promoted to that reserve grade effective as of the date on which he is so recognized. If he is not so appointed in the next higher grade in the Army National Guard and federally recognized in that grade, he shall, effective as of the date of the promotion under this section, have his Federal recognition terminated and be transferred to the Army Reserve. An officer of the Army National Guard of the United States may decline a promotion under this section if the governor or other appropriate authority of the State, Territory, Puerto Rico, the Canal Zone, or the commanding general of the District of Columbia National Guard, whichever is concerned, approves that action. If an officer of the Army National Guard of the United States so declines a promotion, his name shall be removed from the recommended list. Each officer of an Army Reserve unit organized to serve as a unit who is promoted under this section shall, effective as of the date of that promotion, be transferred from his unit unless upon his promotion he fills a vacancy in that unit. An officer of a unit of the Army Reserve organized to serve as a unit may decline a promotion under this section if the Secretary of the Army, or an officer designated by him, approves that action as being in the best interest of the Army. If an officer of a unit of the Army Reserve so declines a promotion, his name shall be removed from the recommended list.

(e) If an officer of the Army National Guard of the United States is found qualified for promotion under this section, section 3390 of this title applies in place of the examination for Federal recognition in the grade for which found qualified. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1474, and amended Pub. L. 86–559, § 1(15), June 30, 1960, 74 Stat. 269; Nov. 8, 1967, Pub. L. 90–130, § 1(11)(C), (D), 81 Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3370 (a)	50: 1235 (1st sentence). 50: 1271 (less 29th through 35th words of last sentence, as applicable to 50: 1235).	Sept. 3, 1954, ch. 1257, §§ 312, 331 (as applicable to § 312), 68 Stat. 1157, 1164.
3370 (b)	50: 1235 (2d and 3d sentences).	
3370 (c)	50: 1235 (4th sentence).	
3370 (d)	50: 1235 (less 1st 4 sentences).	
3370 (e)	50: 1271 (29th through 35th words of last sentence, as applicable to 50: 1235).	

In subsection (b), the words "for consideration under this section" are inserted for clarity.

In subsection (c), the words "among those on the zone of consideration list" are omitted as surplusage.

Subsection (e) is substituted for 50: 1271 (29th through 35th words of last sentence).

AMENDMENTS

1967—Pub. L. 90–130, § 1(11)(D), substitute "grade of colonel to fill vacancies" for "field grade in certain cases" in the section catchline.

Subsec. (a). Pub. L. 90–130, § 1(11)(C), struck out limitation restricting the convening of selection boards to situations in which the existing or anticipated vacancies are in the reserve grade of lieutenant colonel in the Army Nurse Corps, Army Medical Specialist Corps, or the Women's Army Corps, colonels on any other branch, and colonels in the Army Nurse Corps or Army Medical Specialist Corps, and reduced the restriction to a requirement merely that the vacancy be in the reserve grade of colonel.

1960—Pub. L. 86–559, § 1(15)(A), eliminated words "officers not assigned to units," which preceded "promotion", in the catchline.

Subsec. (a). Pub. L. 86–559, § 1(15)(B), eliminated provisions which related to vacancies in the grade of major in the Army Nurse Corps or the Army Medical Specialist Corps, inserted provisions relating to vacancies in the grades of lieutenant colonel in the Army Medical Specialist Corps and colonel in the Army Nurse Corps or Army Medical Specialist Corps, and authorized consideration of officers of any unit of the Army Reserve organized to serve as a unit and officers of the Army National Guard of the United States.

Subsec. (b). Pub. L. 86–559, § 1(15)(B), substituted "who is in an active status, who is not assigned to a unit organized to serve as a unit, and who has the prescribed service computed under that section, be placed on the list" for "with that amount of service be placed on that list", and inserted provisions requiring, so far as practicable, the amount of service prescribed to correspond to that which an officer of the Regular Army in the same branch must have for consideration for promotion to the same grade, and directing the placement on the list of officers of any unit of the Army Reserve organized to serve as a unit, and any officer of the Army National Guard of the United States, who have the prescribed service.

Subsec. (d). Pub. L. 86–559, § 1(15)(C), added provisions relating to promotion of officers of the Army National Guard of the United States, transfer to the Army Reserve of officers not appointed to the next higher grade in the Army National Guard, declination of promotion by officers of the Army National Guard of the United States, transfer of officers of Army Reserve units organized to serve as units, and declination of promotion by officers of units of the Army Reserve organized to serve as units.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 3360, 3364 of this title; title 32 section 310.

§ 3371. Commissioned officers: promotion of brigadier generals and colonels not assigned to units.

(a) Whenever vacancies are authorized or anticipated in the Army Reserve in the reserve grades of major general or brigadier general for officers who are in an active status and who are not assigned to units organized to serve as a unit or for officers who are on active duty (other than for training), the Secretary of the Army may convene a selection board to consider those officers who are in the reserve grade of brigadier general or colonel, as the case may be, for promotion and prescribe the number to be promoted. Only officers who have at least two years of service computed under section 3360 (b) of this title and who meet standards prescribed

by the Secretary may be considered by a selection board under this section.

(b) The selection board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

(c) Subject to section 3380 of this title, an officer recommended for promotion under this section may be promoted whenever there is a vacancy, but it is not mandatory that the authorized number be maintained in any grade.

(d) If an officer of the Army National Guard of the United States is found qualified for promotion under this section, section 3390 of this title applies in place of the examination for Federal recognition in the grade for which found qualified. (Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1475.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3371 (a)	50: 1236 (1st sentence). 50: 1271 (less 29th through 35th words of last sentence, as applicable to 50: 1236).	Sept. 3, 1954, ch. 1257, §§ 313, 331 (as applicable to § 313), 68 Stat. 1157, 1164.
3371 (b)	50: 1236 (2d sentence).	
3371 (c)	50: 1236 (less 1st and 2d sentences).	
3371 (d)	50: 1271 (29th through 35th words of last sentence, as applicable to 50: 1236).	

In subsection (a), the last sentence is substituted for the words "who fulfill the requirements of section 1226 of this title and who meet minimum standards to be prescribed by the Secretary", in 50: 1236 (1st sentence). The words "appoint and" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360, 3364 of this title.

§ 3375. Commissioned officers: generals ceasing to occupy commensurate positions.

Within 30 days after an officer in a reserve general officer grade ceases to occupy a position commensurate with his grade or with a higher grade, the Secretary of the Army shall, as the officer elects—

(1) transfer him in grade to the Retired Reserve, if he is qualified and applies therefor;

(2) transfer him in grade to the inactive status list of the Standby Reserve, if he is qualified;

(3) discharge him from his reserve appointment and, if he is qualified and applies therefor, appoint him in the reserve grade held by him as a reserve officer before his appointment in a general officer grade; or

(4) discharge him from his reserve appointment.

(Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1475.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3375	50: 1266.	Sept. 3, 1954, ch. 1257, § 329, 68 Stat. 1163.

The words "a reserve general officer grade" are substituted for the words "a grade above colonel". The words "as the officer elects" are substituted for the words "at the option of the officer". The words "require that one of the following actions" and 50: 1266 (last 19 words) are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3378. Commissioned officers: promotion of officers removed from active status.

(a) A reserve commissioned officer who has been recommended by a selection board for promotion to, or found qualified for Federal recognition in, the next higher reserve grade, and who at the time he would otherwise be promoted is not eligible because he has been removed from an active status, may not be placed on the recommended list when he returns to an active status unless he is again recommended by a selection board or is again found qualified for Federal recognition in the next higher reserve grade.

(b) A reserve commissioned officer who has been removed from an active status after being recommended by a selection board for promotion to, or found qualified for Federal recognition in, the next higher reserve grade, shall be treated as if he had not been considered by that selection board or examined by the Federal recognition board that found him qualified for that Federal recognition. (Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1476.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3378 (a)	50: 1198 (less last 39 words).	Sept. 3, 1954, ch. 1257, § 208, 68 Stat. 1152.
3378 (b)	50: 1198 (last 39 words).	

In subsection (b), the words "shall be treated as if he had not" are substituted for the words "and shall not be deemed to have been". The words "that found him qualified for that Federal recognition" are substituted for the words "which last * * * examined him prior to the time he is returned to an active status".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3380. Commissioned officers: election to continue on active duty after promotion.

(a) A reserve commissioned officer on active duty (other than for training) who is promoted to a reserve grade that is higher than the grade in which he is serving continues to serve on active duty in the grade in which he was serving immediately before that promotion. Unless he expressly declines the promotion he shall be treated as if he had accepted, on the date of that promotion, an appointment in a temporary grade equal to the grade in which he was serving before that promotion. If he elects not to continue on active duty in the grade in which he is serving, he shall, except as provided in subsection (b), be relieved from active duty and be promoted on

the day after he is relieved or on the date on which he would have been promoted if he had stayed on active duty, whichever is the later. If he is relieved from active duty after the date on which he would have been promoted if he had stayed on active duty, he shall be credited with the service he would have had if he had remained on active duty and had been promoted.

(b) A reserve commissioned officer on active duty (other than for training) who has not completed the period of active duty that he is required by law or regulation to perform as a member of a reserve component, and who is recommended or found qualified for promotion to a higher reserve grade, may not elect to be relieved from active duty under subsection (a), but may decline the promotion if he does not desire to serve on active duty in a grade lower than his reserve grade. If he so declines the promotion, he shall, if he applies, be promoted to the grade for which he was recommended or found qualified upon being temporarily promoted to that higher grade or, subject to subsection (a), upon completing his period of required active duty. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1476.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3380 (a)	50: 1273 (a).	Sept. 3, 1954, ch. 1257, § 333, 68 Stat. 1164; June 30, 1955, ch. 247, §§ 2, 10, 69 Stat. 218, 222.
3380 (b)	50: 1273 (less (a)).	

In subsection (a), the words "If he elects not to" are substituted for the words "If he does not desire to".

In subsection (b), the words "may not elect to be relieved" are substituted for the words "shall not have the election of relief".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3364, 3370, 3371 of this title.

§ 3382. Commissioned officers: Army Reserve; promotion of second lieutenants assigned to units.

Without regard to vacancies, each second lieutenant of the Army Reserve who is in an active status and who is assigned to a unit organized to serve as a unit shall, if he is found qualified for promotion by the Secretary of the Army or an officer designated by him, be promoted to the reserve grade of first lieutenant effective as of the date on which he completes three years of service computed under section 3360 (b) of this title. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1476.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3382	50: 1241.	Sept. 3, 1954, ch. 1257, § 316, 68 Stat. 1159.

The words "Without regard to vacancies" are substituted for the words "irrespective of the existence of a vacancy in such grade". The words "designated by him" are substituted for the words "acting under his discretion".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360 of this title.

§ 3383. Commissioned officers: Army Reserve; promotion to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies in units.

(a) The Secretary of the Army may convene a selection board to consider and recommend officers of any unit of the Army Reserve that is organized to serve as a unit for promotion to fill a vacancy in that unit in the grade of captain, major, lieutenant colonel, or colonel within the numbers authorized for that unit under section 3220 of this title.

(b) In referring the names of officers for consideration for promotion under subsection (a), the convening officer shall place on a zone of consideration list the name of each officer who is assigned to a unit organized to serve as a unit, who is eligible for consideration for promotion under section 3363 (b) or (g) of this title, and who is geographically available to fill the vacancy. Whenever the Secretary determines that a vacancy may be filled by an officer of the Women's Army Corps, officers of that branch are eligible for consideration even though the vacancy is not allocated to that branch. The convening officer shall refer the list to the selection board for consideration. Without regard to section 3363 (a) and (b) of this title, he may also place on such a list for promotion to the next higher reserve grade the name of any reserve first lieutenant or second lieutenant who has served creditably for at least a year in a position that is in a unit organized to serve as a unit and is prescribed to be filled by a captain, and who has not previously been promoted under this section.

(c) The selection board shall recommend the officer whom it considers to be the best qualified.

(d) An officer recommended for promotion under this section may be immediately promoted to fill the vacancy.

(e) After July 1, 1965, no promotion may be made under this section, if that promotion would result in an excess over any grade strength authorized by section 3219 of this title. (Added Pub. L. 85–861, § 1(80) (E), Sept. 2, 1958, 72 Stat. 1477, and amended Pub. L. 86–559, § 1(16), June 30, 1960, 74 Stat. 270; Pub. L. 88–620, § 2, Oct. 3, 1964, 78 Stat. 999; Pub. L. 90–130, § 1(11) (E), Nov. 8, 1967, 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3383 (a)	50: 1242 (a).	Sept. 3, 1954, ch. 1257, § 317 68 Stat. 1159.
3383 (b)	50: 1242 (b) (1st and 2d sentences).	
3383 (c)	50: 1242 (b) (3d sentence).	
3383 (d)	50: 1242 (b) (less 1st 3 sentences).	

In subsection (a), the words "that is organized to serve as a unit" are inserted for clarity.

In subsection (b), the last 10 words of the last sentence are substituted for the words "provided the officer has not previously been promoted under this provision".

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out provision limiting the vacancies for which officers of the Women's Army Corps may be considered to vacancies in reserve grades below colonel.

1964—Subsec. (e). Pub. L. 88–620 substituted "July 1, 1965" for "July 1, 1964."

1960—Subsec. (a). Pub. L. 86–559, § 1(16)(A), substituted "section 3220" for "sections 3217 and 3219."

Subsec. (b). Pub. L. 86–559, § 1(16)(B), made officers of the Women's Army Corps eligible for consideration whenever the Secretary determines that a vacancy in a reserve grade below colonel is one that may be filled by an officer of the Women's Army Corps.

Subsec. (e). Pub. L. 86–559, § 1(16)(C), added subsec. (e).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3212, 3363, 3388 of this title; title 32 section 310.

§ 3384. Commissioned officers: Army Reserve; promotion to grade of brigadier general or major general to fill vacancies in units.

(a) Officers of the Army Reserve may be promoted to the reserve grades of brigadier general and major general to fill vacancies in those grades in any unit of the Army Reserve that is organized to serve as a unit and has attained the strength prescribed by the Secretary of the Army.

(b) Within one year after an officer has been assigned to the duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit, he shall be evaluated by his superior officer. If the superior officer determines that the officer has shown his fitness for the position, he shall send the officer's name to the Secretary for consideration by a selection board for promotion to the next higher reserve grade.

(c) To be eligible for consideration for promotion under this section, an officer must meet the requirements of this chapter and the standards prescribed by the Secretary.

(d) The names of officers who meet the requirements of this section and section 3363 (b) of this title shall be submitted to a selection board convened at least once each year by the Secretary. The selection board shall recommend the officer whom it considers to be the best qualified to fill each vacancy.

(e) An officer recommended for promotion under this section may be immediately promoted to fill the vacancy. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1477.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3384 (a)	50: 1243 (a).	Sept. 3, 1954, ch. 1257, § 318, 68 Stat. 1159.
3384 (b)	50: 1243 (b).	
3384 (c)	50: 1243 (c).	
3384 (d)	50: 1243 (d) (less last sentence).	
3384 (e)	50: 1243 (d) (last sentence).	

In subsection (a), the words "that is organized to serve as a unit" are inserted for clarity.

In subsection (b), the words "At any time" are omitted as surplusage.

In subsection (c), the words "In order" and "by a selection board" are omitted as surplusage. The words "under this section" are inserted for clarity.

In subsection (e), the words "for which considered" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This sections is referred to in sections 123, 3388 of this title.

§ 3385. Commissioned officers: Army National Guard of United States; promotion upon Federal recognition.

An officer of the Army National Guard of the United States to whom Federal recognition has been extended under section 309 or 310 of title 32 may, as of the date of that Federal recognition, be promoted to the next higher reserve grade. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1477.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3385	50: 1253.	Sept. 3, 1954, ch. 1257, § 321, 68 Stat. 1160.

The words "as of the date" are substituted for the words "effective on the date".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3386. Commissioned officers: promotion upon release from active duty.

Upon release from active duty (other than for training), a reserve commissioned officer shall be promoted to a reserve grade that is equal to the highest temporary grade in which he served on that duty satisfactorily, as determined by the Secretary of the Army. An officer who is promoted under this section may not thereafter be promoted for the first time as a reserve officer in an active status and not assigned to a unit organized to serve as a unit, until he completes the service prescribed under section 3369 of this title for promotion to the grade concerned. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1478.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3386	50: 1278.	Sept. 3, 1954, ch. 1257, § 338, 68 Stat. 1165.

The words "shall be promoted * * * that is equal" are substituted for the words "shall be appointed * * * equal". The words "who is promoted under this section" are inserted for clarity. The words "completes the service prescribed under section 3369 of this title for promotion to the grade concerned" are substituted for the words "is qualified under section 1238 (a) of this title".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3388. Commissioned officers: Army Reserve; effect of entering upon active duty while eligible for promotion.

If a commissioned officer of the Army Reserve who enters upon active duty (other than for training) while his name is on a zone of consideration list under section 3383 of this title has had his name submitted to a selection board, or is recommended for promotion under section 3383 or 3384 of this title, his name shall be removed from the list or withdrawn from those recommended for promotion, and he shall be treated as if he had not been considered for promotion. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1478.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3388	50: 1272.	Sept. 3, 1954, ch. 1257, § 332, 68 Stat. 1164.

The words "under section 3383 of this title" are substituted for the words "under part 3 of this subchapter". The words "under section 3383 or 3384 of this title" are substituted for the words "under that part". The words "treated as if he had not" are substituted for the words "deemed not to have been". No reference to section 3382 of this title, relating to the promotion of second lieutenants assigned to units of the Army Reserve, is made, since no zone of consideration lists are maintained for the promotion of those officers.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3389. Commissioned officers: promotion to higher reserve grade after temporary appointment.

(a) When he completes the service prescribed by the Secretary of the Army, a commissioned officer of the Army Reserve who is on active duty (other than for training) in a temporary grade that is higher than his reserve grade shall be promoted to an appropriate higher reserve grade that is not higher than his temporary grade.

(b) When he completes the service prescribed by the Secretary, a commissioned officer of the Army National Guard of the United States who is on active duty in a temporary grade that is higher than his reserve grade is eligible for promotion to an appropriate higher reserve grade that is not higher than his temporary grade.

(c) The Secretary shall annually prescribe the period of service required for promotion to each grade under this section. The period shall conform as nearly as possible to the corresponding period of service then being applied to the promotion of regular officers. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1478, and amended Pub. L. 86–559, § 1(17), June 30, 1960, 74 Stat. 270.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3389 (a)	50: 1275 (less last 29 words, as applicable to Army Reserve).	Sept. 3, 1954, ch. 1257, § 335, 68 Stat. 1165.
3389 (b)	50: 1275 (less last 29 words, as applicable to Army National Guard of the United States).	
3389 (c)	50: 1275 (last 29 words).	

In subsections (a) and (b), the words "an appropriate higher reserve grade that is not higher than his temporary grade" are substituted for the words "an appropriate higher grade * * * equal to or lower than his temporary grade".

In subsection (b), the words "who is on active duty in a temporary grade that is higher than his reserve grade" are substituted for the words "on active duty who holds an appointment in a temporary grade higher than his current grade".

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559 eliminated words "and not above colonel" which followed "not higher than his temporary grade."

Subsec. (b). Pub. L. 86–559 eliminated words "and not above colonel" which followed "not higher than his temporary grade."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3390 of this title.

§ 3390. Commissioned officers: Army National Guard of United States; procedure for promotion to higher reserve grade after temporary appointment.

(a) If an officer of the Army National Guard of the United States who is on active duty (other than for training) is recommended for promotion or becomes eligible for promotion under section 3389 of this title, an opportunity shall be given to the appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, as the case may be, to promote that officer to fill a vacancy in the Army National Guard of that jurisdiction. If necessary, a vacancy may be created for the purposes of this subsection.

(b) If such an officer is so promoted in the Army National Guard, Federal recognition is extended to him effective as of the date on which he would have been promoted if he were an officer of the Army Reserve, and he may be promoted in his reserve grade effective as of the date of the extension of Federal recognition. However, if he is not so promoted in the Army National Guard, his Federal recognition in his reserve grade shall be withdrawn and he shall be transferred to the Army Reserve. (Added Pub. L. 85–861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1478.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3390 (a), (b)	50: 1276.	Sept. 3, 1954, ch. 1257, § 336, 68 Stat. 1165.

In subsection (a), the last sentence is substituted for the words "specially created for that purpose, if necessary". The words "of the State or Territory, Puerto Rico,

the Canal Zone, or the District of Columbia, as the case may be" are substituted for the word "State" for clarity. The words "automatically" and "unit" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3365, 3370, 3371 of this title.

§ 3391. Repealed. Pub. L. 90-130, § 1(11)(F), Nov. 8, 1967, 81 Stat. 376.

Section, Pub. L. 85-861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1479; Pub. L. 86-559, § 1(18), June 30, 1960, 74 Stat. 270, prohibited the promotion of reserve officers of the Army Nurse Corps or the Army Medical Specialist Corps to reserve grades above colonel and prohibited the promotion of reserve officers of the Women's Army Corps to reserve grades above lieutenant colonel.

§ 3392. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.

Notwithstanding any other provision of this chapter, the adjutant general or an assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may, upon being extended Federal recognition, be appointed as a reserve officer of the Army as of the date on which he is so recognized. (Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1479.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3392	50: 1255.	Sept. 3, 1954, ch. 1257, § 323, 68 Stat. 1161.

The words "upon being extended Federal recognition" are substituted for the words "effective upon the date of extension of Federal recognition".

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281 of this title.

§ 3393. Commissioned officers: sea or foreign service not to be required for promotion.

Sea or foreign service may not be made a condition to the promotion of reserve commissioned officers in reserve grades. (Added Pub. L. 85-861, § 1 (80) (E), Sept. 2, 1958, 72 Stat. 1479.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3393	50: 1200.	Sept. 3, 1954, ch. 1257, § 210, 68 Stat. 1152.

The words "may not be made a condition to" are substituted for the words "There shall be no requirement for".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3394. Officers: acceptance of promotion.

(a) An officer of the Army National Guard of the United States or Army Reserve who is promoted as a Reserve is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous. (Aug. 10, 1956, ch. 1041, 70A Stat. 195.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	ource (Statutes at Large)
3394 (a)	10: 558 (less last sentence, as applicable to reserve components).	Oct. 14, 1942, ch. 604 (as applicable to reserve components), 56 Stat. 787.
3394 (b)	10: 558 (last sentence, as applicable to reserve components).	

In subsection (a), the words "is considered" are substituted for the words "shall be deemed". The words "is entitled" are substituted for the words "and shall receive". The words "to them" are substituted for the words "to receive the pay and allowances of the higher grade". The words "that date" are substituted for the words "an earlier date". The words "after December 7, 1941" are omitted as executed. The words "to a higher grade at any time", "for purposes", and "to higher grade" are omitted as surplusage.

In subsection (b), the words "An officer need not take" are substituted for 10: 558 (1st 29 words of last sentence). The words "since last taking it" are substituted for the words "after the taking of such an oath". The words "to a higher grade" are omitted as surplusage.

CROSS REFERENCES

Regular Army officers, see section 3312 of this title.

Temporary appointments, see section 3451 of this title.

§ 3395. During war.

In addition to appointments in time of war under chapter 339 of this title, appointments of reserve officers may be made in time of war. (Aug. 10, 1956, ch. 1041, 70A Stat. 195.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3395	10: 513 (last proviso of last sentence).	June 3, 1916, ch. 134, § 127a (last proviso of last sentence of 7th par.); added July 9, 1952, ch. 608, § 806 (h), 66 Stat. 508.

The exception as to chapter 339 of this title is inserted for clarity. The word "persons" is omitted as surplusage.

Chapter 339.—TEMPORARY APPOINTMENTS

Sec.
3441. General rule.
3442. Commissioned officers; regular and reserve components: appointment in higher grade.
3444. Commissioned officers: during war or emergency.
3445. Officers: additional appointments during war or emergency.
3446. Retention on active duty.
3447. Appointments in commissioned grade: how made; how terminated.

Sec.
3448. Warrant officers: grades; appointment.
3449. Warrant officers: promotion.
3451. Officers: acceptance of appointment in higher grade.
3452. Officers; Medical and Dental Corps: temporary promotion to captain.

AMENDMENTS

1968—Pub. L. 90-235, § 3(b)(2), Jan. 2, 1968, 81 Stat. 758, struck out item 3450, which read: "Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency".

1958—Pub. L. 85-861, § 1 (81) (F), (G), Sept. 2, 1958, 72 Stat. 1480, struck out item 3443 and added item 3452.

CROSS REFERENCES

Rank, adjustment of dates by President, see section 3572 of this title.

Reserve officers, appointments in time of war, see section 3395 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3395 of this title.

§ 3441. General rule.

Temporary appointments may be made only in the Army without specification of component. (Aug. 10, 1956, ch. 1041, 70A Stat. 195.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3441	10: 506d (i).	Aug. 7, 1947, ch. 512, § 515 (i), 61 Stat. 908.

10: 506d (i) (1) is omitted, since the words "regular" and "reserve" are defined in section 101 (33) and (34) of this title to cover appointments as regular and reserve officers of the armed forces. The revised section is substituted for 10: 506d (i) (2) and (3).

VALIDATION OF CERTAIN TEMPORARY APPOINTMENTS IN ARMY OF THE UNITED STATES

Pub. L. 86-197, § 2, Aug. 25, 1959, 73 Stat. 426, provided that all appointments made after December 6, 1941, in the Army of the United States without component under the joint resolution of September 22, 1941 (ch. 414, 55 Stat. 728), that were not earlier terminated by administrative action or specific provision of law could be considered for all purposes to have continued in effect until the close of March 31, 1953.

§ 3442. Commissioned officers; regular and reserve components: appointment in higher grade.

(a) Whenever the number of officers of the Regular Army in any regular grade above second lieutenant is less than the number authorized, the vacancies may be filled by the appointment of qualified officers, as prescribed in subsection (c).

(b) Whenever, under authorization by Congress, the number of commissioned officers of the Regular Army on active duty plus the number of other commissioned officers of the Army ordered to active duty for a period of more than 30 days is more than the authorized strength of the Regular Army in commissioned officers on the active list, the Secretary of the Army shall determine the additional number of officers in each of the commissioned grades based upon the number of officers serving on active duty and the tasks being performed by the Army. Vacancies resulting from that determination may then be filled by the appointment of qualified officers, as prescribed in subsection (c).

(c) Subject to subsections (a) and (b), a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. Under regulations to be prescribed by the Secretary, appointments made under this subsection shall be made on a fair and equitable basis. Selections shall be based upon ability and efficiency with regard being given to seniority and age. (Aug. 10, 1956, ch. 1041, 70A Stat. 195.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3442 (a)	10: 506d (a).	Aug. 7, 1947, ch. 512, § 515 (a), (b), and (c) (less last sentence), 61 Stat. 906, 907.
3442 (b)	10: 506d (b).	
3442 (c)	10: 506d (c) (less last sentence).	

In subsection (a), the words "in any regular grade above second lieutenant" are substituted for the words "holding office under permanent appointments in the grades of major general and brigadier general" and "officers of any promotion list, holding office * * * in the grades of colonel, lieutenant colonel, major, captain, and first lieutenant, respectively", since the grades enumerated include each commissioned grade in the Regular Army except the grade of second lieutenant. The words "the vacancies" are substituted for the words "the additional number authorized in these service grades".

In subsection (b), the words "commissioned officers of the Regular Army on active duty plus the number of other commissioned officers of the Army ordered to active duty for a period of more than 30 days" are substituted for 10: 506d (b) (words within parentheses) and the words "officers serving on active duty". The words "is more than" are substituted for the word "exceeds". The words "the additional number of officers" are substituted for the words "the requirements". The words "Vacancies resulting from that determination" are substituted for the words "and such requirements in each of such grades". The words "from time to time made", "serving", and "total" are omitted as surplusage. 10: 506d (b) (proviso) is omitted as executed by the declaration of the national emergency on December 16, 1950.

In subsection (c), the words "Subject to" are substituted for the words "Within the limitations specified in". The words "any other grade held by him" are substituted for the words "his permanent appointment or any temporary appointment held by him under this or any other provision of law". 10: 506d (c) (last 37 words of 1st sentence) is omitted as executed.

CROSS REFERENCES

Vacancy in commissioned grade, filling by appointment in lower grade, see section 3202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3445, 3447 of this title.

§ 3443. Repealed. Pub. L. 85-861, § 36B (6), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 196, related to grade of appointment of reserve commissioned officers on active duty.

§ 3444. Commissioned officers: during war or emergency.

(a) In time of emergency declared by Congress or the President, and in time of war, the President may appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary commissioned grade.

(b) An officer appointed under subsection (a) may be ordered to active duty for such period as the President prescribes.

(c) Unless sooner vacated, an appointment under subsection (a) is effective during the war or emergency in which it is made and for six months thereafter.

(d) For the purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, an officer of the Medical or Dental Corps who is appointed in a temporary grade under subsection (a) shall, when he enters on active duty, be credited with the constructive service authorized by section 3294 (b) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1 (81) (A), 72 Stat. 1480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3444 (a)	10: 506d (e) (1st sentence, less last 29 words).	Aug. 7, 1947, ch. 512, § 515, (e), 61 Stat. 907.
3444 (b)	10: 506d (e) (last 29 words of 1st sentence).	
3444 (c)	10: 506d (e) (less 1st sentence).	

In subsection (a), the words "is not a Regular or Reserve" are substituted for the words "hold no Regular Army or Reserve status". The words "of the several * * * officer" are omitted as surplusage.

In subsection (b), the words "to active duty" are substituted for the words "into the active military service of the United States". The words "to serve therein" and "of time" are omitted as surplusage.

In subsection (c), the words "under subsection (a)" are substituted for the words "of a temporary officer". The words "is effective" are substituted for the words "shall continue".

AMENDMENTS

1958—Subsec. (d). Pub. L. 85–861 added subsec. (d).

ADJUSTMENT OF SERVICE CREDIT FOR MEDICAL AND DENTAL OFFICERS APPOINTED BEFORE MAY 1, 1956

Authorization to convene boards of officers to review the records and compute the service of medical and dental officers appointed before May 1, 1956, see section 19 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1559, set out as a note under section 3294 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3445, 3447 of this title.

§ 3445. Officers: additional appointments during war or emergency.

(a) In addition to appointments authorized under section 3442 of this title, in time of war or of national emergency declared by the President, a regular officer or a reserve warrant officer may be appointed in a temporary grade that is higher than his regular or reserve grade, without vacating that grade.

(b) In addition to appointments authorized under subsection (a) of this section, and sections 3442 and 3444 of this title, in time of war a person who holds no commissioned grade in the Regular Army may be appointed in any temporary commissioned grade.

(c) Unless sooner vacated, the appointment of an officer under subsection (b), except a member of the Regular Army, is effective during the war in which it is made and for six months thereafter.

(d) Each officer appointed under subsection (b) shall, unless he is a member of the Regular Army, be relieved from active duty, at his request, within six months after the termination of the war. (Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1 (81) (B), 72 Stat. 1480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3445 (a)	10: 513 (1st sentence); 10: 600a (b) (less applicability to temporary appointments).	June 3, 1916, ch. 134, § 127a (1st and 2d sentences, and 1st proviso of last sentence, cf 7th par.); added June 4, 1920, ch. 227, subch. I, § 51 (7th par., less 23d through 27th words); restated June 15, 1933, ch. 87, § 20 (1st and 2d sentences, and proviso of last sentence), 48 Stat. 161; Sept. 9, 1940, ch. 717, § 101, 54 Stat. 875. May 29, 1954, ch. 249, § 3 (b) (less applicability to temporary appointments), 68 Stat. 158.
3445 (b)	10: 513 (2d sentence).	
3445 (c)	10: 513 (1st proviso of last sentence, less last 29 words).	
3445 (d)	10: 513 (last 29 words of 1st proviso of last sentence).	

In subsection (a), the words "In addition to appointments authorized under section 3442 of this title" are inserted to indicate that the authority granted by this subsection is in addition to the authority granted by that section (see opinion of the Judge Advocate General of the Army (JAGA 1951/6604, 2 Nov. 1951)).

Subsection (b) makes express the authority, heretofore implied, to appoint persons other than commissioned officers of the Regular Army (see opinion of the Judge Advocate General of the Army (JAGA 210.1, 5 Sept. 1941)). The words "In addition to appointments authorized under subsection (a) of this section, and sections 3442, 3443, and 3444 of this title" are inserted to indicate that the authority granted by this subsection is in addition to the authority granted by those sections (see opinion of the Judge Advocate General of the Army (JAGA 1951/6604, 2 Nov. 1951)).

In subsection (c), the words "Unless sooner vacated" are inserted for clarity. The words "under subsection (b)" are substituted for the words "made in time of war". The words "is effective during the war in which it is made and for * * * thereafter" are substituted for the words "shall continue until * * * after its termination".

In subsection (d), the words "Unless he is a member of the Regular Army" are inserted, since appointments of members of the Regular Army under this section are not limited to the period of war and six months thereafter, but remain in effect until terminated by the President (see opinions of the Judge Advocate General of the Army (JAGA 1946/6362, 24 July 1946; JAGA 1947/7385, 5 Nov. 1947; JAGA 1948/3343, 4 Mar. 1948; and JAGA 1951/6604, 2 Nov. 1951)). The words "under subsection (b)" are substituted for the words "in time of war". The words "at his request" are substituted for the words "if he makes application therefor". The words "entitled to be" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 eliminated a reference to section 3443 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3447 of this title.

§ 3446. Retention on active duty.

Notwithstanding any other provision of law, the President may retain on active duty a disabled officer until his physical condition is such that he will not be further benefited by retention in a military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1 (81) (C), 72 Stat. 1480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3446	10: 499.	June 19, 1948, ch. 511, 62 Stat. 489.

The word "shall" is substituted for the words "authorized and directed". The words "on active duty" are substituted for the words "in service". The words "warrant officers, and flight officers" are omitted, since the definition of "officer" in section 101 (14) of this title covers commissioned, warrant, and flight officers. The words "who has only a temporary appointment" are substituted for the words "of the Army * * * of the United States". The words "his physical condition is such that he" are substituted for the words "their treatment for physical reconstruction has reached a point where they". The words "in the Army" are substituted for the words "in the military service".

AMENDMENTS

1958—Pub. L. 85–861 substituted "may retain on active duty a disabled officer" for "shall retain on active duty any disabled officer who has only a temporary appointment", and "military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law" for "military hospital or in the Army".

§ 3447. Appointments in commissioned grade: how made; how terminated.

(a) The appointment of a person under sections 3442, 3444, and 3445 of this title shall be made without reference to any other appointment that he may hold in the Army.

(b) Temporary appointments of commissioned officers in the Army shall be made by the President alone in grades below brigadier general, and by the President, by and with the advice and consent of the Senate, in general officer grades.

(c) The President may vacate at any time a temporary appointment in a commissioned grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1 (81) (D), 72 Stat. 1480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3447 (a)	10: 506d (f) (1st sentence).	Aug. 7, 1947, ch. 512, § 515 (f), 61 Stat. 908.
3447 (b)	10: 506d (f) (less 1st and 2d sentences); 10: 513 (less 1st and 2d sentences, and less provisos of last sentence).	June 3, 1916, ch. 134, § 127a (7th par., less 1st and 2d sentences, and less provisos of last sentence); added June 4, 1920, ch. 227, subch. I, § 51 (23d through 27th words of 7th par.); restated June 15, 1933, ch. 87, § 20 (less 1st and 2d sentences, and less proviso of last sentence), 48 Stat. 161.
3447 (c)	10: 506d (f) (2d sentence).	

In subsection (a), the first 15 words are substituted for 10: 506d (f) (1st 46 words of 1st sentence). The word "without" is substituted for the words "shall not contain any". The words "that he may hold" are substituted for the words "held or not held". The words "in the Army of the United States, and such appointments" and "any component of the" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 eliminated provisions that related to appointment of persons under section 3443 of this title.

CROSS REFERENCES

Regular Army, appointments in commissioned grades, see section 3284 of this title.

§ 3448. Warrant officers: grades; appointment.

(a) The temporary warrant officer grades in the Army are those prescribed for regular warrant officers by section 555 (a) of this title.

(b) Whenever, under authorization by Congress, the number of commissioned officers of the Army on active duty is more than the authorized strength of the Regular Army in commissioned officers on the active list, the Secretary of the Army shall determine the additional number needed in each of the warrant officer grades based on the number of warrant officers serving on active duty and the tasks being performed by the Army. The Secretary may appoint, by warrant, qualified persons as warrant officers to fill the vacancies resulting from that determination. Appointments under this subsection continue in effect during the pleasure of the Secretary. While holding such an appointment, a warrant officer may be ordered to active duty with any unit of the Army.

(c) A warrant officer appointed under subsection (b) is entitled—

(1) to count all periods of active duty under the appointment as warrant or enlisted service for all purposes; and

(2) to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Army on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 197; Aug. 8, 1958, Pub. L. 85–603, § 1 (2), 72 Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3448 (a)	10: 600a (a) (less 3d and last sentences, as applicable to temporary appointments).	May 29, 1954, ch. 249, §§ 3 (a) (less last sentence, as applicable to temporary appointments), (b) (as applicable to temporary appointments), 5 (a) (last sentence, as applicable to temporary appointments), 68 Stat. 157, 158, 159.
3448 (b)	10: 600a (a) (3d sentence, as applicable to temporary appointments); 10: 591a (1st, 2d, and 5th sentences); 10: 600c (a) (last sentence, as applicable to temporary appointments).	Aug. 21, 1941, ch. 384, § 3; restated May 29, 1954, ch. 249, § 19 (d), 68 Stat. 166.
3448 (c)	10: 591a (3d and 4th sentences).	
3448 (d)	10: 591a (less 1st 5 sentences); 10: 600a (b) (as applicable to temporary appointments).	

In subsection (b), the words "is more than" are substituted for the word "exceeds". The words "the additional number needed" are substituted for the words "the requirements". The words "vacancies resulting from that determination" are substituted for the words "and such requirements in each of such grades". The words "Appointments under this subsection continue in effect during" are substituted for the words "Such temporary appointments * * * shall remain in effect at". The words "from time to time made", "serving", and "total" are omitted as surplusage. The words "by warrant" are substituted for 10: 600a (a) (3d sentence). The words "persons as" are inserted for clarity. The words "The Secretary" are substituted for 10: 600c (a) (last sentence, as applicable to temporary grades).

In subsection (c), the introductory language is substituted for 10: 591a (1st 22 words of 3d sentence). The words "pay and allowances" are omitted, since they are determined by the grade held. The words "all periods of active duty under the appointment" are substituted for the words "such service". The words "of members of the Army on active duty" are substituted for 10: 591a (last 25 words of 4th sentence). The words "while in active Federal service", "while so serving", "be entitled to the rank * * * of the grades to which they are temporarily appointed" are omitted as surplusage.

In subsection (d), 10: 600a (b) (less last 27 words) is omitted as covered by 10: 591a (less last 4 sentences). The first 19 words are substituted for 10: 591a (1st 50 words of last sentence). The word "existing" is substituted for the word "military". The words "he is entitled" are substituted for the words "such persons may revert".

AMENDMENTS

1958—Former subsec. (d), which permitted warrant officers to be reenlisted in their former enlisted grade upon

termination of their appointment as warrant officers, was repealed by Pub. L. 85–603, and is now covered by section 3258 of this title.

§ 3449. Warrant officers: promotion.

Temporary promotions in warrant officer grades shall be governed by such regulations as the Secretary of the Army may prescribe. (Aug. 10, 1956, ch. 1041, 70A Stat. 197.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3449	10: 600e (last sentence, as applicable to temporary promotions).	May 29, 1954, ch. 249, § 7 (last sentence, as applicable to temporary promotions), 68 Stat. 159.

CROSS REFERENCES

Regular components, see section 557 et seq. of this title.
Reserve officers, see sections 598, 599 of this title.

§ 3450. Repealed. Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided for the suspension of laws for promotion or mandatory retirement or separation during war or emergency of temporary warrant officers of the Army.

§ 3451. Officers: acceptance of appointment in higher grade.

(a) An officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous. (Aug. 10, 1956, ch. 1041, 70A Stat. 197.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3451 (a)	10: 558 (less last sentence, as applicable to temporary appointments).	Oct. 14, 1942, ch. 604 (as applicable to temporary appointments), 56 Stat. 787.
3451 (b)	10: 558 (last sentence, as applicable to temporary appointments).	

In subsection (a), the words "is considered" are substituted for the words "shall be deemed". The words "is entitled" are substituted for the words "and shall receive". The words "to them" are substituted for the words "to receive the pay and allowances of the higher grade". The words "that date" are substituted for the words "an earlier date". The words "after December 7, 1941" are omitted as executed. The words "to a higher grade at any time", "for all purposes", and "to higher grade" are omitted as surplusage.

In subsection (b), the words "An officer need not take" are substituted for 10: 558 (1st 29 words of last sentence). The words "since last taking it" are substituted for the words "after the taking of such an oath". The words "to a higher grade" are omitted as surplusage.

CROSS REFERENCES

Regular Army officers, see section 3312 of this title.
Reserve officers, see section 3394 of this title.

§ 3452. Officers: Medical and Dental Corps: temporary promotion to captain.

Notwithstanding any other provision of law, an officer of the Medical Corps or Dental Corps may be promoted to the temporary grade of captain at any time after the first anniversary of the date upon which he graduated from a medical, osteopathic, or dental school, as the case may be. (Added Pub. L. 85–861, § 1 (81) (E), Sept. 2, 1958, 72 Stat. 1480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3452	10 App.: 91a (e). 10 App.: 121a (e).	Apr. 30, 1956, ch. 223, § 1 (5th par.), 70 Stat. 120; July 24, 1956, ch. 675, § 1 (b) (less applicability to service credit), 70 Stat. 608.

The words "including those relating to selection for promotion" are omitted as covered by the words "Notwithstanding any other provision of law". The words "who is appointed under this section or any other provision of law" are omitted as surplusage. The words "the first anniversary of the date upon which he graduated from" are substituted for the words "one year after completion of".

Chapter 341.—ACTIVE DUTY

Sec.
3491. Non-regular officers: status.
3494. Commissioned officer: grade in which ordered to active duty.
3495. Army National Guard of United States: status.
3496. Army National Guard of United States: commissioned officers; duty in National Guard Bureau.
3497. Army National Guard of United States: members; status in which ordered into Federal service.
3498. Army National Guard of United States: mobilization; maintenance of organization.
3499. Army National Guard in Federal service: status.
3500. Army National Guard in Federal service: call.
3501. Army National Guard in Federal service: period of service; apportionment.
3502. Army National Guard in Federal service: physical examination.
3503. Retired commissioned officers: status.
3504. Retired members: limitations; grade.

AMENDMENTS

1968—Pub. L. 90–235, § 1(a)(3), (b), Jan. 2, 1968, 81 Stat. 753, struck out item 3492, which read: "Members: service extension during war", and item 3493, which read: "Army Reserve: commissioned officers with Corps of Engineers".

1958—Pub. L. 85–861, § 1 (82) (B), Sept. 2, 1958, 72 Stat. 1481, added item 3494.

CROSS REFERENCES

Disabled officers, retention on active duty, see section 3446 of this title.

General military law provisions, see section 671 et seq. of this title.

Temporary appointments to commissioned grade, time for relief from active duty, see section 3445 (d) of this title.

Warrant officers holding temporary appointment, order to active duty, see section 3448 (b) of this title.

§ 3491. Non-regular officers: status.

A commissioned officer of the Army, other than of the Regular Army, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Army Reserve—

(1) whose reserve grade is that in which the officer not of the Regular Army is serving;

(2) who has the same length of service as the officer not of the Regular Army; and

(3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 198.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3491	10: 506d (h).	Aug. 7, 1947, ch. 512, § 515 (h), 61 Stat. 908.

The first 12 words are substituted for 10: 506d (h) (1st 11 words). The words "has the rights and privileges, and is entitled to the benefits" are substituted for the words "shall be entitled * * * to the same rights, privileges, and benefits". Clause (1) is substituted for the words "in a grade the same as such 'active-duty grade'". The words "as the officer not of the Regular Army" are substituted for the words "holding appointment in the Army Reserve". The words "his reserve grade" are substituted for the words "the grade held in the Army Reserve".

§§ 3492, 3493. Repealed. Pub. L. 90-235, § 1(a)(2), (b), Jan. 2, 1968, 81 Stat. 753.

Section 3492, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided for extension of active service of Army members during war. See section 671a of this title.

Section 3493, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, empowered the President to order commissioned officers of the Army Reserve to active duty with the Corps of Engineers.

§ 3494. Commissioned officers: grade in which ordered to active duty.

A reserve commissioned officer who is ordered to active duty shall be ordered to that duty in his reserve grade unless the Secretary of the Army, in his discretion, orders him to active duty (other than for training) in a higher temporary grade. However, a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college may, upon his request, be ordered to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade. (Added Pub. L. 85-861, § 1(82)(A), Sept. 2, 1958, 72 Stat. 1481, and amended Pub. L. 86-559, § 1(20), June 30, 1960, 74 Stat. 271.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3494	50: 1197.	Sept. 3, 1954, ch. 1257, § 207, 68 Stat. 1152.

The words "reserve grade" are substituted for the words "grades held by them as Reserve officers".

AMENDMENTS

1960—Pub. L. 86-559 authorizes a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college to be ordered, upon his request, to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3495. Army National Guard of the United States: status.

Members of the Army National Guard of the United States are not in active Federal service except when ordered thereto under law. (Aug. 10, 1956, ch. 1041, 70A Stat. 198.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3495	50: 1119 (1st sentence).	July 9, 1952, ch. 608, § 709 (1st sentence), 66 Stat. 503.

The words "active Federal service" are substituted for the words "active duty in the service of the United States".

CROSS REFERENCES

Call into Federal service, see section 3500 of this title.

Regulations to carry out this section, see section 280 of this title.

Status when not in Federal service, see section 3079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3496. Army National Guard of United States: commissioned officers; duty in National Guard Bureau.

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States to active duty in the National Guard Bureau.

(b) The number of officers of the Army National Guard of the United States in any grade below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army in that grade authorized for duty in that Bureau. (Aug. 10, 1956, ch. 1041, 70A Stat. 198.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3496 (a) 3496 (b)	32: 175 (less proviso). 32: 175 (proviso).	June 3, 1916, ch. 134, § 81 (2d par., less 1st sentence); restated June 4, 1920, ch. 227, subch. I, § 44 (less 1st 5 sentences); restated Sept. 22, 1922, ch. 423, § 4 (less 1st 6 sentences); restated Feb. 28, 1925, ch. 371, § 3 (7th and 8th sentences); restated June 15, 1933, ch. 87, § 16 (2d par., less 1st sentence), 48 Stat. 160; Mar. 16, 1950, ch. 60, 64 Stat. 19; July 9, 1952, ch. 608, § 806 (g) (1st 24 words of last 107 words), 66 Stat. 508.

In subsection (a), the words "who at the time of their initial assignments are members" are omitted as surplusage. 32: 175 (30 words before proviso) is omitted as covered by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

In subsection (b), the words "below brigadier general" are substituted for the words "below * * * General Officer". The words "in any grade * * * who are ordered to active duty" are substituted for the words "authorized in each grade for duty".

CROSS REFERENCES

National Guard Bureau, assignment of officers of regular or reserve components, see section 3541 of this title.

Payment of pay and allowances for the Chief of the National Guard Bureau and officers ordered to active duty under this section, see section 698 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3541 of this title; title 31 section 698; title 37 section 204.

§ 3497. Army National Guard of United States: members; status in which ordered into Federal service.

Members of the Army National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 199.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3497	50: 1123 (a).	July 9, 1952, ch. 608, § 713 (a), 66 Stat. 504.

The words "officers and enlisted" and "in their status" are omitted as surplusage. The word "Reserves" is substituted for the words "Reserve officers and Reserve enlisted members". The words "to active duty" are substituted for the words "into Federal service".

§ 3498. Army National Guard of United States: mobilization; maintenance of organization.

During an initial mobilization, the organization of a unit of the Army National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 199.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3498	50: 1122 (a).	July 9, 1952, ch. 608, § 712 (a), 66 Stat. 504.

The words "ordered into active Federal service" are inserted for clarity. The words "shall * * * be maintained as it existed on the date of the order to duty" are substituted for the words "existing at the date of an order to active Federal service shall be maintained intact".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3499. Army National Guard in Federal service: status.

Members of the Army National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army, except those applicable only to members of the Regular Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 199.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3499	32: 82.	June 3, 1916, ch. 134, § 101, 39 Stat. 208.

The words "Members of" are inserted for clarity. The words "governing the Army, except those applicable only to members of the Regular Army" are substituted for the words "governing the Regular Army, so far as such laws and regulations are applicable to officers and enlisted men whose permanent retention in the military service, either on the active list or on the retired list, is not contemplated by existing law", since the Regular Army, under section 3075 of this title, consists only of persons whose permanent retention in the military service is "contemplated by law".

§ 3500. Army National Guard in Federal service: call.

Whenever—

(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the Army National Guard of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States, the Territories, Puerto Rico, and the Canal Zone, and, in the District of Columbia, through the commanding general of the National Guard of the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 199.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3500	32: 81a.	Jan. 21, 1903, ch. 196, § 4; restated May 27, 1908, ch. 204, § 3, 35 Stat. 400.

The words "or any of the Territories, Commonwealths, or possessions" are inserted to conform to an opinion of the Judge Advocate General of the Army (C. 16273, May 3, 1904). The words "laws of the United States" are substituted for the words "laws of the Union". The word "may" is substituted for the words "it shall be lawful for". The words "into Federal service" are substituted for the word "forth". The words "members and units" are substituted for the word "number". The words "in such numbers as he considers necessary" are substituted for the words "as he may deem". The words "at his command" and 32: 81a (last 11 words) are omitted as surplusage.

§ 3501. Army National Guard in Federal service: period of service; apportionment.

(a) Whenever the President calls the Army National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia into Federal service, he may specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during the term specified, unless sooner relieved by the President. However, no member of the Army National Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the Army National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia is called into Federal service with the Army National Guard of another of those jurisdictions, the President may apportion the total number called on the basis of the populations of the jurisdictions affected by the call. (Aug. 10, 1956, ch. 1041, 70A Stat. 199.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3501 (a)	32: 81b (less last sentence).	Jan. 21, 1903, ch. 196, § 6, 32 Stat. 776.
3501 (b)	32: 81b (last sentence).	Jan. 21, 1903, ch. 196, § 5; restated May 27, 1908, ch. 204, § 4, 35 Stat. 400.

The last proviso of section 5 of the Act of January 21, 1903, ch. 196, 32 Stat. 776, is not contained in 32: 81b. It is also omitted from the revised section, since in the opinion of the Judge Advocate General of the Army (JAG 010.3, Dec. 12, 1929, p. 20) it was impliedly repealed by section 3 of the Act of April 25, 1914, ch. 71, 38 Stat. 347.

In subsection (a), the words "of the service" are substituted for the words "for which such service is required". The words "members and units called" are substituted for the words "militia so called". The word "member", in the last sentence, is substituted for the words "commissioned officer or enlisted man". The words "except as provided in section 81 of this title" are omitted, since that section was repealed by the seventh paragraph of section 803 of the Armed Forces Reserve Act of 1952, 66 Stat. 505.

In subsections (a) and (b), the words "Army National Guard" are substituted for the words "organized militia (including the National Guard)". The words "Federal service" are substituted for the words "service of the United States" and "actual service of the United States".

In subsection (b), the words "When * * * of a * * * is called * * * with * * * of another of those jurisdictions" are substituted for the words "When * * * of more than one * * * is called". The words "the total number" are substituted for the word "them". The last 15 words are substituted for the words "according to representative population".

§ 3502. Army National Guard in Federal service: physical examination.

(a) Under regulations prescribed by the President, each member of the Army National Guard called into Federal service shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member is mustered out of Federal service he shall be examined as to physical fitness. The record of this examination shall be retained by the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 200.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3502 (a)	32: 83 (less proviso).	June 3, 1916, ch. 134, § 115, 39 Stat. 212.
3502 (b)	32: 83 (proviso).	

In subsection (a), the words "each member" are substituted for the words "Every officer and enlisted man".

In subsections (a) and (b), the words "Federal service" are substituted for the words "the service of the United States" and "the active service of the United States".

In subsection (b), the words "a member" are substituted for the words "an officer or enlisted man". The words "The record of this examination shall be retained by the United States" are substituted for the words "and the record thereof shall be filed and kept in the Department of the Army", to conform to the Act of June 19, 1934, ch. 668, 48 Stat. 1122 (44 U. S. C. 300 et seq.) which governs the care and custody of records generally.

§ 3503. Retired commissioned officers: status.

A retired commissioned officer of the Army who is on active duty is considered, for all purposes except promotion, to be an officer of the branch or organization to which he is assigned. (Aug. 10, 1956, ch. 1041, 70A Stat. 200.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3503	10: 999.	July 9, 1918, ch. 143, subch. XX (2d par.), 40 Stat. 893.

The words "and shall be an extra number therein" are omitted, since, in the opinion of the Judge Advocate General of the Army (JAG 210.85, Feb. 21, 1923), they were repealed by the Act of July 31, 1935, ch. 422, 49 Stat. 505. The words "in the discretion of the President, employed * * * assigned to duty" are omitted as surplusage. The word "branch" is substituted for the words "arms, corps, department" to conform to sections 3063 and 3064 of this title.

CROSS REFERENCES

Command when on active duty, see section 3582 of this title.

§ 3504. Retired members: limitations; grade.

(a) The President may order any retired member of the Regular Army to active duty. He may assign a member ordered under this subsection to such duties as he considers necessary in the interests of national defense.

(b) When ordered to active duty, a retired commissioned officer of the Army any part of whose service was in the Corps of Engineers is eligible to fill any position required by law to be filled by a commissioned officer of the Corps of Engineers.

(c) Whenever any of the following persons is ordered to active duty, he shall be ordered in his retired grade:

(1) Any officer who served four years as Chief of the Medical Service Corps.

(2) Any officer who served two and one-half years as Chief of the Army Nurse Corps or as Chief or an assistant chief of the Women's Medical Specialist Corps or the Army Medical Specialist Corps.

(3) Any officer who served two and one-half years as Director or Deputy Director of the Women's Army Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 200; Sept. 2, 1958, Pub. L. 85–861, § 1 (83), 72 Stat. 1481.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3504 (a)	50 App.: 356.	Aug. 18, 1941, ch. 362, § 6, 55 Stat. 627.
3504 (b)	10: 997.	
3504 (c)	10: 156c (last 13 words); 10: 166g (b) (20 words before proviso); 10: 316b (b) (last 13 words).	June 15, 1917, ch. 31, 40 Stat. 231. Aug. 4, 1947, ch. 459, § 102 (c) (last 13 words), 61 Stat. 735. Apr. 16, 1947, ch. 38, § 108 (b) (20 words before proviso); restated May 16, 1950, ch. 186, § 3 (d) (b) (20 words before proviso), 64 Stat. 161. June 12, 1948, ch. 449, § 103 (b) (last 13 words), 62 Stat. 357.

In subsection (a), the word "member" is substituted for the word "personnel". The first 15 words of the last sentence are substituted for the words "employ them as he shall deem".

In subsection (b), the words "ordered to active duty" are substituted for the words "called back into active service".

AMENDMENTS

1958—Subsec. (c) (2). Pub. L. 85–861 included the Chief or an assistant chief of the Army Medical Specialist Corps.

Chapter 343.—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
3531. Chief of Staff to President: appointment.
3532. Assistant to Comptroller of Department of Defense: detail, grade.
3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions.
3534. Corps of Engineers: detail of officers to assist Commisioner of District of Columbia.
3535. Assistant to Chief of Engineers.
3536. Leader of Army Band: appointment.
3541. National Guard Bureau: assignment of officers of regular or reserve components.
3542. Chief and assistant chief of staff of divisions of Army National Guard in Federal service: detail.
3543. Aides: detail; number authorized.
3547. Duties: chaplains; assistance required of commanding officers.
3548. Duties: warrant officers; limitations.

AMENDMENTS

1968—Pub. L. 90-623, § 2(6), Oct. 22, 1968, 82 Stat. 1314, substituted "Corps of Engineers: detail of officers to assist Commissioner of District of Columbia" for "Engineer Commissioner of the District of Columbia; assistants; detail" in item 3534.

Pub. L. 90-235, § 4(a)(3), (10), (b)(2), Jan. 2, 1968, 81 Stat. 759, 760, struck out item 3538, which read: "Geological Survey: detail of officers of Ordinance Corps", item 3539, which read: "American National Red Cross: detail of officers of Army Medical Service", item 3544, which read: "Duties: regular officers; performance of civil functions restricted", and item 3545, which read: "Duties: officers; superintendence of cooking for enlisted members".

1964—Pub. L. 88-647, title III, § 301(8), Oct. 13, 1964, 78 Stat. 1071, eliminated item 3540 which read: "Educational institutions: detail of members of regular or reserve components as professors and instructors in military science and tactics."

1958—Pub. L. 85-861, § 1 (84), Sept. 2, 1958, 72 Stat. 1481, struck out item 3546.

CROSS REFERENCES

General military law provisions, see section 711 et seq. of this title.

Reserve Forces Policy Board, designation of officer of Regular Army as member, see section 175 (a) (3) of this title.

§ 3531. Chief of Staff to President: appointment.

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army as the Chief of Staff to the President. Unless entitled to the rank, pay, and allowances of a grade above lieutenant general under another provision of law, an officer so appointed by and with the advice and consent of the Senate is entitled to the rank, pay, and allowances of a general, and is additional to the numbers otherwise authorized for that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 201.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3531	10: 506b (b) (3d proviso).	Aug. 7, 1947, ch. 512, § 504 (b) (3d proviso), 61 Stat. 886.

10: 506b (b) (words of 3d proviso before semicolon) is omitted as executed by the declaration of a national emergency on December 16, 1950. The first 17 words are substituted for the words "except that there may be a general officer * * * appointed as". The words "a grade above lieutenant general" are substituted for the words "a general, or of a higher grade". The words "otherwise authorized for that grade" are substituted for the words "hereinbefore set forth in this proviso". The words "and such officer", "title", and "to such position" are omitted as surplusage.

CROSS REFERENCES

Chief of Staff of Army, see section 3034 of this title.

Generals and lieutenant generals, see section 3066 of this title.

Higher retired grade for service in special positions, see sections 3962, 8962 of this title.

Rank, see section 3571 et seq. of this title.

§ 3532. Assistant to Comptroller of Department of Defense: detail, grade.

A colonel on the active list of the Regular Army who is detailed as special assistant to the Comptroller of the Department of Defense, has the grade of brigadier general while so serving, unless he is entitled to a higher grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 201.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3532	10: 921.	Aug. 25, 1941, ch. 409, § 201 (b) (last proviso); added Sept. 27, 1950, ch. 1052, subch. X (last proviso of last par. under "Department of the Navy"), 64 Stat. 1061.

The first 10 words are substituted for 10: 921 (1st 16 words). The word "detailed" is substituted for the word "assigned". The word "Regular" is inserted before the word "Army", since 10: 921 refers to officers "on the active list", which includes only officers of the Regular Army. The word "has" is substituted for the words "shall * * * be considered to hold". The word "unless" is substituted for the words "if not otherwise". The words "pay, and allowances" and "shall receive the pay and allowances of an officer of that grade" are omitted, since pay and allowances are determined by the grade held. The words "for all purposes" are omitted as surplusage.

§ 3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions.

Officers of the Corps of Engineers may be assigned or transferred to and from duties involving the civil functions of the Corps of Engineers only with the approval of the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 201; Nov. 2, 1966, Pub. L. 89-718, § 26, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3533	10: 506 (c) (proviso).	Aug. 7, 1947, ch. 512, § 502 (c) (proviso), 61 Stat. 883.

The words "and reassignments" are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89-718 struck out provisions requiring the recommendation of the Chief of Engineers in order to transfer officers of the Corps of Engineers to or from the civil functions of the Corps of Engineers.

§ 3534. Corps of Engineers: detail of officers to assist Commissioner of District of Columbia.

The President may detail not more than three officers assigned to the Corps of Engineers to assist the Commissioner of the District of Columbia in discharging his duties. (Aug. 10, 1956, ch. 1041, 70A Stat. 201; Oct. 22, 1968, Pub. L. 90-623, § 2(5), 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3534 (a)	10: 189 (less 1st sentence).	June 11, 1878, ch. 180, § 2 (48th through 56th words of 1st sentence, and 2d sentence), 20 Stat. 103.
3534 (b)	10: 190.	June 11, 1878, ch. 180, § 5 (last sentence); restated Aug. 7, 1894, ch. 232 (proviso under "For Engineer's Office"), 28 Stat. 246. Mar. 3, 1881, ch. 134 (words after last semicolon of 1st par. under "General Expenses"), 21 Stat. 460. Dec. 24, 1890, J. Res. 7 (last sentence), 26 Stat. 1113.

In subsection (a), the words "whose grade is above first lieutenant" are substituted for the words "from among the captains or officers of higher grade". The words "in the discretion of" and "from time to time, from the Corps of Engineers, by the President, for this duty" are omitted as surplusage. 10: 189 (last sentence) is omitted as obsolete.

In subsections (a) and (b), the words "assigned to" are substituted for the word "off", since, under section 3063 of this title, officers are assigned to, rather than commissioned in, the Corps of Engineers.

In subsection (b), the words "assist that officer" are substituted for the words "act as assistants to said engineer commissioner". The words "his duties" are substituted for the words "the special duties imposed upon him".

AMENDMENTS

1968—Pub. L. 90-623 substituted "Corps of Engineers: detail of officers to assist Commissioner of District of Columbia" for "Engineer Commissioner of the District of Columbia; assistants: detail" as the section catchline and struck out provisions for the appointment of an Engineer Commissioner of the District of Columbia.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Retired officers with service in Corps of Engineers called back into active service to be eligible to fill any position required to be filled by an Engineer officer, see section 3504 (b) of this title.

§ 3535. Assistant to Chief of Engineers.

An officer assigned as Assistant to the Chief of Engineers in charge of civil works, including river and harbor and flood control improvements, is entitled to the rank, pay, and allowances of a brigadier general while so serving. (Aug. 10, 1956, ch. 1041, 70A Stat. 201.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3535	10: 181c.	June 25, 1948, ch. 650, 62 Stat. 1015.

The words "to duty" are omitted as surplusage. The words "so serving" are substituted for the words "assigned to such duty". The first proviso is omitted, since the authorized strength of general officers applies only to officers appointed to general officer grade. The last proviso is omitted as covered by the third proviso of the Act of June 26, 1936, ch. 839, 49 Stat. 1974.

CHIEF OF PROGRAMS BRANCH; GRADE

Section 301 of act July 15, 1955, ch. 370, title III, 69 Stat. 364, which authorized the Chief of Engineers to place the position of Chief of the Programs Branch, Office of the Assistant Chief of Engineers for Civil Works, in grade GS-17 of the Classification Act of 1949, as amended [chapter 21 of Title 5] was repealed by Pub. L. 87-793, § 607(a)(3), Oct. 11, 1962, 76 Stat. 849. Placement of position in appropriate grade of General Schedule, see section 608 of Pub. L. 87-793.

CROSS REFERENCES

Flood control, see section 701 et seq. of Title 33, Navigation and Navigable Waters.

Rank, see section 3571 et seq. of this title.

River and harbor improvements generally, see section 541 et seq. of Title 33, Navigation and Navigable Waters.

§ 3536. Leader of Army Band: appointment.

(a) The Secretary of the Army may appoint the leader of the Army band from the warrant officers of the Regular Army. The leader serves during the pleasure of the Secretary and may be returned to his former status in the discretion of the Secretary.

(b) Repealed. Pub. L. 87-649, § 14c(5), Sept. 7, 1962, 76 Stat. 501.

(c) Upon retirement, the leader of the Army band has the grade of warrant officer, with the retired pay to which he would have been entitled had he not been appointed leader. (Aug. 10, 1956, ch. 1041, 70A Stat. 201; Sept. 7, 1962, Pub. L. 87-649, § 14c(5), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3536 (a)	10: 11 (1st sentence, less last 85 words; and 2d sentence).	Mar. 3, 1925, ch. 412, 43 Stat. 1100.
3536 (b)	10: 11 (last 85 words of 1st sentence).	
3536 (c)	10: 11 (less 1st and 2d sentences).	

In subsection (a), the word "may" is substituted for the words "is authorized". The first nine words of the second sentence are substituted for 10: 11 (1st 15 words of 2d sentence).

In subsection (b), the word "basic" is substituted for the word "base" to conform to the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "pay and allowances of a captain, and is entitled to be credited for pay purposes with all service which may be credited under section 233 of title 37" are substituted for 10: 11 (last 64 words of 1st sentence). The words "in lieu of any and all pay and allowances as a warrant officer" are omitted as surplusage.

In subsection (c), 10: 11 (1st proviso of last sentence) is omitted as executed. 10: 11 (last proviso of last sentence) and the words "and received the pay and allowances of" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-649 repealed subsec. (b), which related to the basic pay and allowances of the leader of the Army band, and is now covered by sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Pay and allowances, see sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

§§ 3538, 3539. Repealed. Pub. L. 90-235, § 4(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760.

Section 3538, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, provided for the detail of officers of the Ordinance Corps of the Army to serve with the Geological Survey.

Section 3539, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, provided for the detail of officers of the Army Medical Service for duty with the Service to the Armed Forces Division of the American National Red Cross and for the detail of an officer of the Medical Corps of the Army to be in charge of the first-aid department of the American National Red Cross. See section 711a of this title.

§ 3540. Repealed. Pub. L. 88–647, title III, § 301(7), Oct. 13, 1964, 78 Stat. 1071.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, related to the detail of members of regular or reserve components as professors and instructors in military science and tactics to educational institutions, and is now covered by section 2111 of this title.

§ 3541. National Guard Bureau: assignment of officers of regular or reserve components.

Except as provided in section 3496 (b) of this title, the President may assign to duty in the National Guard Bureau as many regular or reserve officers of the Army as he considers necessary. (Aug. 10, 1956, ch. 1041, 70A Stat. 202.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3541	32: 174.	June 3, 1916, ch. 134, § 81 (1st 7 words of 1st sentence of 2d par.); restated June 4, 1920, ch. 227, subch. I, § 44 (1st 6 words of 5th sentence); restated Sept. 22, 1922, ch. 423, § 4 (1st 6 words of 6th sentence); restated Feb. 28, 1925, ch. 371, § 3 (1st 6 words of 6th sentence); restated June 15, 1933, ch. 87, § 16 (1st 7 words of 1st sentence of 2d par.), 48 Stat. 160.

The words "Except as provided in section 3496 (b) of this title" are inserted to reflect the limitation upon the number of commissioned officers of the Army National Guard of the United States who may be ordered to that duty. The words "or reserve" are inserted, since, under section 682 of this title, Reserves may be detailed or assigned to duties authorized for Regulars.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 204.

§ 3542. Chief and assistant chief of staff of divisions of Army National Guard in Federal service: detail.

The President may detail a regular or reserve officer of the Army as chief of staff, and a regular or reserve officer or an officer of the Army National Guard as assistant to the chief of staff, of any division of the Army National Guard that is in Federal service as an Army National Guard organization. (Aug. 10, 1956, ch. 1041, 70A Stat. 202.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3542	32: 10 (less proviso).	June 3, 1916, ch. 134, § 65 (less proviso), 39 Stat. 199.

The words "or reserve" are inserted, since, under section 682 of this title, Reserves may be detailed or assigned to duties authorized for Regulars.

CROSS REFERENCES

Air Staff, see section 8031 et seq. of this title.

Army Staff, see section 3031 et seq. of this title.

Organization of National Guard, see section 104 of Title 32, National Guard.

§ 3543. Aides: detail; number authorized.

(a) Each major general of the Army is entitled to three aides selected by him from commissioned officers of the Army in any grade below major.

(b) Each brigadier general of the Army is entitled to two aides selected by him from commissioned officers of the Army in any grade below captain. (Aug. 10, 1956, ch. 1041, 70A Stat. 202.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3543 (a)	10: 498 (1st 20 words).	R. S. 1098.
3543 (b)	10: 498 (less 1st 20 words).	

In subsection (a), the words "commissioned officers * * * in any grade below major" are substituted for the words "captains or lieutenants".

In subsections (a) and (b), the words "is entitled to" are substituted for the words "shall have".

In subsection (b), the words "commissioned officers in any grade below captain" are substituted for the word "lieutenants".

§§ 3544, 3545. Repealed. Pub. L. 90–235, § 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760.

Section 3544, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, restricted the performance of civil functions by commissioned officers of the Regular Army. See section 973 of this title.

Section 3545, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, provided that cooking for enlisted members of the Army should be superintended by the officers of the organizations to which the members belonged.

§ 3546. Repealed. Pub. L. 85–861, § 36B (7), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, required officers of the Medical Corps and contract surgeons to attend families of members of the Army.

§ 3547. Duties: chaplains; assistance required of commanding officers.

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Army who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties. (Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3547 (a)	10: 238.	R. S. 1125.
3547 (b)	10: 239; [uncodified: Feb. 2, 1901, ch. 192, § 12 (last sentence), 31 Stat. 750].	R. S. 1127. Feb. 2, 1901, ch. 192, § 12 (last sentence), 31 Stat. 750.

In subsection (a), the words "members of the Army" are substituted for the words "officers and soldiers".

In subsection (b), the words "regiments, hospitals, and posts", in 10: 239, are omitted, since at the time of the enactment of section 1127 of the Revised Statutes, chaplains were authorized only for regiments, hospitals, and posts. The revised section preserves the broad coverage of the original statute. The words "Each commanding officer shall" are substituted for the words "It shall be the duty of commanders", in 10: 239. The word "furnish" is substituted for the words "to afford", in 10: 239. The words "including necessary transportation" are substituted for

the last sentence of section 12 of the Act of February 2, 1901, ch. 192, 31 Stat. 750. The words "his command" are substituted for the words "the same", in 10: 239. The words "to assist" are substituted for the words "as may aid them", in 10: 239.

§ 3548. Duties: warrant officers; limitations.

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3548	10: 593 (1st sentence).	Aug. 21, 1941, ch. 384, § 4 (1st sentence), 55 Stat. 653.

10: 593 (1st sentence, less provisos) is omitted as superseded by section 3012 (e) of this title. 10: 593 (last proviso) is omitted as covered by section 936 (a) (4) of this title (article 136 (a) (4) of the Uniform Code of Military Justice). The words "may be assigned" are substituted for the words "shall be vested with power to".

Chapter 345.—RANK AND COMMAND

Sec.
3571. Rank: commissioned officers on active duty.
3572. Rank: commissioned officers serving under temporary appointments.
3573. Rank: commissioned officers in regular grades of brigadier general and major general; seniority list.
3574. Rank: commissioned officers in regular grades below brigadier general.
3575. Rank: warrant officers.
3579. Command: commissioned officers of Army Medical Department.
3580. Command: commissioned officers of Women's Army Corps.
3581. Command: chaplains.
3582. Command: retired officers.

AMENDMENTS

1968—Pub. L. 90–329, June 4, 1968, 82 Stat. 170, substituted "Army Medical Department" for "Army Medical Service" in item 3579.

Pub. L. 90–235, § 5(a)(3), Jan. 2, 1968, 81 Stat. 761, struck out item 3576, which read: "Command: when different commands of Army and Marine Corps join", and item 3578, which read: "Command: commissioned officers of Army in same grade on duty at same place".

CROSS REFERENCES

General military law provisions, see section 741 et seq. of this title.

§ 3571. Rank: commissioned officers on active duty.

(a) Commissioned officers of the Army on active duty in the same grade rank among themselves according to date of rank. The date of rank—

(1) for an officer of the Regular Army serving in his regular grade, is that stated in his commission or letter of appointment;

(2) for an officer of the Regular Army serving in a temporary grade, is his date of appointment in that grade, unless adjusted under section 3572 of this title; and

(3) for a reserve officer, precedes his date of entry on active duty by a period computed by adding—

(A) the years of service after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that are credited to him under section 1332(a)(2) of this title;

(B) the days and months of any part of the year preceding his date of entry on active duty, while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A), if, under regulations to be prescribed by the Secretary of the Army, his service during that part of a year was satisfactory;

(C) the periods of active service while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A) or (B);

(D) the periods of service, while in his current reserve grade or in any higher reserve grade, that he has performed under section 502, 503, 504, or 505 of title 32, and that are not credited to him under clause (A) or (B); and

(E) one day for each point for drill or equivalent instruction after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that is credited to him under section 1332(a)(2)(B) of this title and are not credited to him under clause (A) or (B).

(b) When the dates of rank prescribed by subsection (a) are the same, rank is determined by adding all active commissioned service in the Army, all commissioned service under section 502, 503, 504, or 505 of title 32, and all service credited for points under section 1332 (a) (2) (B) of this title.

(c) When the dates of rank prescribed by subsection (a) and service computed under subsection (b) are the same:

(1) Regular officers rank before reserve officers.

(2) Regular officers rank among themselves according to sections 3573 and 3574 of this title.

(3) Reserve officers rank among themselves according to age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 204; Sept. 2, 1958, Pub. L. 85–861, § 1 (85), 72 Stat. 1481; June 30, 1960, Pub. L. 86–559, § 1 (21), 74 Stat. 271.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
1803 (a)	10: 511 (1st sentence).	June 3, 1916, ch. 134, § 127a (8th par.); added June 4, 1920, ch. 227, subch. I, § 51 (8th par.); restated Feb. 28, 1925, ch. 371, § 5, 43 Stat. 1078; Dec. 14, 1942, ch. 732, 56 Stat. 1050.
1803 (b)	10: 511 (2d sentence).	
1803 (c)	10: 511 (less 1st and 2d sentences).	

In subsection (a), the words "Unless special assignment is made by the President under the provisions of the One hundred and nineteenth Article of War", are omitted as surplusage, since they relate to command and not to rank. The substance of the omitted words is covered by section 3578 of this title.

In subsection (a) (1), the words "serving in his regular grade" are inserted, since clause (2) covers all officers serving in a temporary grade.

Subsection (a) (2) is inserted as a necessary implication of the words "is that stated in his commission or letter of appointment".

In subsection (a) (3), the words "Federal service" are substituted for the words "service of the United States". The words, "his date of rank precedes the date of his entry" are substituted for the words "shall precede that on which he is placed". The words "of his active duty" are substituted for the words "equal to the total length of active Federal service". The words "placed on active duty" are substituted for the word "called", since the

clause applies to Reserves who are "ordered" as well as officers of the Army National Guard who are "called". The words "is his date of entry on active duty" are inserted to make explicit that which is implicit in the statement of the rule applicable to officers with prior service in the same or a higher grade.

In subsection (b), the words "which shall include all time served on active duty as a commissioned officer in the Federal Service" are omitted as surplusage. The reference to sections 144—146 of title 32 is omitted, since those sections relate to pay and allowances only.

In subsection (c), the introductory clause is substituted for the words "When length of such service is the same", to reflect revised subsections (a) and (b). The words "shall take rank among themselves according to their places on the promotion list" are omitted, since rank among regular officers is covered by sections 3573 and 3574 of this title. Clause (2) is inserted for clarity to reflect those sections. The words "rank before" are substituted for the word "preceding". The words "of the same date of rank and length of service" are omitted as covered by the introductory clause.

AMENDMENTS

1960—Subsec. (a)(3). Pub. L. 86-559 added cl. (B), redesignated former cl. (B)—(D) as (C)—(E), and substituted "June 30, 1955" for "July 1, 1955", "current reserve grade" for "current grade", and "higher reserve grade" for "higher grade" wherever appearing.

1958—Subsec. (a). Pub. L. 85-861 eliminated references to officers of the Army National Guard called into Federal service, permitted reserve officers to credit the years of service after July 1, 1955 that are credited to them under section 1332 (a) of this title, and the periods of service performed under section 502 of Title 32, and authorized reserve officers to add one day for each point for drill or equivalent instruction after July 1, 1955 that is credited under section 1332 (a) (2) (B) of this title.

Subsec. (b). Pub. L. 85-861 substituted "rank is determined by adding all active commissioned service in the Army, all commissioned service under section 502, 503, 504, or 505 of title 32, and all service credited for points under section 1332 (a) (2) (B) of this title" for "rank is determined by length of all active commissioned service in the Army and commissioned service under sections 503, 504, and 505 of title 32".

Subsec. (c). Pub. L. 85-861 substituted "and service computed" for "and length of active commissioned service computed", and eliminated officers of the Army National Guard from clauses (1) and (3).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3572. Rank: commissioned officers serving under temporary appointments.

The President may, in accordance with the needs of the Army, adjust dates of rank of commissioned officers of the Army serving in temporary grades. (Aug. 10, 1956, ch. 1041, 70A Stat. 204.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3572	10: 506d (c) (last sentence).	Aug. 7, 1947, ch. 512, § 515 (c) (last sentence), 61 Stat. 907.

The word "commissioned" is inserted for clarity, since the source statute related only to commissioned officers. The words "in his discretion, from time to time" are omitted as surplusage.

CROSS REFERENCES

Temporary appointments, see section 3441 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3571 of this title.

§ 3573. Rank: commissioned officers in regular grades of brigadier general and major general; seniority list.

(a) The date of rank of an officer whose regular grade is brigadier general is the date of his appointment in that regular grade, if at the time of that appointment he held no temporary general officer grade. The date of rank of an officer whose regular grade is major general is the date of rank he held in the regular grade of brigadier general, if he held that grade at the time of his appointment in the regular grade of major general.

(b) If at the time of his appointment in his current regular grade such an officer held only a temporary general officer grade, his date of rank is the date of rank he held in that temporary grade, except that if he was promoted to that temporary grade from the temporary grade of brigadier general his date of rank is the date of rank he held in the temporary grade of brigadier general.

(c) Notwithstanding subsections (a) and (b), the date of rank of such an officer may not be earlier than that of the junior general officer in the same regular grade who was appointed to that grade before him.

(d) The names of general officers of the Regular Army shall be carried on a seniority list in the order of seniority in both regular grade and date of rank as determined under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 204.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3573 (a)	10: 506a (c) (1) (less proviso); 10: 506a (c) (2) (less proviso).	Aug. 7, 1947, ch. 512, § 503 (b), (c), 61 Stat. 886.
3573 (b)	10: 506a (c) (1) (proviso, less words after semicolon); 10: 506a (c) (2) (proviso, less words after semicolon).	
3573 (c)	10: 506a (c) (1) (words of proviso after semicolon); 10: 506a (c) (2) (words of proviso after semicolon).	
3573 (d)	10: 506a (b).	

The revised section consolidates and restates, for clarity, the provisions relating to date of rank of brigadier generals and major generals of the Regular Army.

In subsection (a), the words "whose regular grade is" are substituted for the words "appointed in the grade * * * in the Regular Army". The last 19 words of the first sentence are inserted to reflect the rule stated in revised subsection (b). The last 18 words of the last sentence are inserted for clarity.

In subsection (b), the words "in his current regular grade" are inserted for clarity. The words "a temporary general officer grade" are substituted for the words "grade of brigadier general or any higher temporary grade", in 10: 506a (c) (1), and "grade of brigadier general or higher temporary grade", in 10: 506a (c) (2).

In subsection (c), the last eight words are inserted for clarity.

In subsection (d), the last 18 words are substituted for 10: 506a (b) (2d sentence).

CROSS REFERENCES

Appointments in Regular Army, see section 3281 et seq. of this title.

Chief of Staff to President, rank, see section 3531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3571 of this title.

§ 3574. Rank: commissioned officers in regular grades below brigadier general.

(a) Among commissioned officers of the same grade in the Regular Army who are on the same promotion list, rank in regular grade is determined by the order in which their names appear on that list.

(b) Among commissioned officers of the same grade in the Regular Army who are not on the same promotion list or not on a promotion list, rank in regular grade is determined—

(1) by date of rank;

(2) if the dates of rank are the same, by length of continuous active commissioned service in the Regular Army;

(3) if the dates of rank and length of continuous active commissioned service in the Regular Army are the same, by rank established at the time of original appointment in the Regular Army; and

(4) in other cases, by the Secretary of the Army.

(c) Rank among the graduates of each class at the United States Military Academy, United States Naval Academy, or United States Air Force Academy who, upon graduation, are appointed in the Regular Army shall be fixed under regulations to be prescribed by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 205; Sept. 2, 1958, Pub. L. 85–861, §§ 1 (86), 33 (a) (24), 72 Stat. 1481, 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3574 (a)	10: 559 (d) (2).	Aug. 7, 1947, ch. 512, §§ 505 (d) (2), (3) (less last sentence), 506 (f) (less 1st sentence, and less last 23 words of last sentence), 61 Stat. 889, 892.
3574 (b)	10: 166e (1st sentence); 10. 559 (d) (3) (less last sentence).	
3574 (c)	10: 506c (f) (less 1st sentence, and less last 23 words of last sentence).	Apr. 16, 1947, ch. 38, § 106 (1st sentence), 61 Stat. 44.

In subsection (a), the last 17 words are substituted for 10: 559 (d) (2) (less 1st 9 words).

In subsection (b), the words "or not on a promotion list" are substituted for 10: 166e (1st sentence). Clause (1) is substituted for the words "the officer with the earliest date of rank shall be the senior", in 10: 559 (d) (3). In clause (2), the words "by length of" are substituted for the words "the officer with the greatest amount * * * shall be the senior", in 10: 559 (d) (3). In clause (3), the words "by rank" are substituted for the words "seniority shall be as", in 10: 559 (d) (3). In clause (4), the word "other" is substituted for the words "not covered by the foregoing", in 10: 559 (d) (3).

In subsection (c), the word "rank" is substituted for the words "relative seniority". The words "who, upon graduation, are appointed in the Regular Army" are inserted, since graduates may be appointed in either the Army or the Air Force.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–861 included graduates of the Naval Academy and Air Force Academy, and substituted "regulations to be prescribed" for "regulations prescribed".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (c) of this section by section 33 (a) (24) of Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Commission on graduation from Military Academy, see section 4353 (b) of this title.

Promotion lists, see section 3296 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3571 of this title.

§ 3575. Rank: warrant officers.

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 205.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3575	10: 593 (less 1st sentence).	Aug. 21, 1941, ch. 384, § 4 (less 1st sentence), 55 Stat. 653; May 29, 1954, ch. 249, § 19 (e), 68 Stat. 167.

10: 593 (2d sentence) is omitted as executed. The words "within each warrant officer grade" are inserted for clarity, since section 745 of this title covers rank between warrant officers in different warrant officer grades.

CROSS REFERENCES

Rank of warrant officers, see section 745 of this title.

§ 3576. Repealed. Pub. L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when different commands of the Army and Marine Corps joined or served together. See section 747 of this title.

§ 3578. Repealed. Pub. L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when two or more commissioned officers of the Army in the same grade were on duty at the same place. See section 749 of this title.

§ 3579. Command: commissioned officers of Army Medical Department.

(a) Except as provided in subsection (c), a commissioned officer of the Army Medical Department, other than an officer of the Army Nurse Corps or Army Medical Specialist Corps, is not entitled to exercise command because of his rank, except within the Army Medical Department.

(b) An officer of the Army Nurse Corps or Army Medical Specialist Corps may exercise command only within his branch, or over persons placed under his charge.

(c) An officer of the Medical Service Corps may exercise command of troops that are not part of the Army Medical Department whenever authorized by the Secretary of the Army. The Secretary of the Army may delegate such authority to appropriate commanders as the interest of the Army may require. (Aug. 10, 1956, ch. 1041, 70A Stat. 206; Sept. 2, 1958, Pub. L. 85–861, § 1 (60), (87), 72 Stat. 1462, 1482; Aug. 17, 1961, Pub. L. 87–142, 75 Stat. 364; June 4, 1968, Pub. L. 90–329, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3579 (a)	10: 82.	R. S. 1169.
3579 (b)	10: 166e (less 1st sentence).	Apr. 16, 1947, ch. 38, § 106 (less 1st sentence), 61 Stat. 44.

In subsection (a), the word "commissioned" is inserted for clarity. The words "Except as provided in section 94 of this title", not contained in section 1169 of the Revised

Statutes, but contained in 10: 94, are omitted as surplusage, since 10: 94 deals exclusively with assignments. The words "except within the Army Medical Service" are substituted for the words "in the line or in other staff corps". Officers of the Army Nurse Corps and Women's Medical Specialist Corps are not covered by subsection (a), since their command authority is specifically stated in subsection (b).

In subsection (b), 10: 166e (last 22 words of 1st sentence) is omitted as superseded by sections 3012 (e) and 3065 of this title. The words "may exercise command only" are substituted for the words "shall not be entitled * * * to command except". The words "by virtue of their rank" and "by competent authority" are omitted as surplusage.

AMENDMENTS

1968—Pub. L. 90–329 substituted "Army Medical Department" for "Army Medical Service" in the section catchline and in subsecs. (a) and (c).

1961—Subsec. (a). Pub. L. 87–142, § 1(1), substituted "Except as provided in subsection (c), a" for "A".

Subsec. (c). Pub. L. 87–142, § 1(2), added subsec. (c).

1958—Subsec. (a). Pub. L. 85–861, § 1 (60), substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps".

Subsec. (b). Pub. L. 85–861, § 1 (60), (87), substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps" and "his" for "her own" and "her".

§ 3580. Command: commissioned officers of Women's Army Corps.

The Secretary of the Army shall prescribe the military authority that commissioned officers of the Women's Army Corps may exercise. (Aug. 10, 1956, ch. 1041, 70A Stat. 206.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3580	10: 316d.	June 12, 1948, ch. 449, § 104 (g), 62 Stat. 359.

10: 316d (last 12 words) is omitted as superseded by sections 3012 (e) and 3065 of this title.

§ 3581. Command: chaplains.

A chaplain has rank without command. (Aug. 10, 1956, ch. 1041, 70A Stat. 206.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3581	10: 235.	R. S. 1122.

The words "and shall be on the same footing with other officers of the Army, as to tenure of office, retirement, and pensions" are omitted as obsolete, since there is no distinction between the status of a chaplain as an officer and the status of other officers of the Army.

§ 3582. Command: retired officers.

A retired officer has no right to command except when on active duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 206.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3582	10: 1024.	R. S. 1255.

The words "has no right to" are substituted for the words "shall be withdrawn from". The words "and from the line of promotion" are omitted, since they refer to the operation of laws relating to promotion in the Regular Army which apply, under sections 3296 and 3304 of this title, only to officers on the active list. The words "except when on active duty" are inserted for clarity. The words "from active service" are omitted as surplusage.

CROSS REFERENCES

Status when on active duty, see section 3503 of this title.

§§ 3611, 3612. Repealed. Pub. L. 90–235, § 8(2), Jan. 2, 1968, 81 Stat. 764.

Section 3611, act Aug. 10, 1056, ch. 1041, 70A Stat. 206, provided that the President could prescribe the uniform of the Army.

Section 3612, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided for the disposition of uniforms of enlisted members of the Army who were discharged and for the disposition of uniforms of and issuance of civilian clothing to enlisted members of the Army who were discharged otherwise than honorably.

Chapter 349.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
3632.[1] Members of Army: forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs.
3633.[1] Commissioned officers: forfeiture of pay when dropped from rolls.
3634. Army band: may not be paid for performance outside Army post.
3636.[1] Enlisted members: pay and allowances not to accrue during suspended sentence of dishonorable discharge.
3639. Enlisted members: officers not to use as servants.

AMENDMENTS

1968—Pub. L. 90–235, §§ 6(a)(8), 7(b)(2), Jan. 2, 1968, 81 Stat. 762, 763, struck out item 3631, which read: "Dealing in quartermaster supplies prohibited", item 3635, which read: "Enlisted members: restriction on civilian employment", and item 3637, which read: "Enlisted members: forfeiture of right to pension by deserters".

1958—Pub. L. 85–861, § 1 (88), Sept. 2, 1958, 72 Stat. 1482, struck out item 3638.

§ 3631. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, prohibited officers of the Quartermaster Corps of the Army and officers performing duties of officers of that branch from dealing in quartermaster supplies.

§§ 3632, 3633. Repealed. Pub. L. 87–649, § 14c (6), (7), Sept. 7, 1962, 76 Stat. 501.

Sections, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, provided for forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs, and for forfeiture when dropped from rolls, and are now covered by sections 802 and 803 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 3634. Army band: may not be paid for performance outside Army post.

No Army band or member thereof may receive remuneration for furnishing music outside the limits of an Army post in competition with local civilian musicians. (Aug. 10, 1956, ch. 1041, 70A Stat. 207.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3634	10: 905.	May 11, 1908, ch. 163, 35 Stat. 110.

The last six words are substituted for 10: 905 (last 14 words).

[1] Sections 3632, 3633 and 3636 repealed and analysis was not amended to reflect such repeal.

§ 3635. Repealed. Pub. L. 90-235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, set forth restrictions on civilian employment for enlisted members of the Army on active duty. See section 974 of this title.

§ 3636. Repealed. Pub. L. 87-649, § 14c(8), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that pay and allowances do not accrue to an enlisted member of the Army who is in confinement under sentence of dishonorable discharge, while the execution of the sentence to discharge is suspended, and is now covered by section 804 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 3637. Repealed. Pub. L. 90-235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that an enlisted member of the Army who deserted forfeited all right to a pension.

§ 3638. Repealed. Pub. L. 85-861, § 36B (8), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, required enlisted members to make up time lost, and is now covered by section 972 of this title.

§ 3639. Enlisted members: officers not to use as servants.

No officer of the Army may use an enlisted member of the Army as a servant. (Aug. 10, 1956, ch. 1041, 70A Stat. 208.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3639	10: 608.	R. S. 1232.

The words "in any case whatever" are omitted as surplusage.

§§ 3661 to 3663. Repealed. Pub. L. 90-377, § 6(1), July 5, 1968, 82 Stat. 288.

Section 3661, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided for the organization and administration of the United States Disciplinary Barracks.

Section 3662, act Aug. 10, 1956, ch. 1041, 70A Stat. 209, provided for the military training, organization, and equipping of prisoners who have been sent to the United States Disciplinary Barracks.

Section 3663, act Aug. 10, 1956, ch. 1041, 70A Stat. 209, authorized the Secretary of the Army to parole or remit the sentence and restore to duty offenders who are confined in the United States Disciplinary Barracks.

Chapter 353.—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
3683. Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted.
3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
3686. Members of Army National Guard of United States: credit for service as members of Army National Guard.
3687. Compensation: members of Army other than of Regular Army; when same as that provided for members of Regular Army.
3689.[1] Assignments and allotments of pay.
3691. Flying officer rating: qualifications.
3692. Pilot rating in time of peace: qualifications.

AMENDMENTS

1968—Pub. L. 90-235, §§ 6(a)(3), 7(a)(4), (b)(3), Jan. 2, 1968, 81 Stat. 762, 763, struck out item 3682, which read: "Service credit: officers; service as cadet not counted", item 3685, which read: "Regular Army; Army Reserve: female members; definition of 'dependents'", item 3690, which read: "Exemption from arrest for debt: enlisted members", and item 3693, which read: "Replacement of certificate of discharge".

1958—Pub. L. 85-861, § 1 (91), Sept. 2, 1958, 72 Stat. 1482, struck out items 3681 and 3688.

CROSS REFERENCES

General military law provisions, see section 1031 et seq. of this title.

Leave allowances for officers and enlisted personnel of the Army, see sections 501-504 of Title 37, Pay and Allowances of the Uniformed Services.

§ 3681. Repealed. Pub. L. 85-861, § 36B (9), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 210, related to service listed in the official Army Register.

§ 3682. Repealed. Pub. L. 90-235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 210, provided that in computing length of service, no commissioned officer of the Army could be credited with service as a cadet at the Military Academy or as a midshipman at the Naval Academy, if he was appointed as a cadet or midshipman after Aug. 24, 1912. See section 971 of this title.

§ 3683. Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted.

In computing years of active service, there shall be credited for all purposes, except determination of grade, rank, and right to promotion in the Regular Army, the following service, in addition to any other service that may be credited—

(1) all active service performed in the Army Nurse Corps as it existed at any time before April 16, 1947;

(2) all active service performed in the Navy Nurse Corps as it existed at any time before April 16, 1947;

(3) all active service performed under an appointment under the Act of December 22, 1942, ch. 805, 56 Stat. 1072, or the Act of June 22, 1944, ch. 272, 58 Stat. 324; and

(4) all active full-time service, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(A) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(B) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949.

(Aug. 10, 1956, ch. 1041, 70A Stat. 210; Aug. 25, 1959, Pub. L. 86-197, § 1(4), 73 Stat. 426.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3683	10: 166i.	Apr. 16, 1947, ch. 38, § 110; restated May 16, 1950, ch. 186, § 3 (f), 64 Stat. 161.

[1] Section 3689 repealed and analysis was not amended to reflect such repeal.

The words "active service" are substituted for the words "active Federal military service" and "active military service" for uniformity. In clauses (1) and (2), the words "as it existed at any time before April 16, 1947" are inserted for clarity, since the legislative history of 10: 166i shows that the reference is intended to apply to the corps established by law before April 16, 1947. Service in the Army Nurse Corps now existing would be included as "other service that may be credited". In clause (4), the word "Army" is substituted for the words "War Department", appearing in section 110 of the Army-Navy Nurses Act of 1948, as amended by section 3 (f) of the act of May 16, 1950, ch. 186, 64 Stat. 161, and the words "Department of the Army", in 10: 166i, since the Medical Department was in the Army and not in the War Department. The words "Army Medical Service", inserted by the editors of the United States Code, are omitted, since the Army Medical Service was not in existence during the time covered by the service described. The words "if the service was performed after" are substituted for the words "rendered subsequent to".

REFERENCES IN TEXT

"Act of June 22, 1944, ch. 272, 68 Stat. 324", referred to in subd. (3), is classified to sections 1591—1598 of Appendix to Title 50, War and National Defense.

The Women's Medical Specialist Corps, referred to in subd. (4) (B), was redesignated the Army Medical Specialist Corps by Pub. L. 85–155, Aug. 21, 1957, 71 Stat. 375. See section 3070 of this title. See, also, act Aug. 9, 1955, ch. 654, 69 Stat. 579.

AMENDMENTS

1959—Par. (4). Pub. L. 86–197 inserted ", and before April 1, 1943" in cl. (a), and "and before January 1, 1949" in cl. (B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3925, 3926 of this title.

§ 3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.

An enlisted member of the Regular Army is entitled to count active service as an officer in the Army as enlisted service for all purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 211.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3684	10: 631a (last proviso).	July 14, 1939, ch. 267, § 1 (last proviso); restated May 29, 1954, ch. 249, § 19 (b) (last proviso), 68 Stat. 166.

CROSS REFERENCE

Reenlistment after service as officer, see section 3258 of this title.

§ 3685. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 211; Sept. 2, 1958, Pub. L. 85–861, § 1(89), 72 Stat. 1482, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Army, Army National Guard of the United States or Army Reserve.

§ 3686. Members of Army National Guard of United States: credit for service as members of Army National Guard.

For the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be in Federal service as a Reserve of the Army;

(2) full-time training or other full-time duty performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard under sections 316 and 503—505 of title 32 for which he is entitled to pay from the United States, or for which he has waived such pay, shall be considered active duty for training in Federal service as a Reserve of the Army; and

(3) inactive-duty training performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 211.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3686	50: 1124 (less proviso of clause (b)).	July 9, 1952, ch. 608, § 714 (less proviso of clause (b)), 66 Stat. 504.

The words "now or hereafter enacted", in the introductory clause of 50: 1124, are omitted as surplusage.

In clause (1), the words "by law" and "receive", in 50: 1124 (a), are omitted as surplusage. The words "in Federal service as a Reserve of the Army" are substituted for the words "in the service of the United States as Reserve members". The words "as the case may be" are inserted for clarity.

In clause (2), the word "receive", in 50: 1124 (b), is omitted as surplusage. The reference to sections 144—146 of title 32 is omitted, since those sections related to pay and allowances, not to the performance of duties, and were superseded by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The reference to section 186 of title 32 is omitted, since that section does not prescribe duty or service. The words "or for which he has waived such pay" are substituted for the words "or without pay as provided in section 971 of this title" for clarity. The words "in Federal service as a Reserve of the Army" are substituted for the words "in the service of the United States as Reserve members".

In clause (3), the words "by the appropriate Secretary" are omitted as surplusage. The words "in Federal service as a Reserve of the Army" are substituted for the words "in the service of the United States as Reserve members".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 3687. Compensation: members of Army other than of Regular Army; when same as that provided for members of Regular Army.

A member of the Army, other than of the Regular Army, is entitled to the pensions and other compensation provided by law or regulation for a member of the Regular Army of corresponding grade and length of service, whenever—

(1) he is called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) he is called or ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty, from injury while so employed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 212; Sept 2, 1958, Pub. L. 85–861, § 1(90), 72 Stat. 1482; Sept. 7, 1962, Pub. L. 87–649, § 6(d), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3687	10: 456 (less applicability to hospitalization and death gratuities); 32: 160a (less applicability to hospitalization and death gratuities).	Aug. 30, 1935, ch. 830, § 1 (less applicability to death gratuities and hospitalization); restated Apr. 3, 1939, ch. 35, § 5 (less applicability to death gratuities and hospitalization); July 25, 1939, ch. 349 (less applicability to death gratuities and hospitalization); Dec. 10, 1941, ch. 562 (less applicability to death gratuities and hospitalization); restated June 20, 1949, ch. 225, § 2 (less applicability to death gratuities and hospitalization), 63 Stat. 202; June 28, 1950, ch. 383, § 401 (p) (less applicability to death gratuities and hospitalization), 64 Stat. 271. June 20, 1949, ch. 225, § 3 (less applicability to hospitalization and death gratuities), 63 Stat. 202.

The words "A member of the Army" are substituted for the words "All officers, warrant officers, and enlisted men of the Army of the United States", in 10: 456, and "All officers, warrant officers, and enlisted men of the National Guard of the United States, both ground", in 32: 160a. The word "member", before the words "of the Regular Army", are substituted for the words "officers and enlisted men" in 10: 456 and 32: 160a. The words "active duty (other than for training)" are substituted for the words "active military service * * * for extended military service" for clarity. Reference in 10: 456 and 32: 160a to retired pay is omitted as superseded by chapter 61 of this title (see opinion of the Comptroller General, B–100262, 25 April 1951, 30 Comp. Gen. 409). The references, in 32: 160a, to 10: 22—23, 24—26, and 30—36, are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 10: 23a, in 32: 160a, is omitted as executed. So far as the references in 32: 160a apply to the pay and allowances, pensions, retirement pay, and other compensation for members of the Army National Guard of the United States on active duty, they are omitted as covered by 10: 456. With the exception of 32: 62 (4th proviso of last sentence), the references in 32: 160a do not refer to the training of members of the Army National Guard of the United States, and are therefore omitted from the revised section. The words "active duty for training", in 10: 456, are omitted as covered by the words "active duty". The words "shall be deemed to have been in the active military service during such period and", in 10: 456, and "in all respects" and "now or may hereafter", in 10: 456 and 32: 160a; are omitted as surplusage.

In clause (1), the words "to active duty" are substituted for the words "into the active military service by the Federal Government", in 10: 456, and "if engaged", in 32: 160a. The words "a period of more than" are substituted for the words "extended military service in excess of", in 10: 456, and "periods in excess of", in 32: 160a.

In clause (2), the words "to active duty" are substituted for the words "by the Federal Government to active military service", in 10: 456, and "if engaged", in 32: 160a.

AMENDMENTS

1962—Pub. L. 87–649 substituted "the pensions and other compensation" for "the pay and allowances, pensions, and other compensation." See section 204 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Pub. L. 85–861 inserted "under section 270(b) of this title" following "other than for training", in cl. (1).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF BENEFITS

Section 4 of act June 20, 1949, ch. 225, 63 Stat. 202, which was repealed by act June 7, 1956, ch. 374, § 306 (5), 70 Stat. 254, to the extent it authorized hospital benefits for dependents of members of the reserve components of the Armed Forces, provided that: "The provisions of this Act [now sections 3687, 3688, 6148, 8687, 8688, and 8721 of this title, and sections 318 and 321 of Title 32, National Guard] shall be effective from August 14, 1945, but no back pay, pension, compensation, death gratuity, or retirement pay shall be held to have accrued as the result of the enactment of this Act for any period prior to such date: *Provided,* That in the case of persons electing to receive the benefits of this Act, the amount of any monetary benefits received for any period subsequent to August 14, 1945, under any provisions of law providing benefits for disability or death incident to the service described in sections 1, 2, and 3 of this Act, shall be deducted from the monetary benefits provided for herein." See section 49 (a) of act Aug. 10, 1956, set out preceding section 101 of this title.

§ 3688. Repealed. Pub. L. 85–861, § 36B (10), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 212, related to payment of death gratuity to survivors of members of the Army, and is now covered by sections 1475—1480 of this title.

§ 3689. Repealed. Pub. L. 87–649, § 14c(9), Sept. 7, 1962, 76 Stat. 501.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 213; Sept. 26, 1961, Pub. L. 87–304, § 9(c), 75 Stat. 665, related to assignments and allotments of pay, and is now covered by section 701 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 3690. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 213, exempted enlisted members of the Army, while on active duty, from arrest for any debt, unless it was contracted before enlistment and amounted to at least $20 when first contracted.

§ 3691. Flying officer rating: qualifications.

Only officers of the Army in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 213.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3691	10: 291c; 10: 291c-1; 10: 291e.	June 3, 1916, ch. 134, § 13a (8th, 9th, and 11th provisos); added July 2, 1926, ch. 721, § 2 (4th sentence, less 2d proviso), 44 Stat. 781; June 16, 1936, ch. 587, § 3, 49 Stat. 1524; Oct. 4, 1940, ch. 742 (last proviso), 54 Stat. 963. June 24, 1948, ch. 632 (2d proviso under "Finance Department"), 62 Stat. 650.

10: 291c (proviso) and the words "after June 30, 1948", in 10: 291c-1, are omitted as executed. The definition of the term "flying officer", in 10: 291c, originally was a definition of the term "flying officer in time of peace" as provided by section 2 of the Act of July 2, 1926, ch. 721, 44 Stat. 781. Section 1 of the Act of October 4, 1940, ch. 742, 54 Stat. 963, eliminated the words "in time of peace". As a consequence of that amendment, 10: 291e (1st 26 words) is omitted as surplusage. Clause (2) is substituted for 10: 291c-1 (less last 10 words). The words "commissioned officers or warrant", in 10: 291c-1, are omitted as surplusage. In clause (4), the last 12 words are substituted for the words "any other".

§ 3692. Pilot rating in time of peace: qualifications.

To be eligible to receive a rating as a pilot in time of peace, a member of the Army must pilot a heavier-than-air craft for at least 200 hours, of which 75 are alone, and must successfully complete the prescribed course. (Aug. 10, 1956, ch. 1041, 70A Stat. 213.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3692	10: 291d.	June 3, 1916, ch. 134, § 13a (10th proviso); added July 2, 1926, ch. 721, § 2 (2d proviso of 4th sentence), 44 Stat. 781.

The words "To be eligible" are substituted for the words "In order". The word "member" is substituted for the words "officer or an enlisted man". The words "by competent authority" are omitted as surplusage. The words "except an aviation cadet" are omitted as inapplicable to the Army.

§ 3693. Repealed. Pub. L. 90-235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 214, provided for the replacement of a lost or destroyed certificate of discharge from the Army. See section 1040 of this title.

Chapter 355.—HOSPITALIZATION

Sec.
3721. Members of Army, other than of Regular Army.
3722. Members of C. M. T. C.; members of Army not covered by section 3721 of this title.
3723. When Secretary may require.

AMENDMENTS

1958—Pub. L. 85-861, § 1(92) (D), Sept. 2, 1958, 72 Stat. 1482, substituted "Members of C.M.T.C." for "Members of R.O.T.C. and C.M.T.C." in item 3722.

CROSS REFERENCES

Air Force provisions, see section 8721 et seq. of this title.

Navy and Marine Corps provisions, see section 6201 et seq. of this title.

§ 3721. Members of Army, other than of Regular Army.

A member of the Army, other than of the Regular Army, is entitled to the hospital benefits provided by law or regulation for a member of the Regular Army of corresponding grade and length of service, whenever—

(1) he is called or ordered to active duty (other than for training under section 270 (b) of this title) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) he is called or ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 214; Sept. 2, 1958, Pub. L. 85-861, § 1 (92) (A), 72 Stat. 1482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3721	10: 456 (as applicable to hospitalization); 32: 160a (as applicable to hospitalization).	Aug. 30, 1935, ch. 830, § 1 (as applicable to hospitalization); restated Apr. 3, 1939, ch. 35, § 5 (as applicable to hospitalization); July 25, 1939, ch. 349 (as applicable to hospitalization); Dec. 10, 1941, ch. 562 (as applicable to hospitalization); restated June 20, 1949, ch. 225, § 2 (as applicable to hospitalization), 63 Stat. 202; June 28, 1950, ch. 383, § 401 (p) (as applicable to hospitalization), 64 Stat. 271. June 20, 1949, ch. 225, § 3 (as applicable to hospitalization), 63 Stat. 202.

The words "A member of the Army" are substituted for the words "All officers, warrant officers, and enlisted men of the Army of the United States", in 10: 456, and "All officers, warrant officers, and enlisted men of the National Guard of the United States, both ground", in 32: 160a. The word "member", before the words "of the Regular Army", are substituted for the words "officers and enlisted men", in 10: 456 and 32: 160a. The references, in 32: 160a, to 10: 22—23, 24—26, and 30—36, are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 10: 23a, in 32: 160a, is omitted as executed. With the exception of 32: 62 (4th proviso of last sentence), the references in 32: 160a do not refer to the training of members of the Army National Guard of the United States, and are therefore omitted from the revised section. The words "active duty for training", in 10: 456, are omitted as covered by the words "active duty". The words "shall be deemed to have been in the active military service during such period and", in 10: 456, and "in all respects" and "now or may hereafter", in 10: 456 and 32: 160a, are omitted as surplusage.

In clause (1), the words "to active duty" are substituted for the words "into the active military service by the Federal Government", in 10: 456, and "if engaged", in 32: 160a. The words "a period of more than" are substituted for the words "extended military service in excess of", in 10: 456, and "periods in excess of", in 32: 160a.

In clause (2), the words "to active duty" are substituted for the words "by the Federal Government to active military service", in 10: 456, and "if engaged" in 32: 160a.

AMENDMENTS

1958—Pub. L. 85-861 inserted "(other than for training under section 270 (b) of this title)" following "active duty" in cl. (1).

HOSPITAL BENEFITS FOR DEPENDENTS OF MEMBERS OF THE RESERVE COMPONENTS

Act June 20, 1949, ch. 225, § 2, 63 Stat. 202, which placed reserve personnel of the Army and Air Force who are killed or disabled, as the result of injury, while performing active or inactive training duty for any period of time, on the same basis as regular and reserve personnel serving on extended active duty for periods in excess of 30 days, was

repealed by act June 7, 1956, ch. 374, § 306 (5), 70 Stat. 254, to the extent that it authorized hospital benefits for dependents of members of the reserve components of the Armed Forces. See section 49 (a) of act Aug. 10, 1956, set out preceding section 101 of this title.

EFFECTIVE DATE OF BENEFITS

Benefits under act June 20, 1949 effective from August 14, 1945, see note under section 3687 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3722 of this title.

§ 3722. Members of C. M. T. C.; members of Army not covered by section 3721 of this title.

(a) Under such regulations as the President may prescribe, the following persons are entitled to the benefits of subsection (b):

(1) Each Reserve of the Army, and each officer who has no regular or reserve appointment and who is injured, or contracts a disease, in line of duty while on active duty in time of peace.

(2) Each member of the Army Reserve who is injured in line of duty while not on active duty and while voluntarily participating in an aerial flight in a Government-owned aircraft under proper authority and as an incident to training.

(3) Each person attending a Citizens' Military Training Camp, who is injured, or contracts a disease, in line of duty while traveling to or from, or while attending, a training camp under section 4411 of this title.

(b) So far as any benefit named in this subsection is not provided for him under section 3721 of this title, any person named in subsection (a) is entitled to—

(1) the hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of his injury or disease until the resulting disability cannot be materially improved by further hospitalization or treatment;

(2) the basic pay and allowances, whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease contracted, during the period of his hospitalization or rehospitalization, but not for more than a total of six months after the end of his prescribed tour of duty or training;

(3) subsistence during hospitalization or rehospitalization when he is not entitled to basic pay and allowances under clause (2); and

(4) necessary transportation incident to his hospitalization, rehospitalization, and return to his home when he is discharged from the hospital.

(Aug. 10, 1956, ch. 1041, 70A Stat. 214; Sept. 2, 1958, Pub. L. 85–861, § 1 (92) (B), (C), 72 Stat. 1482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3722 (a)	10: 455a (1st 73 words); 10: 455b (1st 55 words); 10: 455c (1st 63 words).	June 15, 1936, ch. 547, § 1 (1st, 2d, and 3d sentences), 49 Stat. 1507, 1508.
3722 (b)	10: 455a (less 1st 73 words); 10: 455b (less 1st 55 words); 10: 455c (less 1st 63 words).	

In subsection (a), the words "the following persons * * * to the benefits of subsection (b)" are inserted for clarity. 10: 455a (words between 1st and 2d semicolons) is omitted as executed.

In subsection (a) (1), the words "Each Reserve of the Army" are substituted for the words "Members of the Army Reserve and members of the National Guard of the United States", in 10: 455a. The words "each officer who has no regular or reserve appointment" are inserted, since section 3491 of this title gives those officers the same benefits as reserve officers, when they are on active duty. The words "under proper orders", in 10: 455a, are omitted as surplusage.

In subsection (a) (2), the words "is injured" are substituted for the words "suffer personal injury", in 10: 455b. 10: 455b (words within parentheses) is omitted as surplusage.

In subsection (b), the words "So far as any benefit named in this subsection is not provided for him under section 3721 of this title" are inserted, since it is possible that the benefits provided by that revised section will, as to certain persons, overlap those provided by this revised section.

In subsection (b) (2), the word "basic" is inserted before the word "pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

In subsection (b) (3), the word "during" is substituted for the words "for any period of", in 10: 455a. The words "they shall be entitled to" and "at Government expense", in 10: 455a, are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85–861, § 1 (92) (B), substituted "Members of C.M.T.C." for "Members of R.O.T.C. and C.M.T.C." in the catchline.

Subsec. (a). Pub. L. 85–861, § 1 (92) (C), eliminated provisions that related to members of the Reserve Officers' Training Corps in cl. (3).

§ 3723. When Secretary may require.

The Secretary of the Army may order the hospitalization, medical and surgical treatment, and domiciliary care, for as long as necessary, of any member of the Army on active duty, and may incur obligations with respect thereto, whether or not the member was injured, or contracted a disease, in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours. (Aug. 10, 1956, ch. 1041, 70A Stat. 215.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3723	10: 455e; 32: 164d.	July 15, 1939, ch. 282; restated Oct. 14, 1940, ch. 875, § 5, 54 Stat. 1137.

The words "under such regulations as he may prescribe", in 10: 455e and 32: 164d, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The reference to 10: 455a—455d and 32: 164a—164c, and the words "nor any other law of the United States shall be construed as limiting the power and authority", are omitted, since the revised section makes explicit the authority of the Secretary to require the prescribed hospitalization and care. The words "or in training, under the provisions of section 62—" are omitted as covered by the words "active duty". The words "in the active military service" are omitted as surplusage. With the exception of 32: 62 (4th proviso of last sentence), the references to 32: 62—65, 144—146, 183, and 186, in 10: 455e and 32: 164d, do not refer to members of the Army National Guard of the United States and are therefore omitted from the revised section. 10: 455e (1st proviso) and 32: 164d (1st proviso) are omitted since they apply only to the National Guard and are covered by section 320 of title 32.

CROSS REFERENCES

National Guard provisions, see section 320 of Title 32, National Guard.

Chapter 357.—DECORATIONS AND AWARDS

Sec.
3741. Medal of honor: award.
3742. Distinguished-service cross: award.
3743. Distinguished-service medal: award.
3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award.
3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award.
3746. Silver star: award.
3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement.
3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
3749. Distinguished flying cross: award; limitations.
3750. Soldier's Medal: award; limitations.
3751. Service medals: issue, replacement; availability of appropriations.
3752. Medals: posthumous award and presentation.
3753. Civil War battle streamers.

CROSS REFERENCES

General military law provisions, see section 1121 et seq. of this title.

Meritorious Service Medal, establishment of, see Ex. Ord. No. 11448, set out as a note preceding section 1121 of this title.

§ 3741. Medal of honor: award.

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who while a member of the Army, distinguished himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; July 25, 1963, Pub. L. 88–77, § 1(1), 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3741	10: 1403.	July 9, 1918, ch. 143 (8th par. under "Ordnance Department"), 40 Stat. 870.

The words "That the provisions of existing law relating to the award of medals of honor to officers, noncommissioned officers, and privates of the Army be, and they hereby are, amended so that", in the Act of July 9, 1918, ch. 143 (8th par. under "Ordnance Department"), 40 Stat. 870, are not contained in 10: 1403. They are also omitted from the revised section as surplusage. The word "member" is substituted for the words "officer or enlisted man". The word "only" is omitted as surplusage. The word "award" is inserted for clarity, since the President determines the recipient of the medal in addition to presenting it.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the medal of honor, which was limited to those cases in which persons distinguished themselves in action involving actual conflict with an enemy, to permit its award for distinguished service while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an oppoisng foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

CROSS REFERENCES

Award of Medal of Honor to Navy and Air Force members, see sections 6241 and 8741 of this title.

Pensions for persons on Medal of Honor Roll, see sections 560—562 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3742. Distinguished-service cross: award.

The President may award a distinguished-service cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; July 25, 1963, Pub. L. 88–77, § 1(2), 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3742	10: 1406.	July 9, 1918, ch. 143 (9th par. under "Ordnance Department"), 40 Stat. 870.

The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words "since the 6th day of April, 1917" are omitted as executed. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words "or herself" are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words "or who shall hereafter distinguish" are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the distinguished-service cross, which was limited to those cases in which persons distinguished themselves in connection with military operations against an armed enemy, to permit its award for extraordinary heroism not justifying the award of a medal of honor, while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3743. Distinguished-service medal: award.

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place

thereof, to a person who, while serving in any capacity with the Army, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility. (Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3743	10: 1407.	July 9, 1918, ch. 143 (10th par., less words after 1st semicolon, under "Ordnance Department"), 40 Stat. 870.

The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words "since the 6th day of April, 1917" are omitted as executed. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words "or herself" are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words "or who shall distinguish" are omitted as surplusage.

CROSS REFERENCES

Award of distinguished-service medal to Navy and Air Force members, see sections 6243 and 8743 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award.

(a) No more than one medal of honor, distinguished-service cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Army that the person is entitled to the award.

(c) No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Army determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 216; July 5, 1960, Pub. L. 86–582, § 1(1), 74 Stat. 320.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3744 (a)	10: 1411.	July 9, 1918, ch. 143 (12th par., less words after 2d semicolon, under "Ordnance Department"); restated Jan. 24, 1920, ch. 55, § 1 (less last sentence), 41 Stat. 398.
3744 (b)	10: 1409 (words before 1st semicolon).	July 9, 1918, ch. 143 (less words between 1st and 2d semicolons of 15th par. under "Ordnance Department"), 40 Stat. 871.
3744 (c)	10: 1409 (words after 2d semicolon).	

In subsection (a), the words "may be awarded to a person" are substituted for the words "shall be issued to any one person" to conform to the other subsections of the revised section.

In subsection (b), the word "thereof" is substituted for the words "of either of said medal or of said cross". The words "Except as otherwise prescribed in this section", "at the time of", "specific", "official", and "has so distinguished himself as" are omitted as surplusage.

In subsection (c), 10: 1409 (words after 3d semicolon) is omitted as executed. The words "hereinbefore authorized" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–582, § 1(1)(A), substituted "Except as provided in subsection (d), no" for "No."

Subsec. (d). Pub. L. 86–582, § 1(1)(B), added subsec. (d).

EXTENSION OF TIME LIMITATION

Act Aug. 2, 1956, ch. 877, 70 Stat. 933, authorized the award, not later than Aug. 2, 1957, of a decoration or device in lieu of decoration which, prior to Aug. 2, 1956, has been authorized by Congress to be awarded to any person for an act or service performed while on active duty in the military or naval forces of the United States, or while serving with such forces, for any such act or service performed between June 27, 1950, and July 27, 1953, inclusive, if written recommendation for the decoration or device in lieu of decoration has been submitted to the appropriate office in a military department at the seat of Government before Aug. 2, 1956."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award.

The President may delegate his authority to award the medal of honor, distinguished-service cross, and distinguished-service medal, to a commanding general of a separate army or higher unit in the field. (Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3745	10: 1410.	July 9, 1918, ch. 143 (16th par., less words after semicolon, under "Ordnance Department"), 40 Stat. 872.

The words "under such conditions, regulations, and limitations as he shall prescribe" are omitted as surplusage. The words "his authority" are substituted for

the words "the power conferred upon him by sections 1403, 1406—1408, 1409—1412, 1416, 1420, 1422, 1423 and 1424 of this title".

CROSS REFERENCES

Delegation of functions, see section 301 et seq. of Title 3, The President.

§ 3746. Silver star: award.

The President may award a silver of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, is cited for gallantry in action that does not warrant a medal of honor or distinguished-service cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; July 25, 1963, Pub. L. 88–77, § 1(3), 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3746	10: 1412.	July 9, 1918, ch. 143 (words after 2d semicolon of 12th par. under "Ordnance Department"); restated Jan. 24, 1920, ch. 55, § 1 (last sentence); restated Dec. 15, 1942, ch. 736, 56 Stat. 1052.

The words "may award" are inserted to conform to other sections of this chapter. The words "if the person earned" are inserted for clarity. The words "commanded by" are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 substituted provisions permitting the issuance of a silver star for gallantry while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, and requiring it to be of appropriate design, for provisions which authorized the issuance of the silver star for gallantry in action and which required that the silver star be three-sixteenths of an inch in diameter, the citation thereof be published in orders issued from the headquarters of a force that is the appropriate command of a general officer, and that it be worn as directed by the President.

EXECUTIVE ORDER NO. 9419

Ex. Ord. No. 9419, Feb. 4, 1944, 9 F.R. 1495, which authorized award of Bronze Star Medal, was superseded by Ex. Ord. No. 11046, Aug. 24, 1962, 27 F.R. 8575, set out as a note under this section.

EX. ORD. NO. 11046. BRONZE STAR MEDAL

Ex. Ord. No. 11046, Aug. 24, 1962, 27 F.R. 8575, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1. The Bronze Star Medal, with accompanying ribbons and appurtenances, which was first established by Executive Order No. 9419 of February 4, 1944, may be awarded by the Secretary of a military department or the Secretary of Transportation with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders, or other appropriate officers as the Secretary concerned may designate, to any person who, which serving in any capacity in or with the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, after December 6, 1941, distinguishes, or has distinguished, himself by heroic or meritorious achievement or service not involving participation in aerial flight—

(a) while engaged in an action against an enemy of the United States;

(b) while engaged in military operations involving conflict with an opposing foreign force; or

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligent party.

2. The Bronze Star Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

3. No more than one Bronze Star Medal shall be awarded to any one person, but for each suceeding heroic or meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

4. The Bronze Star Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

5. This order shall supersede Executive Order No. 9419 of February 4, 1944, entitled "Bronze Star Medal". However, existing regulations prescribed under that order shall, so far as they are not inconsistent with this order, remain in effect until modified or revoked by regulations prescribed under this order by the Secretary of the department concerned.

JOHN F. KENNEDY

CROSS REFERENCES

Award of silver star to members of Navy and Air Force, see sections 6244 and 8746 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement.

Any medal of honor, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is lost or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3747	10: 1416.	July 9, 1918, ch. 143 (14th par. under "Ordnance Department"), 40 Stat. 871.

The words "issued for wear with or in place of any of them" are inserted for clarity. The words "presented under the provisions of this title" and "such medal, cross, bar, ribbon, rosette, or device" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.

The Secretary of the Army may spend, from any appropriation for contingent expenses of the Department of the Army, amounts necessary to provide

medals and devices under sections 3741, 3742, 3743, 3744, 3746, 3747, and 3752 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3748	10: 1424.	July 9, 1918, ch. 143 (13th par. under "Ordnance Department"), 40 Stat. 871.

The word "amounts" is substituted for the words "so much as may be". The word "provide" is substituted for the words "defray the cost of". The words "medals and devices under" are substituted for the words "medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices provided for in". The words "from time to time" are omitted as surplusage.

§ 3749. Distinguished flying cross: award; limitations.

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Army, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable. (Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3749 (a)	10: 1429 (less 2d and last sentences).	July 2, 1926, ch. 721, § 12 (less 1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, § 4, 50 Stat. 549.
3749 (b)	10: 1429 (2d sentence).	
3749 (c)	10: 1429 (last sentence, less 1st 49 words).	

Although 10: 1429 refers to persons serving "with the Air Corps of the Army", and the functions of the Army Air Corps have been transferred to the Air Force under section 208 (b) of the National Security Act of 1947 (5 U. S. C. 626c (b)), members of the Army continue to participate in aerial flights and are eligible for the award of the distinguished flying cross.

In subsection (a), the words "Under such rules and regulations as he may prescribe" are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal. The words "since the 6th day of April, 1917, has distinguished, or who, after July 2, 1926" and 10: 1429 (proviso of 1st sentence) are omitted as executed.

CROSS REFERENCES

Award of distinguished flying cross to members of Navy and Air Force, see sections 6245 and 8749 of this title.

§ 3750. Soldier's Medal: award; limitations.

(a) The President may award a decoration called the "Soldier's Medal", of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Army, distinguishes himself by heroism not involving actual conflict with an enemy.

(b) Not more than one Soldier's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs. (Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3750 (a)	10: 1428 (less last sentence).	July 2, 1926, ch. 721, § 11, 44 Stat. 789.
3750 (b)	10: 1428 (last sentence).	

In subsection (a), the words "Under such rules and regulations as he may prescribe" are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal. The words "a decoration called" are substituted for the words "a medal to be known as". The words "including the National Guard and the Organized Reserves" are omitted as surplusage. The words "or herself" are omitted, since under section 1 of title 1, words importing the masculine gender include the feminine. The words "after July 2, 1926" are omitted as executed.

In subsection (b), the words "that would otherwise justify" are substituted for the words "sufficient to".

CROSS REFERENCES

Award of Soldier's medal to member of Air Force, see section 8750 of this title.

§ 3751. Service medals: issue; replacement; availability of appropriations.

(a) The Secretary of the Army shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Army after May 12, 1928, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use, without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Army or the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Army, amounts necessary to provide medals and devices under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3751 (a)	10: 1415a (less 21st through 30th words, and less clauses (a) through (n)).	May 12, 1928, ch. 528, §§ 1 (less 25th through 34th words, and less clauses (a) through (n)), 2 (less applicability to § 1 clauses (a) through (n)), 3 (less applicability to § 1 (clauses (a) through (n)), 45 Stat. 500.
3751 (b)	10: 1415b (less applicability to 10: 1415a (clauses (a) through (n)).	
3751 (c)	10: 1415c (less applicability to 10: 1415a (clauses (a) through (n)).	

In subsection (a), 10: 1415a (proviso) is omitted as surplusage, since the revised section is not limited to

persons who are members of the Army at the time of the issue.

In subsection (b), the words "member of the Army or the Air Force" are substituted for the words "persons in the military service of the United States".

In subsection (c), the last 16 words are substituted for 10: 1415c (last 16 words).

ISSUANCE OF CERTAIN OTHER MEDALS AND DEVICES

Section 33 of act Aug. 10, 1956, provided that:

"(a) The Secretary of the Army shall procure, and issue without charge to any person entitled thereto, the following service medals, and any ribbon, clasp, star, or similar device prescribed as a part of that medal:

"(1) Civil War campaign medal;
"(2) Indian campaign medal;
"(3) Spanish campaign medal;
"(4) Spanish War service medal;
"(5) Cuban occupation medal;
"(6) Puerto Rico occupation medal;
"(7) Philippine campaign medal;
"(8) Philippine Congressional medal;
"(9) China campaign medal;
"(10) Cuban pacification medal;
"(11) Mexican service medal;
"(12) Mexican border service medal;
"(13) Victory medal and clasps; and
"(14) fourragere as an individual decoration.

"(b) Under regulations prescribed by the Secretary, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use, without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Army or the Air Force, the medal or device may be replaced without charge.

"(c) The Secretary may spend, from any appropriation for the support of the Army, amounts necessary to provide medals and devices under this section.

"(d) If a person dies before a medal or device is presented to him under subsection (a), it may be presented to his family."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3752 of this title.

§ 3752. Medals: posthumous award and presentation.

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 3751 of this title, it shall be presented to his family. (Aug. 10, 1956, ch. 1041, 70A Stat. 217; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (23), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3752 (a)	10: 1409 (words between 1st and 2d semicolons); 10: 1429 (1st 49 words of last sentence).	July 9, 1918, ch. 143 (words between 1st and 2d semicolons of 15th par. under "Ordnance Department"), 40 Stat. 871.
3752 (b)	10: 1415a (21st through 30th words, less applicability to clauses (a) through (n)).	July 2, 1926, ch. 721, § 12 (1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549. May 12, 1928, ch. 528, § 1 (25th through 34th words, less applicability to clauses (a) through (n)), 45 Stat. 500.

In subsection (a), the words "If a person" are substituted for the words "In case an individual * * * dies", in 10: 1409, and "In case an individual * * * shall have died", in 10: 1429. The words "within three years from the date", in 10: 1409, are omitted as covered by section 3744 of this title. The words "who shall distinguish himself", in 10: 1409, and "who distinguishes himself", in 10: 1429, are omitted as covered by the words "the award * * * to which he is entitled".

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "it shall be presented" for "it may be presented".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3753. Civil War battle streamers.

If, under regulations prescribed by the Secretary of the Army, it is determined that a regiment or other unit of the Army is entitled to that honor, the regiment or unit may carry any appropriate Civil War battle streamer with its colors or standards. (Aug. 10, 1956, ch. 1041, 70A Stat. 218.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3753	Uncodified.	Mar. 9, 1948, ch. 104, 62 Stat. 71.

The words "it is determined" are substituted for the words "upon verification in the War Department that it is entitled to such honors".

Chapter 359.—SEPARATION FROM REGULAR ARMY FOR SUBSTANDARD PERFORMANCE OF DUTY

Sec.
3781. Selection boards: composition; duties.
3782. Boards of inquiry: composition; duties.
3783. Boards of review: composition; duties.
3784. Removal of officer; action by Secretary of the Army upon recommendation.
3785. Rights and procedures.
3786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.
3787. Officers eligible to serve on boards.

AMENDMENTS

1960—Pub. L. 86-616, § 2(a), July 12, 1960, 74 Stat. 386, substituted "substandard performance of duty" for "failure to meet standards" in the heading of the chapter, and added item 3787.

§ 3781. Selection boards: composition; duties.

The Secretary of the Army may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 218; July 12, 1960, Pub. L. 86-616, § 2(a), 74 Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3781	10: 581.	June 29, 1948, ch. 708, § 102, 62 Stat. 1081.

The words "Immediately following June 29, 1948" are omitted as executed. The word "commissioned" is inserted before the word "officer", since the chapter is limited to proceedings involving commissioned officers.

AMENDMENTS

1960—Pub. L. 86–616 substituted provisions authorizing the Secretary to convene a board at any time for provisions which required the Secretary to convene a board annually, and substituted "because his performance of duty has fallen below standards prescribed by the Secretary" for "because of failure to achieve the standards of performance to be prescribed by the Secretary by regulation."

SAVINGS PROVISION

Section 2(c) of Pub. L. 86–616 provided that: "The amendments made by this section [to this chapter] do not apply to any proceedings begun under chapter 359 of title 10, United States Code [this chapter], before the enactment of this section [July 12, 1960]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3782 of this title.

§ 3782. Boards of inquiry: composition; duties.

(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3781 of this title, shall be retained on the active list of the Regular Army.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 3781 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 218; July 12, 1960, Pub. L. 86–616, § 2(a), 74 Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3782 (a)	10: 582 (1st sentence, less 1st 21 words).	June 29, 1948, ch. 708, §§ 103, 104 (1st 32 words of 1st sentence), 62 Stat. 1081.
3782 (b)	10: 582 (1st 21 words of 1st sentence).	
3782 (c)	10: 582 (less 1st sentence).	
3782 (d)	10: 583 (1st 32 words of 1st sentence).	

In subsection (c), the words "and shall not be subject to further action" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–616 eliminated provisions which required the boards to be composed of general officers, and substituted "whether an officer, required to show cause under section 3781 of this title, shall be retained" for "as to the fitness of officers to be retained."

Subsec. (b). Pub. L. 86–616 substituted "so required to show cause for retention" for "required to show cause for retention under section 3781 of this title."

Subsec. (c). Pub. L. 86–616 redesignated former subsec. (d) as (c) and substituted therein "determines that the officer has failed to establish that he should be retained on the active list" for "recommends the removal of an officer from the active list of the Regular Army." Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–616 redesignated former subsec. (c) as (d) and substituted therein "determines that the officer has established that he should be retained on the active list" for "recommends the retention of an officer" and "at any time after one year from the date of that determination" for "at any future time." Former subsec. (d) redesignated (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3783 of this title.

§ 3783. Boards of review: composition; duties.

(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3782 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 3781 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 218; July 12, 1960, Pub. L. 86–616, § 2(a), 74 Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3783 (a)	10: 583 (1st sentence, less 1st 32 words).	June 29, 1948, ch. 708, § 104 (less 1st 32 words of 1st sentence, and less last sentence), 62 Stat. 1081.
3783 (b)	10: 583 (2d sentence).	
3783 (c)	10: 583 (less 1st, 2d, and last sentences).	

In subsection (b), the words "and shall not be subject to further action" are omitted as surplusage.

In subsection (c), the words "the removal" are substituted for the words "against the retention".

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–616 substituted "three or more officers" for "five or more general officers", and eliminated provisions which permitted the boards to make recommendations as to the retention of officers.

Subsec. (b). Pub. L. 86–616 redesignated former subsec. (c) as (b), and substituted therein "If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list" for "If a board of review recommends the removal of an officer from the active list of the Regular Army." Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–616 redesignated former subsec. (b) as (c), and substituted therein "If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list" for "If a board of review recommends the retention of an officer" and "at any time after one year from the date of that determination" for "at any future time". Former subsec. (c) redesignated (b).

§ 3784. Removal of officer: action by Secretary of the Army upon recommendation.

The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive. (Aug. 10, 1956, ch. 1041,

70A Stat. 219; July 12, 1960, Pub. L. 86-616, § 2(a), 74 Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3784	10: 580; 10: 583 (last sentence, less provisos).	June 29, 1948, ch. 708, §§ 101, 104 (last sentence, less provisos), 62 Stat. 1081.

The word "sufficient" is substituted for the word "satisfactory", in 10: 580. The words "if the removal for that cause is recommended by a board of review under this chapter" are substituted for the words "in the manner hereinafter prescribed", in 10: 580. The words "Notwithstanding any other provision of law", in 10: 580, are omitted as surplusage. The words "such a case" are substituted for the words "removing any officer from the active list", in 10: 583.

AMENDMENTS

1960—Pub. L. 86-616 substituted "if his removal is recommended by a board of review under this chapter" for "for any cause that he considers sufficient, if removal for that cause is recommended by a board of review under this chapter."

§ 3785. Rights and procedures.

Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

(1) notified in writing, at least 30 days before the hearing of his case by a board of inquiry, that he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding.

(Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86-616, § 2(a), 74 Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3785 (a)	10: 584 (less last sentence).	June 29, 1948, ch. 708, § 105, 62 Stat. 1082.
3785 (b)	10: 584 (last sentence).	

In subsection (b), the word "for" is substituted for the words "in the consideration of the case of".

AMENDMENTS

1960—Pub. L. 86-616 required the notification to be given at least 30 days before the hearing of the case by a board of inquiry, and eliminated provisions which permitted the officer to appear in person and by counsel before a board of review, and which prohibited any person from being a member of more than one board convened under this chapter for the same officer.

§ 3786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for honorable discharge with severance benefits under subsection (b).

(b) Each officer removed from the active list of the Regular Army under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86-616, § 2(a), 74 Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3786 (a)	10: 583 (provisos of last sentence).	June 29, 1948, ch. 708, §§ 104 (provisos of last sentence), 106, 62 Stat. 1082.
3786 (b)	10: 585 (less last proviso).	
3786 (c)	10: 585 (last proviso).	

In subsection (a), the words "during proceedings under this chapter" are inserted for clarity. The words "with severance benefits under subsection (b)" are substituted for 10: 583 (last proviso of last sentence).

In subsection (b), the words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "at the rate to which he was entitled" are substituted for the words "being received". The words "not more than 12" are substituted for 10: 585 (1st proviso).

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-616 substituted "for which he would be eligible if retired at his request" for "to which he would be entitled if retired at his request" in cl. (1), and "voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade" for "voluntary retirement, be honorably discharged in the grade then held with severance pay equal to one month's basic pay at the rate to which he was entitled on the date of discharge multiplied by the number of years of his active commissioned service, but not more than 12" in cl. (2).

CROSS REFERENCES

Retired grade, see section 3961 et seq. of this title.

Retirement after at least 40 years of service, see section 3924 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3924 of this title.

§ 3787. Officers eligible to serve on boards.

(a) No officer may serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer. (Added Pub. L. 86-616, § 2(a), July 12, 1960, 74 Stat. 388.)

Chapter 360.—SEPARATION FROM REGULAR ARMY FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

Sec.
3791. Selection boards: composition; duties.
3792. Boards of inquiry: composition; duties.
3793. Boards of review: composition; duties.
3794. Removal of officer; action by Secretary of the Army upon recommendation.
3795. Rights and procedures.
3796. Officers considered for removal: retirement or discharge.
3797. Officers eligible to serve on boards.

§ 3791. Selection boards: composition; duties.

The Secretary of the Army may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list. (Added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 388.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3792, 3793 of this title.

§ 3792. Boards of inquiry: composition; duties.

(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3791 of this title, shall be retained on the active list of the Regular Army.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title. (Added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 388.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3793 of this title.

§ 3793. Boards of review: composition; duties.

(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3792 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title. (Added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389.)

§ 3794. Removal of officer: action by Secretary of the Army upon recommendation.

The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive. (Added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389.)

§ 3795. Rights and procedures.

Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a board of inquiry, for which he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security.

In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld. (Added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 389.)

§ 3796. Officers considered for removal: retirement or discharge.

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for discharge under subsection (b).

(b) Each officer removed from the active list of the Regular Army under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a

whole year, and a part of a year that is less than six months is disregarded. (Added Pub. L. 86–616, § 3 (a), July 12, 1960, 74 Stat. 389.)

§ 3797. Officers eligible to serve on boards.

(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer. (Added Pub. L. 86–616, § 3(a), July 12, 1960, 74 Stat. 390.)

Chapter 361.—SEPARATION FOR VARIOUS REASONS

Sec.
3814. Regular commissioned officers: discharge during three-year probationary period.
3818. Regular female members: termination of appointment or enlistment.
3819. Army Reserve officers: discharge fo failure of promotion to first lieutenant.
3820. Army National Guard of United States officers: discharge.

AMENDMENTS

1968—Pub. L. 90–235 § 3(a)(3), (b)(3), Jan. 2, 1968, 81 Stat. 757, 758, struck out item 3811, which read: "Army enlisted members: discharge certificate; limitations on discharge", item 3812, which read: "Army enlisted members: during war or emergency; discharge", item 3813, which read: "Army enlisted members: dependency discharge", item 3815, which read: "Regular enlisted members: resignation of members enlisted on career basis; limitations", and item 3816, which read: "Regular enlisted members: minority discharge".

1958—Pub. L. 85–861, § 1(93(C), Sept. 2, 1958, 72 Stat. 1482, added item 3819.

CROSS REFERENCES

Reserves, discharge, see section 1162 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006 of this title.

§§ 3811 to 3813. Repealed. Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 3811, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for the discharge of enlisted members of the Army and limitations thereon, and for the issuance of discharge certificates. See section 1169 of this title.

Section 3812, act Aug. 1956, ch. 1041, 70A Stat. 220, provided for the discharge of members of the Army enlisted during war or emergency. See section 1172 of this title.

Section 3813, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for dependency discharges for enlisted members of the Army.

§ 3814. Regular commissioned officers: discharge during three-year probationary period.

The Secretary of the Army may discharge a regular commissioned officer who has less than three years of continuous service as a commissioned officer therein. However, such an officer may not be discharged because of his marriage, unless the marriage occurred within one year after the date of his original appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 220.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3814	10: 484a.	June 3, 1916, ch. 134, § 23; restated June 4, 1920, ch. 227, subch. I, § 23: restated July 25, 1939, ch. 338, 53 Stat. 1074.

The words "under such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "until July 1, 1942, the marriage of an officer shall not be a cause for revocation of commission" are omitted as executed. The word "appointment" is substituted for the word "commission", since the intent is to rescind the authority of a person to be an officer and not merely to revoke the written indicia of that authority. The word "regular" is inserted for clarity, since only regular officers are on the "active list". The word "discharge" is substituted for the words "revoke the commission", since the discharge of the officer would terminate his appointment. The words "hereafter", "on the active list", "at the date of said revocation", "initially commissioned after the date of this section", and "and each officer whose commission is so revoked shall be discharged from the Army" are omitted as surplusage.

CROSS REFERENCES

Effect of failure of promotion to first lieutenant, see section 3298 of this title.

§§ 3815, 3816. Repealed. Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 3815, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for the resignation of regular enlisted members of the Army enlisted on a career basis and limitations thereon.

Section 3816, act Aug. 10, 1956, ch. 1041, 70A Stat. 221, provided for minority discharges for regular enlisted members of the Army. See section 1170 of this title.

§ 3818. Regular female members: termination of appointment or enlistment.

(a) The Secretary of the Army may terminate—

(1) the appointment of a female commissioned officer of the Regular Army, under regulations prescribed by the President; or

(2) the appointment of a warrant officer, or the enlistment of an enlisted member, of the Women's Army Corps, Regular Army.

(b) The appointment of a commissioned officer may not be terminated under subsection (a) (1) by dismissal.

(c) An enlisted member of the Woman's Army Corps whose enlistment is terminated under subsection (a) (2) shall be discharged from the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 221.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3818 (a)	10: 81–2 (last proviso); 10: 166j; 10: 559k; 10: 591–1 (b); 10: 621b (b) (less last 14 words).	June 24, 1952, ch. 457 (last proviso), 66 Stat. 156. Apr. 16, 1947, ch. 38, § 111, 61 Stat. 46.
3818 (b)	No source.	June 12, 1948, ch. 449, §§ 104 (h), 105 (b), 106 (b), 62 Stat. 359, 360.
3818 (c)	10: 621b (b) (last 14 words).	

In subsection (a), the words "the circumstances and in accordance with", in 10: 81–2, 166j, and 559k are omitted as surplusage. The word "appointment" is substituted for the word "commission", in 10: 81–2, 166j, and 559k, since the intent is to rescind the authority of a person to be an officer and not merely to revoke the written indicia of authority. The applicability of 10: 81–2 (last proviso) and 166j to the separation of reserve officers is omitted as superseded by section 1162 of this title. The words "female commissioned officer of the Regular Army" are substituted for the words "any officer appointed pursuant hereto", in 10: 81–2; "any officer commissioned in any of the corps established by sections 166—166l and 374—377 of this title", in 10: 166j; and "any officer appointed in the Women's Army Corps", in 10: 559k; since those words, collectively, describe all of the female commissioned officers of the Regular Army.

In subsections (a) and (c), the words "under such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

Subsection (b) is inserted because of section 1161 of this title.

EX. ORD. NO. 10240. REGULATIONS GOVERNING SEPARATION FROM SERVICE

Ex. Ord. No. 10240, Apr. 27, 1951, 16 F. R. 3689, provided:

The Commission of any woman serving in the Regular Army, the commission or warrant of any woman serving in the Regular Navy or the Regular Marine Corps, and the commission, warrant, or enlistment of any woman serving in the Regular Air Force under either of the above-mentioned acts may be terminated, regardless of rank, grade, or length of service, by or at the direction of the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, respectively, (1) under the same circumstances, procedures, and conditions and for the same reasons under which a male member of the same armed force and of the same grade, rating or rank, and length of service may be totally separated from the service by administrative action, whether by termination of commission, termination of appointment, revocation of commission, discharge, or otherwise, or (2) whenever it is established under appropriate regulations of the Secretary of the department concerned that the woman (a) is the parent by birth or adoption, of a child under such minimum age as the Secretary concerned shall determine, (b) has personal custody of a child under such minimum age, (c) is the stepparent of a child under such minimum age and the child is within the household of the woman for a period of more than thirty days a year, (d) is pregnant, or (e) has, while serving under such commission, warrant, or enlistment, given birth to a living child; and such woman may be totally separated from the service by administrative action by termination of commission, termination of appointment, revocation of commission, discharge, or otherwise.

§ 3819. Army Reserve officers: discharge for failure of promotion to first lieutenant.

Except as provided in sections 1005 and 1006 of this title, each second lieutenant of the Army Reserve who is in an active status shall be discharged from his reserve appointment if he is not promoted before or on the date on which he completes three years of service computed under section 3360 (b) of this title. (Added Pub. L. 85–861, § 1 (93) (A), Sept. 2, 1958, 72 Stat. 1482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3819	50: 1261 (as applicable to Army Reserve).	Sept. 3, 1954, ch. 1257, § 324 (as applicable to Army Reserve), 68 Stat. 1161.

The words "if he is not promoted" are substituted for the words "whose promotion to the next higher grade is not accomplished".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360 of this title.

§ 3820. Army National Guard of United States officers: discharge.

(a) The Secretary may terminate the reserve appointment of an officer of the Army National Guard of the United States and withdraw his Federal recognition as an officer of the Army National Guard, if he has been absent without leave for three months.

(b) An officer of the Army National Guard of the United States whose Federal recognition as an officer of the Army National Guard is withdrawn under section 323 (b) of title 32 shall be discharged from his reserve appointment.

(c) Except as provided in sections 1005 and 1006 of this title, each second lieutenant of the Army National Guard of the United States who is not promoted before or on the date on which he completes three years of service computed under section 3360 (b) of this title, shall be discharged from his reserve appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 221; Sept. 2, 1958, Pub. L. 85–861, § 1 (93) (B), 72 Stat. 1482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3820 (a)	32: 115 (less 1st and 2d sentences).	June 3, 1916, ch. 134, § 76 (less 1st sentence and less 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, § 13 (less 1st sentence, and less 1st 24 words of 2d sentence), 48 Stat. 158; July 9, 1952, ch. 608, § 806 (e), 66 Stat. 507.
3820 (b)	32: 115 (2d sentence, less 1st 24 words).	

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–861 added subsec. (c).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3360 of this title; title 32 section 323.

Chapter 363.—SEPARATION OR TRANSFER TO RETIRED RESERVE

Sec.
3843. Age 60: reserve officers below major general.
3844. Age 62: reserve major generals other than those covered by section 3845 and brigadier generals on a recommended list.
3845. Age 64: officers holding certain offices.
3846. First lieutenants, captains, and majors not recommended by two selection boards.
3848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels.
3850. Thirty years or more: reserve commissioned officers; excessive number.
3851. Thirty years or five years in grade: reserve colonels and brigadier generals.
3852. Thirty-five years or five years in grade: reserve major generals.
3853. Computation of years of service.
3854. Regulations.
3855. Retention in active status of certain officers until age 60.

AMENDMENTS

1967—Pub. L. 90–130, § 1(12) (A), Nov. 8, 1967, 81 Stat. 376, eliminated item 3847, which read: "Twenty-five years: officers below lieutenant colonel; Army Nurse Corps, Army Medical Specialist Corps, and Women's Army Corps."

1960—Pub. L. 86–559, § 1(32), June 30, 1960, 74 Stat. 273, substituted "officers below lieutenant colonel; Army Nurse Corps, Army Medical Specialist Corps, and Women's Army Corps" for "Women's Army Corps majors" in item 3847, eliminated items 3841, 3842, and 3849, and added item 3855.

1958—Pub. L. 85–861, § 1 (94), Sept. 2, 1958, 72 Stat. 1483, added items 3841—3854.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007, 3353 of this title.

§§ 3841, 3842. Repealed. Pub. L. 86-559, § 1(22), June 30, 1960, 74 Stat. 271.

Sections, Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1483, related to separation or transfer to Retired Reserve of Reserve nurses and medical specialists at age 50 if in a Reserve grade below major and at age 55 if in a Reserve grade above captain.

§ 3843. Age 60: reserve officers below major general.

(a) Except as provided in section 3845 of this title, each officer in the reserve grade of brigadier general who has not been recommended for promotion to the reserve grade of major general or has not remained in an active status since such a recommendation shall, on the last day of the month in which he becomes 60 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Except as provided in section 3845 of this title, after July 1, 1960, each commissioned officer in a reserve grade below brigadier general who is not a member of the Retired Reserve shall, on the last day of the month in which he becomes 60 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85-861, § 1 (94), Sept. 2, 1958, 72 Stat. 1483, and amended Pub. L. 86-559, § 1(23), June 30, 1960, 74 Stat. 271.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3843 (a)	50: 1263 (a) (1st par., as applicable to brigadier generals not on a recommended list).	Sept. 3, 1954, ch. 1257, § 326 (a) (1st par., as applicable to brigadier generals not on a recommended list, and as applicable to grades below brigadier general), 68 Stat. 1161.
3843 (b)	50: 1263 (a) (1st par., as applicable to grades below brigadier general).	

In subsection (b), the words "after July 1, 1960" are inserted to reflect 50: 1263 (words of 2d paragraph (before colon)).

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-559 substituted "in a reserve grade below brigadier general who is not a member of the Retired Reserve" for "in an active status in a reserve grade below brigadier general."

TRANSFER TO RETIRED RESERVE OR DISCHARGE OF RESERVE COMMISSIONED OFFICERS BEFORE JULY 2, 1960

Section 21 of Pub. L. 85-861 provided that:

"(a) Before July 2, 1960, each officer of the Army in the reserve grade of colonel who has not been recommended for promotion to the reserve grade of brigadier general or has not remained in an active status since such a recommendation, and each officer of the Army in the reserve grade of lieutenant colonel who has been recommended for promotion to the reserve grade of colonel and has remained in an active status since that recommendation, shall, on the last day of the month in which he becomes 58 years of age—

"(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

"(2) if he is not qualified or does not apply therefor, be discharged.

"(b) Before July 2, 1960, each officer of the Army in the reserve grade of lieutenant colonel who has not been recommended for promotion to the reserve grade of colonel or has not remained in an active status since such a recommendation, and each officer of the Army in a reserve grade below lieutenant colonel, shall, on the last day of the month in which he becomes 55 years of age—

"(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

"(2) if he is not qualified or does not apply therefor, be discharged.

"(c) Notwithstanding subsections (a) and (b), the Secretary of the Army may authorize the retention in an active status until age 60 of any officer of the Army National Guard of the United States who would otherwise be removed from an active status under this section and who is assigned to a headquarters or headquarters detachment of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia.

"(d) Notwithstanding subsections (a) and (b), a reserve officer who is on active duty (other than for training) in a temporary grade above lieutenant colonel and who would otherwise be removed from an active status under this section may, in the discretion of the Secretary, be retained on active duty, but not past his sixtieth birthday, and may not be removed from an active status while he is on that duty.

"(e) Notwithstanding subsections (a) and (b), the age prescribed for the discharge or transfer from an active status before July 2, 1960, of a reserve officer covered by this section is 60 for the purposes of section 1006 of title 10, United States Code.

"(f) Notwithstanding subsections (a) and (b), a reserve officer of the Army who is assigned to the Selective Service System may be retained in an active status in that assignment until he becomes 60 years of age."

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is refered to in sections 123, 1006 of this title.

§ 3844. Age 62: reserve major generals other than those covered by section 3845 and brigadier generals on a recommended list.

Except as provided in section 3845 of this title, each officer in the reserve grade of major general who is not a member of the Retired Reserve, and each officer in the reserve grade of brigadier general who is not a member of the Retired Reserve and who is on a recommended list for promotion to the reserve grade of major general, shall, on the last day of the month in which he becomes 62 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85-861, § 1 (94), Sept. 2, 1958, 72 Stat. 1484, and amended Pub. L. 86-559, § 1(24), June 30, 1960, 74 Stat. 271.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3844	50: 1263 (a) (1st par., as applicable to major generals other than Chief of National Guard Bureau, adjutants general, and commanding generals, and as applicable to brigadier generals on a recommended list). 50: 1263 (b) (as applicable to 50: 1263 (a) (as applicable to brigadier generals on a recommended list)).	Sept. 3, 1954, ch. 1257, § 326 (a) (1st par., as applicable to major generals other than Chief of National Guard Bureau, adjutants general, and commanding generals, and as applicable to brigadier generals on a recommended list), (b) (as applicable to § 326 (a) (as applicable to brigadier generals on a recommended list)), 68 Stat. 1161, 1162.

The words "in an active status" are substituted for the words "who is not removed from an active status at an earlier date under other provisions of law".

AMENDMENTS

1960—Pub. L. 86–559 substituted "in the reserve grade of major general who is not a member of the Retired Reserve, and each officer in the reserve grade of brigadier general who is not a member of the Retired Reserve and who is on a recommended list for promotion to the reserve grade of major general, shall" for "in an active status in the reserve grade of major general and each officer in an active status in the reserve grade of brigadier general who is on a recommended list for promotion to the reserve grade of major general shall."

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006 of this title.

§ 3845. Age 64: officers holding certain offices.

An officer of the Army National Guard of the United States who is Chief of the National Guard Bureau, and each adjutant general or commanding general of the troops of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, shall, on the last day of the month in which he becomes 64 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85–861, § 1 (94), Sept. 2, 1958, 72 Stat. 1484.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3845	50: 1263 (a) (1st par., as applicable to Chief of National Guard Bureau, adjutants general, and commanding generals).	Sept. 3, 1954, ch. 1257, § 326 (a) (1st par., as applicable to Chief of National Guard Bureau, adjutants general, and commanding generals), 68 Stat. 1161.

The words "Except as provided hereafter in this section" and "who is not removed from an active status at an earlier date under other provisions of law" are omitted as surplusage. The words "An officer of the Army National Guard of the United States who is" are inserted for clarity, since the Chief of the National Guard Bureau might be a member of the Air Force and be covered by section 8845 of this title.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 1006, 3843, 3844 of this title.

§ 3846. First lieutenants, captains, and majors not recommended by two selection boards.

Except as provided in sections 1005 and 1006 of this title, an officer in the reserve grade of first lieutenant, captain, or major who, while serving in the reserve grade that he then holds, was considered but not recommended for promotion by two selection boards convened under section 3366 or 3367 of this title, shall, within 90 days after the second selection board submits its report to the convening authority if he is not on active duty or is on active duty for training, or within 120 days after being notified of his failure of selection by the second selection board if he is on active duty (other than for training)—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85–861, § 1 (94), Sept. 2, 1958, 72 Stat. 1484.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3846	50: 1262.	Sept. 3, 1954, ch. 1257, § 325, 68 Stat. 1161; June 30, 1955, ch. 247, § 9, 69 Stat. 222.

The words "but not recommended" are substituted for the words "and not recommended for promotion by either board".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006, 3368, 3855 of this title.

§ 3847. Repealed. Pub. L. 90–130, § 1(12)(A), Nov. 8, 1967, 81 Stat. 376.

Section, Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484; Pub. L. 86–559, § 1(25), June 30, 1960, 74 Stat. 272, provided for the transfer to the Retired Reserve or discharge from his reserve appointment, after July 1, 1960, of each officer in a reserve grade below lieutenant colonel with 25 years service assigned to the Army Nurse Corps, Army Medical Specialist Corps, or the Women's Army Corps who had not been recommended for promotion to the reserve grade of lieutenant colonel or who has not remained on active duty since such a recommendation.

§ 3848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels.

(a) After July 1, 1960, each officer in the reserve grade of first lieutenant, captain, major, or lieutenant colonel who is not a member of the Retired Reserve shall, 30 days after he completes 28 years of service computed under section 3853 of this title—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Each officer in the reserve grade of lieutenant colonel who has been recommended for promotion, and who would otherwise be removed from an active status under this section, shall be retained in that status until he is appointed or is refused appointment to the next higher grade.

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Army may authorize the retention in an active status until age 60 of any officer of the Army National Guard of the United States who would otherwise be removed from an active status under this section and who—

(1) is assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

(2) is employed as a technician under section 709 of title 32, United States Code, in a position for which Army National Guard membership is prescribed by the Secretary.

(d) Notwithstanding subsection (a), an officer who is assigned to the Army Nurse Corps, the Army Medical Specialist Corps, or the Women's Army Corps, and who would otherwise be removed from an active status under subsection (a), may, in the discretion of the Secretary of the Army, be retained in an active status, but not later than 30 days after he completes 30 years of service computed under section 3853 of this title. (Added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485, and amended Pub. L. 86–559, § 1(26), June 30, 1960, 74 Stat. 272; Pub. L. 90–130, § 1(12)(B), Nov. 8, 1967, 81 Stat. 376; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3848 (a)	50: 1264 (b).	Sept. 3, 1954, ch. 1257, §§ 326 (d) (as applicable to § 327 (b)), 327 (b), (c) (as applicable to lieutenant colonels), (e) (as applicable to 1st lieutenants, captains, majors, and lieutenant colonels), 68 Stat. 1162, 1163.
	50: 1264 (e) (as applicable to 1st lieutenants, captains, majors, and lieutenant colonels).	
3848 (b)	50: 1264 (c) (as applicable to lieutenant colonels).	
3848 (c)	50: 1263 (d) (as applicable to 50: 1264 (b)).	

In subsection (a), the words "After July 1, 1960" are substituted for 50: 1264 (e). The words "in an active status" are substituted for the words "not removed from an active status at an earlier date under other provisions of law", in 50: 1264 (b).

In subsection (b), 50: 1264 (c) (last 33 words) is omitted as surplusage.

In subsection (c), the words "in the grade of colonel or below" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–486 authorized the Secretary to retain in active status any officer who is employed as a technician under section 709 of Title 32 in a position for which Army National Guard membership is prescribed by the Secretary.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 3847 of this title and eliminated provisions limiting the applicability of the section, in the case of officers assigned to the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, to officers in the reserve grade of major who have been recommended for promotion to the reserve grade of lieutenant colonel, who are not a member of the Retired Reserve, and who have remained in an active duty status since that recommendation.

1960—Subsec. (a). Pub. L. 86–559, § 1(26)(A), substituted "except as provided in section 3847 of this title, each officer in the reserve grade of first lieutenant, captain, major, or lieutenant colonel who is not a member of the Retired Reserve, and each officer in the reserve grade of major who is assigned to the Army Nurse Corps, Army Medical Specialist Corps, or the Women's Army Corps, who has been recommended for promotion to the reserve grade of lieutenant colonel who is not a member of the Retired Reserve, and who has remained in an active status since that recommendation, shall" for "each officer in an active status in the reserve grade of first lieutenant, captain, major, or lieutenant colonel shall."

Subsec. (d). Pub. L. 86–559, § 1(26)(B), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006 of this title.

§ 3849. Repealed. Pub. L. 86–559, § 1(27), June 30, 1960, 74 Stat. 272.

Section, Pub. L. 85–861, § (94), Sept. 2, 1958, 72 Stat. 1485, related to separation or transfer to retired reserve of officers in the reserve grade of lieutenant colonel assigned to the Women's Army Corps upon completion of 28 years of service.

§ 3850. Thirty years or more: reserve commissioned officers; excessive number.

Whenever the Secretary of the Army believes that there are too many commissioned officers in an active status, in any reserve grade, who have at least 30 years of service computed under section 3853 of this title or at least 20 years of service computed under section 1332 of this title, he shall convene a board to consider all officers in an active status in that grade who have that amount of service and who are not assigned to a unit organized to serve as a unit. The board shall recommend officers by name for removal from an active status, in the number specified by the Secretary. In the case of an officer so recommended, the Secretary may—

(1) transfer him to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, discharge him from his reserve appointment.

(Added Pub. L. 85–861, § 1 (94), Sept. 2, 1958, 72 Stat. 1485.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3850	50: 1267	Sept. 3, 1954, ch. 1257, § 330, 68 Stat. 1163.

The words "The board shall * * * in the number specified by the Secretary" are inserted for clarity. The words "and transfer to the Retired Reserve or discharge" are omitted as surplusage. The word "may" is substituted for the words "in his discretion, is authorized".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3851. Thirty years or five years in grade: reserve colonels and brigadier generals.

(a) After July 1, 1960, each officer in the reserve grade of colonel or brigadier general who is not a member of the Retired Reserve or the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia shall, 30 days after he completes 30 years of service computed under section 3853 of this title or on the fifth anniversary of the date of his appointment in his current reserve grade, whichever is later—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Each officer who has been recommended for promotion, and who would otherwise be removed from an active status under this section, shall be retained in that status until he is appointed or refused appointment to the next higher grade.

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Army may authorize the retention in an active status until age 60 of any officer of the Army National Guard of the United States who would otherwise be removed from an active status under this section and who—

(1) is assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

(2) is employed as a technician under section 709 of title 32, United States Code, in a position for which Army National Guard membership is prescribed by the Secretary.

(Added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486, and amended Pub. L. 86–559, § 1(28), June 30, 1960, 74 Stat. 272; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3851 (a)	50: 1264 (a) (less applicability to major generals). 50: 1264 (e) (as applicable to colonels and brigadier generals).	Sept. 3, 1954, ch. 1257, §§ 326 (d) (as applicable to § 327 (a)), 327 (a) (less applicability to major generals), (c) (less applicability to lieutenant colonels), and (e) (as applicable to colonels and brigadier generals), 68 Stat. 1162, 1163.
3851 (b)	50: 1264 (c) (less applicability to lieutenant colonels).	
3851 (c)	50: 1263 (d) (as applicable to 50: 1264 (a)).	

In subsection (a), the words "After July 1, 1960" are substituted for 50: 1264 (e). The words "who is not removed from an active status at an earlier date under other provisions of law" are omitted as covered by the words "in an active status", in 50: 1264 (a).

In subsection (b), 50: 1264 (c) (last 33 words) is omitted as surplusage.

In subsection (c), the words "or below" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–486 struck out "whose reserve grade is colonel" following "the United States," and added provisions authorizing the Secretary to retain in active status any officer who is employed as a technician under section 709 of Title 32 in a position for which Army National Guard membership is prescribed by the Secretary.

1960—Subsec. (a). Pub. L. 86–559 substituted "in the reserve grade of colonel or brigadier general who is not a member of the Retired Reserve or the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia" for "in an active status in the reserve grade of colonel or brigadier general."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 1006 of this title.

§ 3852. Thirty-five years or five years in grade: reserve major generals.

After July 1, 1960, each officer in the reserve grade of major general who is not a member of the Retired Reserve or the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia shall, 30 days after he completes 35 years of service computed under section 3853 of this title, or on the fifth anniversary of the date of his appointment to that grade, whichever is later—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85–861, § 1 (94), Sept. 2, 1958, 72 Stat. 1486, and amended Pub. L. 86–559, § 1(29), June 30, 1960, 74 Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3852	50: 1264 (a) (as applicable to major generals). 50: 1264 (e) (as applicable to major generals).	Sept. 3, 1954, ch. 1257, § 327 (a) (as applicable to major generals), (e) (as applicable to major generals), 68 Stat. 1162, 1163.

The words "After July 1, 1960" are substituted for 50: 1264 (e). The words "who is not removed from an active status at an earlier date under other provisions of law", in 50: 1264 (a), are omitted as covered by the words "in an active status".

AMENDMENTS

1960—Pub. L. 86-559 substituted "in the reserve grade of major general who is not a member of the Retired Reserve or the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia" for "in an active status in the reserve grade of major general."

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Retention of reserve officers after completing 18 or more, but less than 20 years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 1006 of this title.

§ 3853. Computation of years of service.

For the purpose of determining whether a reserve commissioned officer may be transferred to the Retired Reserve, or discharged, under this chapter, his years of service are the greater of—

(1) the sum of (A) his years of service as a commissioned officer of any component of the armed forces or of the Army without specification of component, (B) his years of service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States, and (C) the years of service credited to him under section 3353 of this title or section 22 of the Act enacting this section; and

(2) the number of years by which his age exceeds 25 years.

No service may be counted more than once. For a person credited with service under section 3353 of this title or section 22 of the Act enacting this section, no service before appointment may be counted. (Added Pub. L. 85-861, § 1(94), Sept. 2, 1958, 72 Stat. 1486, and amended Pub. L. 86-559, § 1(30), June 30, 1960, 74 Stat. 273; Pub. L. 87-651, title I, § 115, Sept. 7, 1962, 76 Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3853	50: 1222 (g) (less applicability to promotion).	Sept. 3, 1954, ch. 1257, § 302 (g) (less applicability to promotion), 68 Stat. 1153.

The introductory clause is inserted to confine the applicability of the formula set forth in the revised subsection to those revised sections which are based on sections of the source statute containing the words "total years of service".

REFERENCES IN TEXT

Section 22 of the Act enacting this section, referred to in text, means section 22 of Pub. L. 85-861, which is set out as a note under section 3353 of this title.

AMENDMENTS

1962—Pub. L. 87-651 substituted "section 22 of the Act" for "section 23 of the Act" in cl. (1).

1960—Pub. L. 86-559 included within cl. (1)(B) the years of service in the National Guard after June 14, 1933, if the officer's service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States.

DEFERMENT OF DISCHARGE OR TRANSFER TO RETIRED RESERVE OF CERTAIN OFFICERS

Section 5 of Pub. L. 86-559 provided that:

"Notwithstanding any other provision of law except section 1001 of title 10, United States Code, the discharge or transfer to the Retired Reserve (because of his length of service) of any reserve officer of the Army who—

"(1) was originally appointed as a reserve officer before September 3, 1954;

"(2) upon completing the number of years of service, computed under section 3853(2) of title 10, at which his discharge or transfer to the Retired Reserve would otherwise be required, has not, because of hardship or circumstances beyond his control, completed 20 years of service computed under section 1332 of title 10, but who could complete that amount of service before becoming 60 years of age; and

"(3) has remained in an active status since September 3, 1954;

may be deferred until he completes that amount of service if he can complete it before he becomes 60 years of age."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3848, 3850, 3851, 3852 of this title.

§ 3854. Regulations.

The Secretary of the Army shall prescribe regulations to carry out this chapter. (Added Pub. L. 85-861, § 1 (94), Sept. 2, 1958, 72 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3854	50: 1223 (e) (less applicability to promotion).	Sept. 3, 1954, ch. 1257, § 303 (e) (less applicability to promotion), 68 Stat. 1154.

The words "not inconsistent with the provisions hereof" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 3855. Retention in active status of certain officers until age 60.

Notwithstanding any other section of this chapter except section 3846, the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer in the Medical Corps, Dental Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialist Corps, but not later than the date on which he becomes 60 years of age. (Added Pub. L. 86-559, § 1(31), June 30, 1960, 74 Stat. 273.)

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

Chapter 365.—RETIREMENT FOR AGE

Sec.
3883. Age 60: regular commissioned officers below major general.
3884. Age 60: regular major generals whose retirement has been deferred.
3885. Age 62: regular major generals.
3886. Age 64: regular major generals whose retirement has been deferred; permanent professors of United States Military Academy.
3888. Computation of years of service: mandatory retirement; regular commissioned officers.
3889. Computation of retired pay; law applicable.

AMENDMENTS

1957—Pub. L. 85–155, title IV, § 401 (2), Aug. 21, 1957, 71 Stat. 390, omitted items 3881, 3882, and 3887.

§§ 3881, 3882. Repealed. Pub. L. 85–155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section 3881, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized the Secretary of the Army to retire regular commissioned officers of the Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is below major.

Section 3882, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized the Secretary of the Army to retire regular commissioned officers of the Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is above captain.

§ 3883. Age 60: regular commissioned officers below major general.

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the registrar of the United States Military Academy, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85–600, § 1 (6), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3883	10: 941a (a) (1) (less 23 words before 1st proviso).	Aug. 7, 1947, ch. 512, § 514 (a) (1) (less 23 words before 1st proviso), 61 Stat. 902.

10: 941a (a) (1) (1st 19 words and 1st and last proviso) is omitted as executed. The words "below major general" are substituted for the words "if in the * * * grade of brigadier general or in any * * * grade below that of brigadier general". The words "when he becomes 60 years of age" are substituted for the words "on that date upon which he attains the age of sixty years". The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title. The words "under applicable provisions of law" are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

1958—Pub. L. 85–600 excluded the registrar of the Military Academy from the retirement provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3888 of this title.

§ 3884. Age 60: regular major generals whose retirement has been deferred.

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under clause (1) of that section, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3884	No source.	No source.

The rule stated in the revised section is inserted as a necessary implication of the rule stated in clause (1) of section 3923 of this title.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3888 of this title.

§ 3885. Age 62: regular major generals.

Unless retired or separated at an earlier date or unless retained under section 3923 (2) of this title, each commissioned officer whose regular grade is major general shall be retired when he becomes 62 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89–718, §§ 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3885	10: 941a (a) (1) (23 words before 1st proviso).	Aug. 7, 1947, ch. 512, § 514 (a) (1) (23 words before 1st proviso), 61 Stat. 902.

The words "unless retained under section 3923 (2) of this title" are inserted for clarity. The words "when he becomes 62 years of age" are substituted for the words "on that date upon which he attains the age of sixty-two years". The words, "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3888 of this title.

§ 3886. Age 64: regular major generals whose retirement has been deferred; permanent professors of United States Military Academy.

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under clause (2) of that section, and each permanent professor and the registrar of the United States Military Academy, shall be retired when he becomes 64 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85–600, § 1 (7), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3886	10: 941a (a) (2); 10: 1079a (c) (less proviso).	Aug. 7, 1947, ch. 512, §§ 514 (a) (2), 520 (c) (less proviso), 61 Stat. 902, 912.

The rule stated in the revised section requiring major generals of the Regular Army to retire at age 64 is inserted as a necessary implication of the rule stated in clause (2) of section 3923 of this title. The words "under

applicable provisions of law", in 10: 941a (a) (2), are omitted as surplusage. The words "when he becomes 64 years of age" are substituted for the words "on that date upon which he attains the age of sixty-four years", in 10: 941a (a) (2), and "at the age of sixty-four years", in 10: 1079a (c) (less proviso). The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

AMENDMENTS

1966—Pub. L. 89-718 substituted "8301" for "47a".

1958—Pub. L. 85-600 included the registrar of the Military Academy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3888 of this title.

§ 3887. Repealed. Pub. L. 85-155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 223, related to computation of years of service of commissioned officers of the Army Nurse Corps or Women's Medical Specialist Corps for the purposes of retirement under former sections 3881 or 3882 of this title, or retirement pay under section 3991 of this title.

§ 3888. Computation of years of service; mandatory retirement; regular commissioned officers.

For the purpose of computing the retired pay of a commissioned officer of the Regular Army retired under section 3883, 3884, 3885, or 3886 of this title, his years of service are the greatest of—

(1) the years of service that may be credited to him under section 1405 of this title;

(2) the years of service credited to him at the time of his original appointment in the Regular Army to determine his eligibility for promotion, except the constructive service credited to him under section 3287 (a) (2) (A) or (B) or 3294 (b) of this title or under section 506 (c) of the Officer Personnel Act of 1947 (61 Stat. 890), plus his years of active commissioned service in the Regular Army after that appointment; or

(3) his years of service computed under clause (A), (B), or (C), whichever applies, if any:

(A) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

(i) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

(ii) the number of days, months, and years by which his age at the time of that appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army after that appointment.

(B) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, before December 31, 1947, other than an officer covered by clause (A) or appointed under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

(i) his years of active commissioned service in the Regular Army after that appointment; and

(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 7, 1941, under any earlier appointment.

(C) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, after December 31, 1947, other than an officer appointed in the Women's Army Corps, Regular Army, under section 108 of the Women's Armed Services Integration Act of 1948 (62 Stat. 361), the sum of—

(i) his years of active commissioned service in the Regular Army after that appointment; and

(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 31, 1947, under an earlier appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 223; Aug. 21, 1957, Pub. L. 85-155, title I, § 101 (18), 71 Stat. 379; May 20, 1958, Pub. L. 85-422, § 11 (a) (3), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85-861, § 1 (96), 72 Stat. 1487.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3888	10: 941a (b) (as applicable to 10: 941a (a) (3); 10:941a (e) (59th through 93d words of clause (1), as applicable to 10: 941a (a) (3)).	Aug. 7, 1947, ch. 512, § 514 (b) (as applicable to § 514 (a) (3)), (e) (59th through 93d words of clause (1), as applicable to § 514 (a) (3)), 61 Stat. 903, 905; June 12, 1948, ch. 449, § 104 (d) (8), 62 Stat. 359.

In clause (2) (A), the words "before January 1, 1948" are substituted for the words "between December 28, 1945, and December 31, 1947".

In clause (2) (A)—(D), the words "plus his [her] years" are substituted for the words "increased by the period of his [her]".

In clause (2) (C), clause (i) is substituted for the words "or the total period of active Federal service performed by him after attaining the age of twenty-one years as a commissioned officer in the Army of the United States or any component thereof from December 7, 1941, to the date of such appointment".

In clause (2) (D), the words "other than an officer covered by clause (A) or (C)" are substituted for the words "any other".

In clause (2) (E), the words "other than an officer covered by clause (B)" are inserted for clarity.

AMENDMENTS

1958—Pub. L. 85-861 amended section generally, by, among other changes, eliminating provisions which related to computation of years of service of officers appointed under the act of Dec. 28, 1945, ch. 601, 59 Stat. 663, under section 108 of the Women's Armed Services Integration Act of 1948, and of officers appointed in the Army Nurse Corps or Army Medical Specialist Corps, inserting provisions in clauses (3) (B) and (C) excluding officers appointed in the Army Nurse Corps and Army Medical Specialist Corps, and adding provisions relating to the years of service of an officer credited to him at the time of his original appointment in the Regular Army to determine his eligibility for promotion, except the constructive service credited to him, plus his years of active commissioned service in the Regular Army after that appointment.

Pub. L. 85-422 substituted "that may be credited to him under section 1405 of this title" for "credited to him in computing his basic pay" in subd. (1).

1957—Pub. L. 85–155 added provisions relating to computation of service of officers appointed in the Army Nurse Corps or Army Medical Specialist Corps.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 3889. Computation of retired pay: law applicable.

A member of the Army retired under this chapter is entitled to retired pay computed under chapter 371 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 224.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3889	No source.	No source.

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

Chapter 367.—RETIREMENT FOR LENGTH OF SERVICE

Sec.
3911. Twenty years or more: regular or reserve commissioned officers.
3913. Twenty years or more: deferred officers not recommended for promotion.
3914. Twenty to thirty years: regular enlisted members.
3916. Twenty-eight years: promotion-list lieutenant colonels.
3917. Thirty years or more: regular enlisted members.
3918. Thirty years or more: regular commissioned officers.
3919. Thirty years or more: regular commissioned officers; excessive number.
3920. More than thirty years: permanent professors of United States Military Academy.
3921. Thirty years or five years in grade: promotion-list colonels.
3922. Thirty years or five years in grade: regular brigadier generals.
3923. Thirty-five years or five years in grade: regular major generals.
3924. Forty years or more: Army officers.
3925. Computation of years of service: voluntary retirement; regular enlisted members.
3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
3927. Computation of years of service: mandatory retirement; regular commissioned officers.
3929. Computation of retired pay: law applicable.

AMENDMENTS

1967—Pub. L. 90–130, § 1(13), Nov. 8, 1967, 81 Stat. 376, eliminated item 3915 which read: "Twenty-five years: regular majors; Women's Army Corps, Army Nurse Corps and Army Medical Specialist Corps."

1957—Pub. L. 85–155, title I, § 101 (20), title IV, § 401 (3), Aug. 21, 1957, 71 Stat. 380, 390, included the Army Nurse Corps and the Army Medical Specialist Corps within item 3915, and omitted items 3912 and 3928.

§ 3911. Twenty years or more: regular or reserve commissioned officers.

The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 224.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3911	10: 943a; 10: 971b (1st 100 words).	July 31, 1935, ch. 422, § 5 (1st 101 words); restated June 13, 1940, ch. 344, § 3 (1st 45 words), 54 Stat. 380; June 29, 1948, ch. 708, § 202 (1st 105 words), 62 Stat. 1084; July 16, 1953, ch. 203, 67 Stat. 175.

The words "a regular or reserve commissioned officer of the Army" are substituted for the words "any officer on the active list of the Regular Army * * * or any officer of the reserve components of the Army of the United States". The words "Philippine Scouts" are omitted as obsolete. The words "has at least 20" are substituted for the words "shall have completed not less than twenty". The words "upon the officer's request" are substituted for the words "upon his own application". The words "service computed under section 3926 of this title" are substituted for the words "active Federal service in the armed forces of the United States", since that revised section makes explicit the service covered.

CROSS REFERENCES

Composition of retired reserve, see section 274 of this title.

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 274, 1006, 3926 of this title.

§ 3912. Repealed. Pub. L. 85–155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 19, 1956, ch. 1041, 70A Stat. 225, permitted the Secretary of the Army, upon the officer's request, to retire a commissioned officer of the Regular Army in the Army Nurse Corps or Women's Medical Specialist Corps who has at least 20 years of service computed under former section 3928 of this title.

§ 3913. Twenty years or more: deferred officers not recommended for promotion.

(a) A deferred officer who is not recommended for promotion under section 3303(c) of this title, or an officer who is found disqualified for promotion under section 3302(f) of this title, shall, if he has at least 20 years of service computed under section 3927(a) of this title, be retired, except as provided by section 8301 of title 5, on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Army, but not later than the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned.

(b) Unless sooner retired or separated under another provision of law, a deferred officer who is not recommended for promotion under section 3303(c) of this title, or an officer found disqualified for promotion under section 3302(f) of this title, who is not eligible for retirement under subsection (a) of this section or any other provision of law, but is within two years of becoming entitled to retirement under subsection (a) or some other provision of law, shall be retained on the active list in his regular grade until the date he completes 20 years of service computed under section 3927(a) of this title, or the first day of the seventh calendar month after the

Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later, and then retired. (Aug. 10, 1956, ch. 1041, 70A Stat. 225; July 12, 1960, Pub. L. 86–616, § 4, 74 Stat. 390; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3913 (a)	10: 559c (h) (16th through 53d words of last sentence); 10: 559c (i); 10: 941a (e) (1st 16 words of clause (1).)	Aug. 7, 1947, ch. 512, §§ 509 (h) (16th through 53d words, and proviso, of last sentence), 509 (i), 514 (d) (2d sentence), 514 (e) (1st 16 words of clause (1)), 61 Stat. 896, 903, 905.
3913 (b)	10: 559c (h) (proviso of last sentence); 10: 941a (d) (2d sentence).	

In subsection (a), 10: 559c–1 (1st 45 words) and the words "prior to his loss of seniority", in 10: 559c (i), are omitted as surplusage. In clause (2), the words "had his years of service not been reduced under section 3303 (b) of this title" are substituted for the words "had he not suffered loss in years of service", in 10: 559c (i).

In subsections (a) and (b), the words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title. Reference to officers found disqualified for promotion under section 3302 (f) of this title is inserted to conform to that section.

In subsection (b), the words "who is not recommended for promotion under section 3303 (c) of this title" are inserted for clarity. The words "or some other provision of law" are inserted, since 10: 559c (h) (proviso) and 10: 941a (d) (2d sentence) refer to the provisions of 10: 941a (e), which include, as an alternative method of retirement, retirement under any other provision of law. The words "rather than that hereinafter prescribed", in 10: 941a (d), are omitted as surplusage.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a."

1960—Subsec. (a). Pub. L. 86–616, § 4(1), substituted provisions requiring retirement on such date as may be requsted by the officer and approved by the Secretary, but not later than the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend the officer for promotion to the grade concerned for provisions which required retirement one year and 30 days after the date of appointment to the grade concerned of the first officer junior to the officer on the list considered by the first selection board or one year and 30 days after the date on which he would have completed, for promotion purposes, 7, 14, or 21 years of service, if the officer is in the grade of first lieutenant, captain, or major, had the officer's years of service not been reduced under section 3303(b) of this title, whichever is earlier.

Subsec. (b). Pub. 86–616, § 4(2), substituted "the date he completes 20 years of service computed under section 3927(a) of this title, or the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later" for "so entitled to retire."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3927 of this title.

§ 3914. Twenty to thirty years: regular enlisted members.

Under regulations to be prescribed by the Secretary of the Army, a regular enlisted member of the Army who has at least 20, but less than 30, years of service computed under section 3925 of this title may, upon his request, be retired. He then becomes a member of the Army Reserve, and shall perform such active duty as may be prescribed under law, until his service computed under section 3925 of this title, plus his inactive service as a member of the Army Reserve, equals 30 years. (Aug. 10, 1956, ch. 1041, 70A Stat. 225; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (25), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3914	10: 948 (1st sentence); 10: 948a.	Oct. 6, 1945, ch. 393, § 4 (1st sentence); restated Aug. 10, 1946, ch. 952, § 6 (a) (1st sentence), 60 Stat. 996. Aug. 10, 1946, ch. 952, § 7, 60 Stat. 996.

The words "now or hereafter", in 10: 948a, are omitted as surplusage. The words "computed under section 3925 of this title" are substituted for the words "active Federal service", in 10: 948, and "active Federal military service", in 10: 948a, since that revised section makes explicit the service covered. The words "be retired" are substituted for the words "will be placed on the retired list of", in 10: 948. The words "completed a minimum", in 10: 948; and "the period of", "be subject to", "periods of", and "now or after August 10, 1946", in 10: 948a; are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85–861 substituted "regulations to be prescribed" for "regulations prescribed".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

DOUBLE CREDITS FOR FOREIGN SERVICE BY ENLISTED MEN

Acts May 26, 1900, ch. 586, 31 Stat. 209; Mar. 2, 1903, ch. 975, 32 Stat. 933; Apr. 23, 1904, ch. 1485, 33 Stat. 264; Aug. 24, 1912, ch. 391, § 1, 37 Stat. 575; May 17, 1932, ch. 190, 47 Stat. 158, provided that: "In computing length of service for retirement, credit shall be given soldiers for double the time of their actual service in China, Puerto Rico, Cuba, the Philippine Islands, the Island of Guam, Alaska, and Panama, but double credit shall not be given for service rendered subsequent to April 23, 1904, in Puerto Rico or the Territory of Hawaii, nor shall credit for double time for foreign service be given to those who enlisted after August 24, 1912: *Provided,* That nothing herein shall be so construed as to forfeit credit for double time accrued prior to August 24, 1912."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3925 of this title.

§ 3915. Repealed. Pub. L. 90–130, § 1(13), Nov. 8, 1967, 81 Stat. 376.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 235; Aug. 21, 1967, Pub. L. 85–155, title I, § 101(19), 71 Stat. 379; Sept. 30, 1966, Pub. L. 89–609, § 1(5), 80 Stat. 852; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for the retirement after 25 years' service of regular majors in the Women's Army Corps, Army Nurse Corps, and Army Medical Specialist Corps.

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OR TRANSFER FROM ACTIVE STATUS

Secretary of the Army authorized to suspend the operation of any provision of law pertaining to the mandatory retirement, discharge, separation, or transfer from an active status of an officer of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, for five years following Nov. 8, 1967, see section 4(a) of Pub. L. 90–130, set out as a note under section 3069 of this title.

§ 3916. Twenty-eight years: promotion-list lieutenant colonels.

(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of

lieutenant colonel shall be retired, except as provided by section 8301 of title 5, on the thirtieth day after he completes 28 years of service computed under section 3927 (a) of this title. However, if his name is carried on the list of officers recommended for appointment to the regular grade of colonel, he shall be retained on the active list while his name is so carried.

(b) The Secretary of the Army may defer the retirement under this section of—

(1) any promotion-list officer in the regular grade of lieutenant colonel in the Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, or the Chaplains, but not later than the date on which he becomes 60 years of age;

(2) any officer in the grade of lieutenant colonel in the Women's Army Corps, Army Nurse Corps, or Army Medical Specialist Corps, Regular Army, until the thirtieth day after she completes 30 years of service computed under section 3927 (a) of this title; and

(3) any officer while serving as Director of the Women's Army Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226; Aug. 21, 1957, Pub. L. 85-155, title I, § 101 (21), 72 Stat. 380; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3916 (a)	10: 941a (d) (clause (4), less 2d, 3d, and last provisos).	Aug. 7, 1947, ch. 512, § 514 (d) (clause (4)), 61 Stat. 905; June 12, 1948, ch. 449, § 104 (d) (9), 62 Stat. 359.
3916 (b)	10: 941a (d) (2d, 3d, and last provisos of clause (4)).	

In subsection (a), the words "After June 30, 1953" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter appointed", "under other provisions of law", "eliminated from the active list and", "unless he is appointed in the permanent grade of colonel, or any higher permanent grade, in the Regular Army before that date", and "and if appointed in the permanent grade of colonel their elimination from the active list shall be governed by the provisions of paragraph (3) of this subsection" are omitted as surplusage. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after". The words "computed under section 3927 (a) of this title" are inserted for clarity. The words "except as provided by section 47a of title 5" are inserted, since that act controls the effective date of retirement under this title.

In subsection (b), the words "may defer the retirement under this section of" are substituted for the words "may, in the discretion of * * * be retained on the active list after the date specified for their retirement".

In subsection (b) (3), the words "in the permanent grade of lieutenant colonel" and "in the temporary grade of colonel by virtue of occupying the position of" are omitted as surplusage.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "8301" for "47a".

1957—Subsec. (b) (2). Pub. L. 85-155 permitted the deferment of retirement of officers in the Army Nurse Corps or Army Medical Specialist Corps.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3927 of this title.

§ 3917. Thirty years or more: regular enlisted members.

A regular enlisted member of the Army who has at least 30 years of service computed under section 3925 of this title shall be retired upon his request. (Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3917	10: 947 (less proviso); 10: 947a (less last 11 words).	Mar. 2, 1907, ch. 2515, § 1 (1st 35 words), 34 Stat. 1217. Feb. 14, 1885, ch. 67 (less 43d through 53d words); restated Sept. 30, 1890, ch. 1125 (less 43d through 53d words), 26 Stat. 504.

The word "regular" is inserted to conform to an opinion of the Judge Advocate General of the Army (JAGA, 1953/2301, 23 Mar. 1953). The words "upon his request" are substituted for the words "upon making application to the President", in 10: 947, and "by application to the President", in 10: 947a. The words "either as a private or noncommissioned officer, or both", in 10: 947a, are omitted as surplusage. The words "shall be retired" are substituted for the words "be placed upon the retired list", in 10: 947, and "be placed on the retired list heretofore created", in 10: 947a. The words "computed under section 3925 of this title" are inserted for clarity. The 21 words before the proviso and the proviso of the Act of February 14, 1885, as restated, are not contained in 10: 947a. They are also omitted from the revised section, since the proviso is executed and the 21 words before the proviso are omitted as covered by formula E of section 3991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3925 of this title.

§ 3918. Thirty years or more: regular commissioned officers.

A regular commissioned officer of the Army who has at least 30 years of service computed under section 3926 of this title may be retired upon his request, in the discretion of the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3918	10: 943.	R. S. 1243; Dec. 16, 1930, ch. 14, § 1 (as applicable to R. S. 1243), 46 Stat. 1028.

The word "commissioned" is inserted, since the retirement of warrant officers for length of service is covered by section 1293 of this title. The word "regular" is inserted, since 10: 943 is applicable historically only to officers of the Regular Army. The words "and placed on the retired list" are omitted as surplusage. The words "computed under section 3926 of this title" are inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3926 of this title.

§ 3919. Thirty years or more: regular commissioned officers; excessive number.

Whenever the Secretary of the Army believes that there are too many commissioned officers on the active list of the Regular Army, in any grade, who have at least 30 years of service computed under section 3927 (a) of this title, he may convene a board of at least five general officers of the Regular Army. The board shall consider all officers on the active list in that grade and with that service,

and shall recommend officers by name for retirement, in the number specified by the Secretary. The Secretary may retire an officer so recommended. (Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3919	10: 941a (c).	Aug. 7, 1947, ch. 512, § 514 (c), 61 Stat. 903.

The words "After August 7, 1947" are omitted as executed. The word "commissioned" is inserted for clarity. The words "are too many" are substituted for the words "is an excessive number of". The words "recommend officers by name for retirement, in the number specified by the Secretary" are substituted for the words "recommend for retirement a specified number thereof", to make it clear that the Secretary specifies the number to be recommended by the board, and that the board names the officers. The words "computed under section 3927 (a) of this title" are inserted for clarity. The word "may" is substituted for the words "in his discretion, is authorized to".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3927 of this title.

§ 3920. More than thirty years: permanent professors of United States Military Academy.

The Secretary of the Army may retire any permanent professor of the United States Military Academy who has more than 30 years of service as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3920	10: 1079a (c) (proviso).	Aug. 7, 1947, ch. 512, § 520 (c) (proviso), 61 Stat. 912.

The word "retire" is substituted for the words "direct the retirement of". The words "as a commissioned officer" are substituted for the word "commissioned".

§ 3921. Thirty years or five years in grade: promotion-list colonels.

(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of colonel shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 30 years of service computed under section 3927 (a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of brigadier general, he shall be retained on the active list while his name is so carried.

(b) The Secretary of the Army may defer the retirement under this section of any promotion-list officer in the regular grade of colonel in the Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, or the Chaplains, but not later than the date on which he becomes 60 years of age. The number of deferments in effect under this subsection for any one promotion list at any one time may not be more than 10 percent of the number of colonels authorized for that list. (Aug. 10, 1956, ch. 1041, 70A Stat. 226; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3921 (a)	10: 941a (d) (clause (3) less last proviso).	Aug. 7, 1947, ch. 512, § 514 (d) (clause (3), less 81st through 105th words of last proviso), 61 Stat. 904.
3921 (b)	10: 941a (d) (last proviso of clause (3), less 81st through 105th words).	

In subsection (a), the words "After June 30, 1953" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter", "under other provisions of law", "eliminated from the active list and", "unless he is appointed in the permanent grade of brigadier general, or any higher permanent grade, in the Regular Army before the later of such two dates", and "and if appointed in the permanent grade of brigadier general their elimination from the active list shall be governed by the provisions of paragraph (2) of this subsection" are omitted as surplusage. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after". The words "computed under section 3927 (a) of this title" are inserted for clarity. The words "except as provided by section 47a of title 5", are inserted, since that section controls the effective date of retirement under this title.

In subsection (b), the words "may defer the retirement under this section" are substituted for the words "may, in the discretion * * * be retained on the active list after the date specified for their retirement". The words "but not later than the date on which he becomes" are substituted for the words "but in no event shall any such officer be so retained after reaching". The last sentence is substituted for the words "not more than 10 per centum of the number authorized in that grade for any such promotion list, respectively".

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a".

CROSS REFERENCES

Promotion-list officers, see section 3211 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3211, 3927 of this title.

§ 3922. Thirty years or five years in grade: regular brigadier generals.

(a) Unless retired or separated at an earlier date, each officer in the regular grade of brigadier general, other than a professor of the United States Military Academy, shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 30 years of service computed under section 3927 (a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of major general, he shall be retained on the active list while his name is so carried.

(b) The Secretary of the Army may defer the retirement under this section of any brigadier general who is serving in a higher temporary grade, but not later than the date on which he becomes 60 years of age. Not more than five deferments under this subsection may be in effect at any one time. (Aug. 10, 1956, ch. 1041, 70A Stat. 227, Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3922 (a)	10: 941a (d) (clause (2), less 2d proviso).	Aug. 7, 1947, ch. 512, § 514 (d) (clause (2)), 61 Stat. 904.
3922 (b)	10: 941a (d) (2d proviso of clause (2)).	

In subsection (a), the words "After that date which is six months after August 7, 1947" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter appointed", "under other provisions of law", "eliminated from the active list and", "unless he is appointed in the permanent grade of major general in the Regular Army before the later of such two dates", and "and if appointed in the permanent grade of major general their elimination from the active list shall be governed by the provisions of paragraph (1) of this subsection" are omitted as surplusage. The words "other than a professor at the United States Military Academy" are substituted for 10: 941a (d) (last proviso of clause (2)). The words "the thirtieth day after" are substituted for the words "that date which is thirty days after". The words "computed under section 3927 (a) of this title" are inserted for clarity. The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

In subsection (b), the words "may defer the retirement under this section" are substituted for the words "may, in the discretion of * * * be retained on the active list". The words "but not later than the date on which he becomes" are substituted for the words "until * * * is reached" to conform to an opinion of the Judge Advocate General of the Army, which holds that a brigadier general may not be retained beyond age 60 (see JAGA 1953/3331, 21 Apr. 1953). The word "five" is substituted for the word "ten", to reflect the allocation of the spaces covered by this subsection, between the Army and the Air Force, under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). (See revision note for section 3211 of this title.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "8301" for "47a".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3927 of this title.

§ 3923. Thirty-five years or five years in grade: regular major generals.

Unless retired or separated at an earlier date, each officer in the regular grade of major general shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 35 years of service computed under section 3927 (a) of this title, whichever is later. However, the Secretary of the Army may defer the retirement under this section of—

(1) any such major general, but not later than the date on which he becomes 60 years of age; and

(2) any such major general who is serving in a temporary grade above major general, or who is serving in a position that carries a grade above major general, but not later than the date on which he becomes 64 years of age; and not more than five deferments under this clause may be in effect at any one time.

(Aug. 10, 1950, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3923	10: 941a (d) (1st sentence and clause (1)).	Aug. 7, 1947, ch. 512, § 514 (d) (1st sentence and clause (1)), 61 Stat. 903, 904.

10: 941a (d) (1st sentence) is omitted as surplusage, since it is merely a statement of the general coverage of 10: 941a (d) and (e). The words "After that date which is six months after August 7, 1947" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter appointed", "under other provisions of law", "eliminated from the active list and", and "unless he is permanently appointed in a grade above that of major general before the later of such two dates" are omitted as surplusage. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after the date upon which". The words "but not later than the date on which he becomes 60 years of age" are substituted for the words "until age sixty is reached", to make it clear that the Secretary can retire the officer between the time he is deferred and the time he reaches that age. For the same reason, the words "but not later than the date on which he becomes 64 years of age" are substituted for the words "until age sixty-four is reached". The words "computed under section 3927 (a) of this title" are inserted for clarity. The words "may defer the retirement under this section" are substituted for the words "may, in the discretion of * * * be retained on the active list". The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title. The word "five" is substituted for the word "ten" to reflect the allocation of spaces covered by this section, between the Army and the Air Force, under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). (See revision note for section 3922 of this title.)

AMENDMENTS

1966—Pub. L. 89-718 substituted "8301" for "47a".

CROSS REFERENCES

Retirement of major generals at ages 60, 62, and 64, see sections 3884—3886 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3884, 3885, 3886, 3927 of this title.

§ 3924. Forty years or more: Army officers.

(a) Except as provided in section 3786 of this title, a commissioned officer of the Army who has at least 40 years of service computed under section 3926 of this title shall be retired upon his request.

(b) Any warrant officer of the Army who has at least 40 years of service computed under section 3926 (a) of this title shall be retired upon his request. (Aug. 10, 1956, ch. 1041, 70 Stat. 227.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3924 (a)	10: 942 (as applicable to commissioned officers).	June 30, 1882, ch. 254 (last 21 words of 3d proviso under "Pay Department"), 22 Stat. 118.
3924 (b)	10: 942 (less applicability to commissioned officers).	

In subsection (a), the words "except as provided in section 3786 of this title" are inserted, since, under that revised section, when board proceedings are pending against a commissioned officer, his right to retire under this revised section, which is otherwise absolute, is discretionary with the Secretary under that revised section.

In subsections (a) and (b), the words "or volunteer service, or both" are omitted as obsolete in accordance with an opinion of the Attorney General, 22 Ops. Atty.

Gen. 199, August 30, 1898, holding that such words refer to volunteer service in the Civil War. The words "upon his request" are substituted for the words "if he make application therefor to the President".

In subsection (b), the applicability of 10: 942 to warrant officers is based on an opinion of the Judge Advocate General of the Army (JAGA 1950/6951, 4 Jan. 1951), which holds that 10: 594 (less provisos) makes 10: 942 applicable to warrant officers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3926 of this title.

§ 3925. Computation of years of service: voluntary retirement; regular enlisted members.

(a) For the purpose of determining whether a regular enlisted member of the Army may be retired under section 3914 or 3917 of this title, and of computing his retired pay under section 3991 of this title, his years of service are computed by adding all active service in the armed forces and service computed under section 3683 of this title.

(b) Time required to be made up under section 972 of this title may not be counted in determining years of service under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 228; Sept. 2, 1958, Pub. L. 85-861, § 1 (97), 72 Stat. 1488.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3925 (a)	10: 947 (proviso); 10: 958.	Mar. 2, 1907, ch. 2515, § 1 (proviso), 34 Stat. 1218.
3925 (b)	No source.	Aug. 10, 1946, ch. 952, § 6 (b), 60 Stat. 996.

In subsection (a), the words "active service" are substituted for the word "service", in 10: 947, and "active Federal service performed", in 10: 958, for uniformity. The words "service computed under section 3683 of this title" are inserted, since a person entitled to count service under that revised section might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

Subsection (b) is inserted because of section 3638 of this title and in accordance with long-standing interpretation of the effect of 10: 629 upon the computation of years of service for retirement.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "section 972 of this title" for "section 3638 of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3914, 3917 of this title.

§ 3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.

(a) For the purpose of determining whether an officer of the Army may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force;

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement;

(3) all service computed under section 3683 of this title; and

(4) if an officer of the Regular Army, all active service performed as an officer of the Philippine Constabulary.

(b) For the purpose of determining whether a commissioned officer of the Regular Army in the Medical Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a commissioned officer of the Regular Army in the Dental Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) For the purpose of determining whether a commissioned officer of the Army Nurse Corps or the Army Medical Specialist Corps may be retired under section 3911 of this title, all service computed under section 3683 of this title shall be treated as if it were service as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 228; Aug. 25, 1959, Pub. L. 86-197, § 1(5), 73 Stat. 426.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3926 (a)	10: 951 (less applicability to 10: 166g (a)); 10: 951a; 10: 951b (less applicability to 10: 166g (a)); (uncodified: June 18, 1878, ch. 263, § 7 (less applicability to 10: 166g (a)), 20 Stat. 150)).	June 3, 1916, ch. 134, § 127a (6th par., less 1st 13 words, and less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended); added June 4, 1920, ch. 227, subch. I, § 51 (6th par., less 1st 13 words, and less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended), 41 Stat. 785. May 23, 1928, ch. 710, 45 Stat. 720. June 15, 1935, ch. 257 (less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended), 49 Stat. 377. June 18, 1878, ch. 263, § 7 (less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended), 20 Stat. 150.
3926 (b)	10: 953a (1st sentence).	May 29, 1928, ch. 902, 45 Stat. 996; Jan. 29, 1938, ch. 12, § 2, 52 Stat. 8.
3926 (c)	10: 953a (less 1st sentence).	

Subsection (a) consolidates the various service computation provisions applicable to voluntary retirement of commissioned officers. Clause (1) is substituted for 10: 951. Clause (2) is substituted for 10: 951b. The words "pay period and", in 10: 951a, are omitted as superseded by section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U. S. C. 233). The words "longevity pay and", in section 7 of the act of June 18, 1878, ch. 263, 20 Stat. 150, are omitted for the same reason. The last sentence of section 7 of that act is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the act of June 29, 1948, ch. 708, 62 Stat. 1084. Clause (3) is inserted, since a person entitled to count service under section 3683 of this title might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

In subsection (b), the words "as a member of the Medical Reserve Corps", in 10: 953a, are omitted as covered by subsection (a) (1). The words "are computed by adding to his service under subsection (a)" are substituted for the words "shall be credited to the same extent as service under a Regular Army commission".

Subsection (c) is substituted for 10: 953a (less 1st sentence).

AMENDMENTS

1959—Subsec. (d). Pub. L. 86–197 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3911, 3918, 3924 of this title.

§ 3927. Computation of years of service: mandatory retirement; regular commissioned officers.

(a) For the purpose of determining whether a regular commissioned officer may be retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title, his years of service are the greater of—

(1) the years of service credited to him at the time of his original appointment in the Regular Army to determine his eligibility for promotion, except the constructive service credited to him under section 3287 (a) (2) (A) or (B) or 3294 (b) of this title or under section 506 (c) of the Officer Personnel Act of 1947 (61 Stat. 890), plus his years of active commissioned service in the Regular Army after that appointment; or

(2) his years of service computed under clause (A), (B), or (C), whichever applies, if any:

(A) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

(i) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

(ii) the number of days, months, and years by which his age at the time of the appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army after that appointment.

(B) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, before December 31, 1947, other than an officer covered by clause (A) or appointed under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

(i) his years of active commissioned service in the Regular Army after that appointment; and

(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 7, 1941, under any earlier appointment.

(C) For an officer appointed in the Regular Army, except in the Army Nurse Corps or Army Medical Specialist Corps, after December 31, 1947, other than an officer appointed in the Women's Army Corps, Regular Army, under section 108 of the Women's Armed Services Integration Act of 1948 (62 Stat. 361), the sum of—

(i) his years of active commissioned service in the Regular Army after that appointment; and

(ii) his years of active commissioned service in the Army after becoming 21 years of age and after December 31, 1947, under any earlier appointment.

(b) For the purpose of computing the retired pay of a commissioned officer of the Regular Army retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title, his years of service are the greater of—

(1) the years of service that may be credited to him under section 1405 of this title; or

(2) his years of service computed under subsection (a).

(Aug 10, 1956, ch. 1041, 70A Stat. 228; Aug. 21, 1957, Pub. L. 85–155, title I, § 101 (22), 71 Stat. 380; May 20, 1958, Pub. L. 85–422, § 11 (a) (4), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1 (98), 72 Stat. 1488.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3972 (a)	10: 941a (b) (less applicability to 10: 941a (a) (3)).	Aug. 7, 1947, ch. 512, § 514 (b) (less applicability to § 514 (a) (3)), (e) (59th through 93d words of clause (1), less applicability to § 514 (a) (3)), 61 Stat. 903; June 12, 1948, ch. 449, § 104 (d) (8), 62 Stat. 359.
3927 (b)	10: 941a (e) (59th through 93d words of clause (1), less applicability to 10: 941a (a) (3)).	

In subsection (a) (1), the words "before January 1, 1948" are substituted for the words "between December 28, 1945, and December 31, 1948".

In subsection (a) (1)—(4), the words "plus his [her] years" are substituted for the words "increased by the period of his [her]".

In subsection (a) (3), clause (A) is substituted for the words "or the total period of active Federal service performed by him after attaining the age of twenty-one years as a commissioned officer in the Army of the United States or any component thereof from December 7, 1941, to the date of such appointment".

In subsection (a) (4), the words "other than an officer covered by clause (1) or (3)" are substituted for the words "any other".

In subsection (a) (5), the words "other than an officer covered by clause (2)" are inserted for clarity.

Subsection (b) is substituted for 10: 941a (e) (59th through 93d words of clause (1), less applicability to 10: 941a (a) (3)).

AMENDMENTS

1958—Pub. L. 85–861 amended section generally, by, among other changes, eliminating provisions which related to computation of years of service of officers appointed under the act of Dec. 28, 1945, ch. 601, 59 Stat. 663, under section 108 of the Women's Armed Services Integration Act of 1948, and of officers appointed in the Army Nurse Corps or Army Medical Specialist Corps, inserting provisions in clauses (2) (B) and (C) excluding officers appointed in the Army Nurse Corps and Army Medical Specialist Corps, and adding provisions relating to the years of service of an officer credited to him at the time of his original appointment in the Regular Army to determine his eligibility for promotion, except the constructive service credited to him, plus his years of active commissioned service in the Regular Army after that appointment.

Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "credited to him in computing his basic pay" in subsec. (b) (1).

1957—Pub. L. 85–155, § 101 (22), added provisions relating to computation of years of service for officers of the Army Nurse Corps and the Army Medical Specialist Corps.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1405, 3303, 3913, 3915, 3916, 3919, 3921, 3922, 3923 of this title.

§ 3928. Repealed. Pub. L. 85–155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 229, related to computation of years of service of commissioned

officers of the Army Nurse Corps or Women's Medical Specialist Corps for the purposes of retirement under former section 3912 of this title, or retirement pay under section 3991 of this title.

§ 3929. Computation of retired pay: law applicable.

A member of the Army retired under this chapter is entitled to retired pay computed under chapter 371 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 230.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3929	No source.	No source.

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

Chapter 369.—RETIRED GRADE

Sec.
3961. General rule.
3962. Higher grade for service in special positions: regular commissioned officers.
3963. Higher grade for service during certain periods: regular and reserve commissioned officers.
3964. Higher grade after 30 years of service: Army warrant officers; regular enlisted members.
3965. Restoration to former grade: regular warrant officers and enlisted members.
3966. Retired lists.

§ 3961. General rule.

Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement. (Aug. 10, 1956, ch. 1041, 70A Stat. 230.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3961	10: 941a (a) (3) (31st through 42d words; and proviso, as applicable to retired grade); 10: 941a (e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade); 10: 947a (last 11 words); 10: 1025; 10: 1026 (proviso).	Aug. 7, 1947, ch. 512, §§ 514 (a) (3) (31st through 42d words; and proviso, as applicable to retired grade), 514 (e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade), 61 Stat. 893, 902. Feb. 14, 1885, ch. 67 (43d through 53d words); restated Sept. 30, 1890, ch. 1125 (43d through 53d words), 26 Stat. 504. R. S. 1254. June 3, 1916, ch. 134, § 4c (proviso); added June 29, 1945, ch. 197 (proviso); restated Aug. 7, 1947, ch. 512, § 513 (c) (proviso), 61 Stat. 902.

The applicability of the rule stated in the revised section to situations not expressly covered by the laws named in the source credits above is necessarily implied from laws providing for retirement in higher grade in those situations.

§ 3962. Higher grade for service in special positions: regular commissioned officers.

(a) Upon retirement, a commissioned officer of the Regular Army who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Army, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 3066 of this title, or (5) as Surgeon General of the Army in the grade of lieutenant general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him at any time on the active list.

(b) Upon retirement, a commissioned officer of the Regular Army who has served at least four years as chief or assistant chief of a branch is entitled to retire in the highest grade, prescribed for such an office, that he held while so serving.

(c) Upon retirement, any permanent professor of the United States Military Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general. (Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, Pub. L. 85-861, § 1 (99), 72 Stat. 1489; Oct. 22, 1965, Pub. L. 89-288, § 2, 79 Stat. 1050.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3962 (a)	10: 506b (d) (less 1st and last provisos).	Aug. 4, 1947, ch. 459, § 102 (c) (1st 6, and 9th through 43d, words), 61 Stat. 735.
3962 (b)	10: 156c (1st 6, and 9th through 43d, words); 10: 1026 (less 24 words before proviso, and less proviso).	June 3, 1916, ch. 134, § 4c (less 24 words before proviso, and less proviso); added June 4, 1920, ch. 227, § 4 (less last 18 words of 4th sentence of 7th par.); June 6, 1924, ch. 275, § 2; July 2, 1926, ch. 721, § 7; Apr. 22, 1938, ch. 167; May 12, 1939, ch. 127 (less 75th through 91st words); Oct. 14, 1940, ch. 858, § 1 (less last 26 words); restated June 29, 1945, ch. 197 (less 24 words before proviso, and less proviso); restated Aug. 7, 1947, ch. 512, § 513 (c) (less 24 words before proviso, and less proviso), 61 Stat. 902. Aug. 7, 1947, ch. 512, §§ 504 (d) (less 1st and last provisos), 520 (b) (less proviso), 61 Stat. 888, 912. Apr. 16, 1947, ch. 38, § 108 (b) (1st 5, and 8th through 76th, words; and proviso); restated May 16, 1950, ch. 186, § 3 (d) (b) (1st 5, and 8th through 76th, words; and proviso), 64 Stat. 161. June 12, 1948, ch. 449, § 103 (b) (1st 6 and 9th through 54th, words), 62 Stat. 357.
3962 (c)	10: 166g (b) (1st 5, and 8th through 76th, words; and proviso); 10: 316b (b) (1st 6, and 9th through 54th, words).	
3962 (d)	10: 1079a (b) (less proviso).	

In subsection (a), the words "who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Army, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 3066 of this title" are substituted for the words "while serving in accordance with the provisions of subsection (b) or (c) of this section".

In subsection (b), 10: 156c (1st 6, and 9th through 43d, words) is omitted as covered by 10: 1026 (less 24 words before proviso, and less proviso), since the Medical Service Corps is a branch of the Army. The references to the Commanding General of the General Headquarters Air Force are omitted as executed.

In subsection (c), 10: 166g (b) (proviso) is omitted as executed.

In subsection (d), the words "Upon retirement" are substituted for the words "When * * * is retired". The word "allowances" is omitted, since retired officers are not entitled to allowances. The words "grade is below brigadier general" are inserted, since any permanent professor who has the grade of brigadier general retires in that grade under section 4335 of this title.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-288 added the Surgeon General of the Army to the list of commissioned officers who may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him at any time on the active list.

1958—Subsec. (c). Pub. L. 85-861 redesignated former subsec. (d) as (c) and repealed former subsec. (c) which related to retirement of commissioned officers who served as Director or Deputy Director of the Women's Army Corps, Chief of the Army Nurse Corps, or Chief or assistant chief of the Women's Medical Specialist Corps.

RETIRED GRADE FOR CERTAIN GENERAL OFFICERS

Section 38 of act Aug. 10, 1956, provided that: "The President, by and with the advice and consent of the Senate, may in his discretion extend the privilege granted by sections 3962 (a) and 8962 (a) of title 10, United States Code, to officers, heretofore or hereafter retired, who served in the grade of general or lieutenant general after December 7, 1941, and before July 1, 1946."

CROSS REFERENCES

Chief and assistant chiefs of Army Medical Specialist Corps, see section 3070 of this title.

Chief of Army Nurse Corps, see section 3069 of this title.

Chief of Staff, see section 3034 of this title.

Chief of Staff to President, see section 3531 of this title.

Director and Deputy Director of Women's Army Corps, see section 3071 of this title.

Permanent professors of Military Academy, see section 4336 of this title.

Senior members of Military Staff Committee of United Nations, see section 711 of this title.

§ 3963. Higher grade for service during certain periods: regular and reserve commissioned officers.

(a) A regular commissioned officer who is retired, or a reserve commissioned officer who is retired or to whom retired pay is granted, is entitled to a retired grade equal to the highest temporary grade in the Army in which he served on active duty satisfactorily, as determined by the Secretary of the Army, for not less than six months.

(b) Upon retirement, a member of the Regular Army in the Army Nurse Corps or Army Medical Specialist Corps who was (1) a member of the Army Nurse Corps established by the Act of July 9, 1918, ch. 143 (40 Stat. 879), a female dietitian or physical therapist appointed under the Act of December 22, 1942, ch. 805 (56 Stat. 1072), or (3) a female officer appointed under the Act of June 22, 1944, ch. 272 (58 Stat. 324), is entitled to a retired grade equal to the highest grade or relative rank in which she served on active duty satisfactorily, as determined by the Secretary, after September 8, 1940, and before July 1, 1946. (Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, Pub. L. 85-861, § 1 (60), (100), 72 Stat. 1462, 1489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3963 (a)	10: 1002 (less 34 words before proviso, and less proviso).	June 29, 1948, ch. 708, §§ 203 (a) (less 34 words before proviso, and less proviso), 203 (d) (less last 40 words), 62 Stat. 1085.
3963 (b)	10: 1003 (less last 40 words).	

In subsection (a), the words "is entitled to a retired grade equal to" are substituted for the words "shall be advanced on the applicable officers' retired list to". The words "after * * * and before" are substituted for the words "during the period * * * to". The words "under any provision of law" are omitted as surplusage.

In subsections (a) and (b), the provisions of 10: 1002 and 1003, applicable to members retired before the enactment of this title, are omitted as executed. Members retired after enactment of this title are entitled to the higher retired grade upon retirement, and are not advanced on the retired list to that grade.

In subsection (b), the provisions of 10: 1003 are limited to members of the Army Nurse Corps and Women's Medical Specialist Corps of the Regular Army, since, under section 113 of the Army-Navy Nurses Act of 1947 (10: 166*l*), no further appointments may be made under the Acts of July 9, 1918, ch. 143, 40 Stat. 879, December 22, 1942, ch. 805, 56 Stat. 1073, and June 22, 1944, ch. 272, 58 Stat. 324, and appointments previously made thereunder ceased to exist on October 17, 1947, except as to certain retirement and other rights which are now executed. The words "is entitled to a retired grade equal to the highest grade or relative rank" are substituted for the words "shall be advanced on the retired list to a grade with relative rank equal to the highest grade * * * or to the highest relative or commissioned rank".

REFERENCES IN TEXT

Act of June 22, 1944, ch. 272 (58 Stat. 324), referred to in subsec. (b), is classified to sections 1591—1598 of Appendix to Title 50, War and National Defense.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861, § 1 (100), eliminated words ", after September 8, 1940, and before July 1, 1946" that followed "six months".

Subsec. (b). Pub. L. 85-861, § 1 (60), substituted "Army Medical Specialist Corps" for "Women's Medical Specialist Corps".

RETIREMENT OF CERTAIN LIEUTENANT COLONELS; GRADE; PAY

Section 5a of act July 31, 1935, ch. 422, as added by act Aug. 7, 1947, ch. 512, title V, § 521 (b), 61 Stat. 913, provided that: "Any officer in the permanent grade of lieutenant colonel retired after January 1, 1946, upon his own application, or for physical disability or mandatorily by reason of reaching a prescribed age, or by reason of having completed a prescribed length of service, shall, if at time of retirement he has completed twenty-eight years or more of active Federal commissioned service and has served in any capacity as a member of the military or naval forces of the United States prior to November 12, 1918, unless entitled to be retired in a higher grade under some other provision of law, be retired in the grade of colonel with retired pay computed as otherwise provided by law for a colonel with the same length of service including all service now or hereafter credited for active duty pay purposes."

§ 3964. Higher grade after 30 years of service: Army warrant officers; regular enlisted members.

Each warrant officer of the Army, and each enlisted member of the Regular Army, who is retired before or after this title is enacted is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest temporary grade in which he served on active duty satisfactorily, as determined by the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 231; Sept. 2, 1958, Pub. L. 85-861, § 1 (100), 72 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3964	10: 594 (1st proviso, less last 39 words; and last proviso); 10: 1004 (less 30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (1st proviso, less last 39 words; and last proviso); restated June 29, 1948, ch. 708, § 203 (c) (1st proviso, less last 39 words; and last proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19 (f), 68 Stat. 167. June 29, 1948, ch. 708, § 203 (e) (less 30 words before proviso), 62 Stat. 1086.

The words "when his active service plus his service on the retired list totals 30 years" are substituted for the words "upon the completion of thirty years' [years of] service, to include the sum of his active service and his service on the retired list", in 10: 594 and 1004. The words "under any provision of law", in 10: 594 and 1004; "officer, flight officer, or warrant officer", in 10: 594; and "commissioned, warrant, or enlisted", in 10: 1004; are omitted as surplusage. 10: 594 (last proviso) and 1004 (proviso) are omitted as superseded by section 1372 of this title.

AMENDMENTS

1958—Pub. L. 85-861 eliminated words ", after September 8, 1940 and before July 1, 1946" which followed "Secretary of the Army".

CROSS REFERENCES

Recomputation of retired pay to reflect advancement on retired list, see section 3992 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3965, 3992 of this title.

§ 3965. Restoration to former grade: regular warrant officers and enlisted members.

Each retired warrant officer or enlisted member of the Regular Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant-officer or enlisted status, as the case may be. (Aug. 10, 1956, ch. 1041, 70A Stat. 231.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3965	10: 1006.	June 29, 1948, ch. 708, § 204, 62 Stat. 1086.

The words "hereafter", "rank or", and "shall thereafter be deemed to be enlisted or warrant officer personnel, as appropriate, for all purposes" are omitted as surplusage. The words "three months from June 29, 1948" and "whichever is later" are omitted as executed.

§ 3966. Retired lists.

(a) The Secretary of the Army shall maintain a retired list containing the name of each retired commissioned officer of the Regular Army.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Army, other than of the Regular Army; and

(2) each retired warrant officer or enlisted member of the Regular Army who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Army.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 231; Sept. 2, 1958, Pub. L. 85-861, § 1 (101), 72 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3966 (a)	10: 1001.	June 29, 1948, ch. 708, §§ 201, 301 (a), 62 Stat. 1084, 1087.
3966 (b)	10: 1036.	
3966 (c)	No source.	
3966 (d)	No source.	

In subsections (a), (b), (c) and (d), the word "maintain" is substituted for the word "establish", since the lists have been established and are published annually.

In subsection (a), the words "Effective upon June 29, 1948" are omitted as executed. 10: 1001 (last 12 words of 1st sentence, and last sentence) is omitted as no longer required, since, upon enactment of this title laws referring to the limited or unlimited retired list will be expressly repealed.

Subsection (b) (1) is substituted for the words "all commissioned officers and former commissioned officers of the Army of the United States * * * other than those of the Regular Army * * * heretofore or hereafter granted retirement pay under sections 456, 456a, and 1036a of this title, or any law hereafter enacted to provide retirement pay for commissioned officers other than those of the Regular Army".

In subsection (b) (2), the words "who is advanced to a commissioned grade" are substituted for the words "heretofore or hereafter retired under any provision of law who, by reason of service in temporary commissioned grades in the Army of the United States * * * or in any of the respective components thereof, are entitled to be retired with commissioned rank or grade".

Subsections (c) and (d) are inserted, since sections 3964 and 3965 of this title refer to service on the retired list as a warrant officer or enlisted member.

AMENDMENTS

1958—Pub. L. 85-861 eliminated provisions in subsecs. (a) and (b) which required annual publication in the official Army Register of the retired list.

CROSS REFERENCES

Army Register, see section 122 of this title.

Chapter 371.—COMPUTATION OF RETIRED PAY

Sec.
3991. Computation of retired pay.
3992. Recomputation of retired pay to reflect advancement on retired list.

CROSS REFERENCES

Chapter as applicable to—

Retirement for age, see section 3889 of this title.

Retirement for length of service, see section 3929 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3889, 3929 of this title.

§ 3991. Computation of retired pay.

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
A	3883 3884 3885 3886 3913 3915 3916 3919 3921 3922 3923	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 3888 or 3927(b) whichever is applicable.[4]	Amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based.	Excess over 75 % of pay upon which computation is based.
B	3911 3918 3920 3924	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 1405 of this title.[4]		Excess over 75% of pay upon which computation is based.
C	3914	Monthly basic pay [3] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 3925.[4]	10% of product of columns 1 and 2 for extraordinary heroism in line of duty.[5]	Excess over 75% of pay upon which computation is based.
D	3917	Monthly basic pay [3] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 3925.[4]		Excess over 75% of pay upon which computation is based.

[1] For the purposes of this section, determine member's retired grade as if section 3962 (c) did not apply and, for an officer who has served as Chief of Staff, compute at the highest rates of basic pay applicable to him while he served in that office.

[2] Compute at rates applicable on date of retirement.

[3] Compute at rates applicable on date of retirement, or if the member has served as sergeant major of the Army, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater.

[4] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

[5] The Secretary of the Army's determination as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 232; Aug. 21, 1957, Pub. L. 85–155, title I, § 101 (23), 71 Stat. 380; May 20, 1958, Pub. L. 85–422, §§ 6 (1), (8), 11 (a) (5), 72 Stat. 129, 131; Sept. 2, 1958, Pub. L. 85–861, § 1 (101A), 72 Stat. 1489; Oct. 2, 1963, Pub. L. 88–132, § 5 (h) (2), 77 Stat. 214; Dec. 16, 1967, Pub. L. 90–207, § 3(2), 81 Stat. 653.)

Historical and Revision Notes

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3991 introductory paragraph.	10: 156c (7th and 8th words); 10: 166g (b) (7th word); 10: 316b (b) (7th and 8th words); 10: 941a (a) (3) (proviso, less applicability to retired grade); 10: 941a (e) (1st proviso of clause (1), less applicability to retired grade).	R. S. 1274. Mar. 2, 1907, ch. 2515, § 1 (less 1st 35 words, and less proviso), 34 Stat. 1217. June 3, 1916, ch. 134, § 4c (24 words before proviso); added June 4, 1920, ch. 227, § 4 (last 18 words of 4th sentence of 7th par.); May 12, 1939, ch. 127 (75th through 91st words); Oct. 14, 1940, ch. 858, § 1 (last 26 words); restated June 29, 1945, ch. 197 (21 words before proviso); restated Aug. 7, 1947, ch. 512, § 513 (c) (24 words before proviso), 61 Stat. 902. July 31, 1935, ch. 422, § 5 (less 1st 101 words, and less 3d proviso); restated June 13, 1940, ch. 344, § 3 (less 1st 45 words, and less 2d proviso), 54 Stat. 380; Aug. 7, 1947, ch. 512, §§ 514 (g), 521 (a), 61 Stat. 906, 912; June 29, 1948, ch. 708, § 202 (less 1st 105 words), 62 Stat. 1084. Oct. 6, 1945, ch. 393, § 4 (less 1st sentence); restated Aug. 10, 1946, ch. 952, § 6 (a) (less 1st sentence), 60 Stat. 996. Aug. 10, 1946, ch. 952, § 6 (c), 60 Stat. 996. Apr. 16, 1947, ch. 38, § 108 (a) (less 1st 49 words, and less 1st 84 words of last proviso), 61 Stat. 44. Apr. 16, 1947, ch. 38, § 108 (b) (less 1st 5, and 8th through 76th, words; less 20 words before proviso; and less proviso); restated May 16, 1950, ch. 186, § 3 (d) (b) (less 1st 5, and 8th through 76th, words; less 20 words before. proviso; and less proviso), 64 Stat. 161.
3991 (A)	10: 166g (a) (less 1st 49 words; less 1st proviso; and less 1st 84 words of last proviso).	
3991 (B)	10: 941a (a) (3) (less 31st through 42d words, and less proviso); 10: 941a (e) (clause (1), less 1st 25, and 59th through 113th, words; and less 1st proviso).	
3991 (C)	10: 971; 10: 971b (less 1st 100 words, and less 1st and 3d provisos).	
3991 (D)	10: 948 (less 1st sentence, and less 1st and last provisos of last sentence).	
3991 (E)	10: 980.	
3991 footnote 1.	10: 506b (d) (1st proviso); 10: 1079a (b) (proviso).	
3991 footnote 2.	10: 156c (less 1st 43, and last 13, words); 10: 166g (b) (less 1st 76 words, less 20 words before proviso, and less proviso); 10: 316b (b) (less 1st 54, and last 13, words); 10: 1002 (34 words before proviso, and proviso); 10: 1003 (last 40 words); 10: 1026 (24 words before proviso).	
3991 footnote 3.	No source.	
3991 footnote 4.	10: 166g (a) (1st proviso); 10: 941a (e) (94th through 113th words of clause (1); 10: 948 (last proviso of last sentence); 10: 971b (1st proviso); 37: 272 (d) (1st proviso).	

Historical and Revision Notes—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3991 footnote 5.	10: 948 (1st proviso of last sentence).	Aug. 4, 1947, ch. 459, § 102 (c) (less 1st 6, 9th through 43d, and last 13, words), 61 Stat. 735. Aug. 7, 1947, ch. 512, §§ 504 (d) (1st proviso), 514 (a) (3) (less 31st through 42d words; and less proviso, less applicability to retired grade), 514 (e) (clause (1), less 1st 25, and 59th through 93d, words; and less 1st proviso, as applicable to retired grade), 520 (b) (proviso), 61 Stat. 888, 902, 905, 912. June 12, 1948, ch. 449, § 103 (b) (less 1st 6, 9th through 54th, and last 13, words), 62 Stat. 357. June 29, 1948, ch. 708, §§ 203 (a) (34 words before proviso, and proviso), 203 (d) (last 40 words), 62 Stat. 1085.

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula B, the words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "his retired grade" are substituted for the words "permanent grade held at time of retirement" to reflect the right to higher retired grade when qualified under other provisions of law. 10: 941a (e) (last proviso of clause (1)) is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U. S. C. 233), the

active duty pay of all members of the Army is based upon years of service.

In formula C, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words "basic pay" are substituted for the words "active duty base and longevity pay", and the words "in determining his basic pay" are substituted for the words "for longevity pay purposes", to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "Monthly basic pay of member's retired grade" are substituted for the words "the rank upon which they are retired", in 10: 971, and "rank with which retired", in 10: 971b, to reflect their right to advancement on the retired list. 10: 971 now applies only when the retiring officer has 30 or more years of service which may be credited in computing his retired pay. 10: 971b (2d proviso) is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U. S. C. 233), the pay of all members is based upon cumulative years of service. 10: 971b (4th proviso) is omitted as executed. 10: 971b (last proviso) is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the act of June 29, 1948, ch. 708, 62 Stat. 1084. Sections 3918, 3920, and 3924 are included under this formula, since it achieves the same result as is reached on a basis of 30 years multiplied by 2½ percent, and simplifies the table.

In formulas D and E, the words "credited under section 3925" are substituted for the words "active Federal service", since that revised section makes explicit the service covered. The act of August 10, 1946, ch. 952, § 6 (c), 60 Stat. 996, is not contained in 10: 948. It is also omitted from the revised section as executed. 10: 980 now applies only when the retiring enlisted member has at least 30 years of service which may be credited in computing his retired pay. However, as noted above, 10: 980 is the only provision of law applicable to cases in which the retiring member has at least 30 years of service. The act of June 16, 1942, ch. 413, § 19 (63d through 75th words of 2d par.), 56 Stat. 369, repealed so much of the act of March 2, 1907, ch. 2513, 34 Stat. 1217, as provided allowances for enlisted men on the retired list. The repeal of section 19 of the act of June 16, 1942, by section 531 (b) (34) of the Career Compensation Act of 1949, 63 Stat. 839, did not revive that portion of the act of March 2, 1907, which had been repealed by the act of June 16, 1942. Accordingly, the act of March 2, 1907, as thus modified by the act of June 16, 1942, is used as the basis for formula E.

Footnote 2 reflects the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. Except in cases covered by formula C the pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were themselves enacted after the provisions authorizing higher retired grade. The provisos of 10:1002 and 1005 are omitted as surplusage, since no formula for the computation of retired pay includes inactive service on the retired list as a credit.

The words "at rates applicable on date of retirement and adjust to reflect later changes in permanent rates", in footnote 2; and all of footnote 4; are based on the source statutes incorporated in the formulas to which footnotes 2 and 4 apply.

In footnote 4, the words "and disregard a part of a year that is less than six months" are made applicable to formulas A—E although this part of the rule is expressed only as to formula B, in 10: 941a (e) (1). The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H. R. 5007, 81st Congress, first session, p. 313, July 6, 1949) indicates that the provisions, upon which formulas A and C—E are based, should be construed to require that a part of a year that is less than six months be disregarded.

AMENDMENTS

1967—Pub. L. 90–207 inserted ", or if the member has served as sergeant major of the Army, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater" following "retirement" in footnote 3 of the table.

1963—Pub. L. 88–132 substituted in column 1 of Formula A in the table "Monthly basic pay of member's retired grade" for "Monthly basic pay to which member would be entitled if he were on active duty in his retired grade" and eliminated from footnote 2 to such table "and adjust to reflect later changes in applicable permanent rates. However, if member's retired grade is determined under section 3963(a) or 3963(b), or if member has served 4 years as Chief of the Medical Service Corps, use pay to which member would be entitled if he were on active duty in his retired grade" following "date of retirement."

1958—Pub. L. 85–861 substituted "section 3962 (c)" for "section 3962 (d)" in footnote 1, and "3963 (a)" for "3962 (c), 3963 (a)" in footnote 2.

Formula B. Pub. L. 85–422, § 11 (a) (5), substituted "credited to him under section 1405 of this title" for "credited to him in determining basic pay" in Column 2.

Formula C. Pub. L. 85–422, § 6 (8), substituted "Monthly basic pay to which member was entitled on day before he retired" for "Monthly basic pay to which member was entitled on date when he applied for retirement" in Column 1.

Formula D. Pub. L. 85–422, § 6 (8), substituted "monthly basic pay to which member was entitled on day before he retired" for "Monthly basic pay of member's retired grade" in Column 1.

Footnote 1. Pub. L. 85–422, § 6 (1), eliminated provisions which related to inapplicability of section 3962 (a), and inserted provisions permitting computation at the highest rates of basic pay applicable to an officer who has served as Chief of Staff while he served in that office.

1957—Pub. L. 85–155 redesignated formulas "B"—"E" of the table as formulas "A"—"D". Former formula "A", which related to computation of retirement pay for persons retired under former sections 3881, 3882, and 3912 of this title, was repealed by Pub. L. 85–155.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

COMPUTATION OF RETIRED PAY FOR CERTAIN ENLISTED MEMBERS RETIRED PRIOR TO JUNE 1, 1958

Pub. L. 87–537, July 18, 1962, 76 Stat. 168, provided: "That members retired prior to June 1, 1958, pursuant to section 4 of the Armed Forces Voluntary Recruitment Act of 1945, as amended by section 6(a) of the Act of August 10, 1946 (60 Stat. 995), are authorized to include active service performed to the date of retirement as creditable service in the computation of basic pay upon which retired pay is based."

APPLICATION OF 1958 AMENDMENT TO RETIRED PERSONS

Section 6, last paragraph, of Pub. L. 85–422, provided that: "The amendments made by clauses (1)—(3), (6), (7), (8), and (9) of this section [to Formulas 1 and 2 and footnote 4 of section 1401, Formulas C and D and footnote 1 of section 3991, sections 5083, 5201 (c) and 6326 (c) (2), and Formulas C and D and footnote 1 of section 8991 of this title] do not apply to any person who is retired, or to whom retired pay (including temporary disability re-

tired pay) is granted, before the effective date of this Act [see effective date note under this section]."

RECOMPUTATION OF RETIRED PAY OF GENERALS AND LIEUTENANT GENERALS

Officers entitled to retired pay on May 31, 1958, who served on active duty before that day in the grade of general or lieutenant general for a period of at least 180 days, authorized to recompute retired pay, see section 7 (b), (c) of Pub. L. 85-422, May 20, 1958, 72 Stat. 130.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1405, 3925 of this title.

§ 3992. Recomputation of retired pay to reflect advancement on retired list.

A member of the Army who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay as follows:

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 3925 of this title.[2]		Excess over 75% pay upon which computation is based.

[1] Compute at rates applicable on date of retirement.
[2] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

(Aug. 10, 1956, ch. 1041, 70A Stat. 233.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
3992	10: 594 (last 39 words of 1st proviso); 10: 1004 (30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (last 39 words of 1st proviso); restated June 29, 1948, ch. 708, § 203 (c) (last 39 words of 1st proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19 (f), 68 Stat. 167. June 29, 1948, ch. 708, § 203 (e) (30 words before proviso), 62 Stat. 1086.

The words "basic pay * * * as the case may be" are inserted to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "at the rate prescribed by law for his length of service", in 10: 1004, are omitted as covered by the words "base and longevity pay". The words "base and longevity pay" are retained to cover the cases of members retired before the enactment of the Career Compensation Act of 1949, and advanced on the retired list after the enactment of that act. The words "and disregard a part of a year that is less than six months" are inserted to conform to footnote 4 of section 3991 of this title.

Chapter 373.—CIVILIAN EMPLOYEES

Sec.
4022. Contract surgeons.
4024. Expert accountant for Inspector General.
4025. Production of supplies and munitions: hours and pay of laborers and mechanics.

AMENDMENTS

1962—Pub. L. 87-651, title I, § 116(2), Sept. 7, 1962, 76 Stat. 513, eliminated item 4023.

1958—Pub. L. 85-861, § 1 (102), Sept. 2, 1958, 72 Stat. 1489, eliminated item 4021.

§ 4021. Repealed. Pub. L. 85-861, § 36B (11), Sept. 2, 1958, 72 Stat. 1570.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to appointments in the professional and scientific service, and is now covered by section 1581 of this title.

§ 4022. Contract surgeons.

(a) In an emergency the Surgeon General, with the approval of the Secretary of the Army, may employ as many contract surgeons as may be necessary.

(b) When a contract surgeon is in charge of an Army hospital, he has the same authority as a commissioned officer of the Medical Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 233.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4022 (a) 4022 (b)	10: 107. 10: 108.	Feb. 2, 1901, ch. 192, § 18 (4th proviso), 31 Stat. 752. Apr. 23, 1904, ch. 1485 (2d proviso under "Miscellaneous"), 33 Stat. 266.

In subsection (a), the word "employ" is substituted for the word "appoint", since the filling of the positions involved is not appointment to an office in the constitutional sense.

CROSS REFERENCES

Assignment of pay by contract surgeons, see section 701 of Title 37, Pay and Allowances of the Uniformed Services.

§ 4023. Repealed. Pub. L. 87-651, title I, § 116(1), Sept. 7, 1962, 76 Stat. 513.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to employment of civilians in service club and library services.

§ 4024. Expert accountant for Inspector General.

The Secretary of the Army shall appoint an expert accountant to perform duties under the Inspector General. (Aug. 10, 1956, ch. 1041, 70A Stat. 234.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4024	10: 52.	Feb. 24, 1891, ch. 284 (7th clause under "Miscellaneous"), 26 Stat. 773.

The words "in case of vacancy" are omitted as surplusage.

§ 4025. Production of supplies and munitions: hours and pay of laborers and mechanics.

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Army producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Army these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40. (Aug. 10, 1956, ch. 1014, 70A Stat. 234.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4025	5: 189a.	July 2, 1940, ch. 508, § 4 (b), 54 Stat. 714.

The words "Notwithstanding the provisions of any other law" are omitted as surplusage. The word "producing" is substituted for the words "who are engaged in the manufacture or production". The last sentence is substituted for 5: 189a (last 34 words).

CROSS REFERENCES

Hours of work of Government employees, see section 6101 et seq. of Title 5, Government Organization and Employees.

PART III.—TRAINING

Chap.		Sec.
401.	Training Generally	4301
403.	United States Military Academy	4331
407.	Schools and Camps	4411

AMENDMENTS

1964—Pub. L. 88-647, title III, § 301(11), Oct. 13, 1964, 78 Stat. 1072, eliminated chapter 405.

Chapter 401.—TRAINING GENERALLY

Sec.
4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.
4302. Enlisted members of Army: schools.
4306. Service schools: leaves of absence for instructors.
4307. Director of civilian marksmanship: detail.
4308. Civilian rifle ranges: establishment; instruction.
4309. Rifle ranges: recommendations to Congress; regulations.
4310. Rifle instruction: detail of members of Army.
4311. Rifle instruction: issue of rifles and ammunition.
4312. National rifle and pistol matches: small-arms firing school.
4313. National rifle matches and small-arms school: expenses.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 925.

§ 4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.

(a) The Secretary of the Army may detail members of the Army as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Army on the active list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail but not longer than four years. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Army may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Army National Guard of the United States, without the approval of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia of whose Army National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Army under subsection (a) during one enlistment may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Army, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Army, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 234.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4301 (a)	10: 535 (1st 75 words)	June 3, 1916, ch. 134, § 127a (13th par.); added June 4, 1920, ch. 227, subch. I, § 51 (13th par.); restated June 8, 1926, ch. 495; May 13, 1941, ch. 113; June 30, 1941, ch. 262 (4th proviso under "Finance Department"); restated June 19, 1948, ch. 501, § 1, 62 Stat. 477. June 19, 1948, ch. 501, § 2, 62 Stat. 478.
4301 (b)	10: 535 (less 1st 75 words, and less provisos).	
4301 (c)	10: 535 (1st proviso).	
4301 (d)	10: 535 (words of 2d proviso before semicolon).	
4301 (e)	10: 535 (words of 2d proviso after semicolon).	
4301 (f)	10: 535 (last proviso).	
4301 (g)	10: 535a.	

In subsection (a), the words "members of the Army" are substituted for the words "personnel of the Army of the United States, without regard to component".

In subsection (b), the words "is detailed under subsection (a)" are substituted for the words "receives such instruction". The words "as long as the detail" are substituted for the words "equal to the duration of his period of instruction". The words "However, if the detail is for" are substituted for the words "except that where the duration of such training is". The words "other than one of the Regular Army on the active list" are inserted, since members of the Regular Army on the active list are on continuous active duty. The word "additional" is inserted, since the detail under this section is active duty. The words "the officer may be ordered to that additional duty" are substituted for the words "such subsequent active duty may * * * the officer concerned".

In subsection (c), the words "of whose Army National Guard he is a member" are substituted for the words "whichever is concerned".

In subsection (d), the words "as a condition of a detail under subsection (a)" are substituted for the words "prior to his detail pursuant to the provisions of this paragraph". The words "accept a discharge" are substituted for the words "be discharged".

In subsection (e), the words "during one enlistment" are inserted for clarity.

In subsection (f), the last sentence is substituted for 10: 535 (words within parentheses of last proviso).

In subsection (g), the words "under this section" are substituted for 10: 535a (9th through 41st words).

DETAIL OF PERSONNEL OF ALL COMPONENTS OF ARMY DURING WORLD WAR II

Act Feb. 6, 1942, ch. 40, 56 Stat. 50, as amended by act Mar. 6, 1943, ch. 13, 57 Stat. 14, provided for the detail of all components of the Army during World War II.

§ 4302. Enlisted members of Army: schools.

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Army with the approval of the President, enlisted members of the Army shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Army officers in this instruction.

(b) Schools for the instruction of enlisted members of the Army in the common branches of education, including United States history shall be maintained at all posts at which members of the Army are stationed. The Secretary may detail members of the Army to carry out this subsection. The commander of each post where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4302 (a)	10: 1176.	June 3, 1916, ch. 134, § 27 (last par.), 39 Stat. 186.
4302 (b)	10: 1172.	R. S. 1231.

In subsection (a), the first 12 words are substituted for 10: 1176 (1st 5, and last 18, words). The words "and the Secretary of the Army shall have the power at all times to suspend, increase, or decrease the amount of such instruction offered" are omitted as surplusage.

In subsection (b), the words "garrisons, and permanent camps" are omitted as covered by the word "posts". The word "including" is substituted for the words "and especially in". The word "members" is substituted for the words "officers and enlisted men". The words "as may be necessary", "It * * * be the duty", and "or garrison" are omitted as surplusage.

DELEGATION OF FUNCTIONS

Function of the President under subsec. (a) of this section delegated to the Secretary of Defense, see section 1(6) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Expenditures for furniture, text-books, etc., of post schools, see section 4536 of this title.

§ 4306. Service schools: leaves of absence for instructors.

The officer in charge of an Army service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without reduction of pay or allowances, to any officer on duty exclusively as an instructor at the school. (Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4306	10: 843.	Mar. 23, 1910, ch. 115 (proviso under "United States Service Schools"), 36 Stat. 244.

The words "The provisions of section 1144 of this title, authorizing leaves of absence to certain officers of the Military Academy * * * are hereby, extended to include" are omitted as surplusage.

§ 4307. Director of civilian marksmanship: detail.

The President may detail a commissioned officer of the Army or of the Marine Corps as director of civilian marksmanship, to serve under the direction of the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4307	32: 182.	Aug. 29, 1916, ch. 418 (11th proviso under "National Guard"), 39 Stat. 648.

The word "detail" is substituted for the word "appoint", since the filling of the office is not appointment to an office in the constitutional sense. The words "in his discretion" are omitted as surplusage. The word "commissioned" is inserted, since the source statute historically applied only to commissioned officers.

§ 4308. Civilian rifle ranges: establishment; instruction.

(a) The Secretary of the Army, under regulations approved by him upon the recommendation of the National Board for the Promotion of Rifle Practice, shall provide for—

(1) the construction, equipment, maintenance, and operation of indoor and outdoor rifle ranges and their accessories and appliances;

(2) the instruction of able-bodied citizens of the United States in marksmanship, and the employment of necessary instructors for that purpose;

(3) the promotion of practice in the use of rifled arms, the maintenance and management of matches or competitions in the use of those arms, and the issue of the arms, ammunition, targets, and other supplies and appliances, necessary for those purposes;

(4) the award to competitors of trophies, prizes, badges, and other insignia;

(5) the sale to members of the National Rifle Association, at cost, and the issue to clubs organized for practice with rifled arms, under the direction of the National Board for the Promotion of Rifle Practice, of the arms, ammunition, targets, and other supplies and appliances necessary for target practice;

(6) the maintenance of the National Board for the Promotion of Rifle Practice, including provision for its necessary expenses and those of its members;

(7) the procurement of necessary supplies, appliances, trophies, prizes, badges and other insignia, clerical and other services, and labor; and

(8) the transportation of employees, instructors, and civilians to give or receive instruction or to assist or engage in practice in the use of rifled arms, and the transportation and subsistence, or an allowance instead of subsistence, of members of teams authorized by the Secretary to participate in matches or competitions in the use of rifled arms.

(b) There is authorized to be appropriated annually the sum of $7,500 for the incidental expenses

of the National Board for the Promotion of Rifle Practice, including books, pamphlets, badges, trophies, prizes, and medals. (Aug. 10, 1956, ch. 1041, 70A Stat. 236.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4308 (a)	32: 181.	June 7, 1924, ch. 291, Title I (2d par. under "Ordnance Equipment for Rifle Ranges for Civilian Instruction"), 43 Stat. 510; Aug. 7, 1946, ch. 770 (par. 56), 60 Stat. 870.
4308 (b)	32: 181c.	May 28, 1928, ch. 816, § 3, 45 Stat. 786.

In subsection (a), the words "within the limits of appropriations made from time to time by Congress" and "reasonable rules and" are omitted as surplusage. The words "in connection therewith", "to the Government", and "materials" are omitted as surplusage.

In subsection (a) (8), the word "allowance" is substituted for the word "commutations" to conform to the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

TRAVEL EXPENSES OF CIVILIAN NATIONAL BOARD MEMBERS

Pub. L. 91–668, title III, § 301, Jan. 11, 1971, 84 Stat. 2025, provided in part: "That travel expenses of civilian members of the National Board shall be paid in accordance with the Standardized Government Travel Regulations, as amended."

Similar provisions were contained in the following prior acts:

Dec. 29, 1969, Pub. L. 91–171, title III, § 301, 83 Stat. 475.
Sept. 29, 1967, Pub. L. 90–96, title II, § 201, 81 Stat. 237.
Oct. 15, 1966, Pub. L. 89–687, title II, § 201, 80 Stat. 985.
Sept. 29, 1965, Pub. L. 89–213, title II, § 201 79 Stat. 868.
Aug. 19, 1964, Pub. L. 88–446, title II, § 201, 78 Stat. 470.
Oct. 17, 1963, Pub. L. 88–149, title II, § 201, 77 Stat. 259.
Aug. 9, 1962, Pub. L. 87–577, title II, § 201, 76 Stat. 323.
Aug. 17, 1961, Pub. L. 87–144, title II, § 201, 75 Stat. 370.
July 7, 1960, Pub. L. 86–601, title II, § 201, 74 Stat. 344.
Aug. 18, 1959, Pub. L. 86–166, title II, § 201, 73 Stat. 372.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, 72 Stat. 716.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, 71 Stat. 315.
July 2, 1956, ch. 488, title, III, § 301, 70 Stat. 458.
July 13, 1955, ch. 358, title III, § 301, 69 Stat. 305.
June 30, 1954, ch. 432, title IV, § 401, 68 Stat. 341.
Aug. 1, 1953, ch. 305, title III, § 301, 67 Stat. 341.
July 10, 1952, ch. 630, title III, § 301, 66 Stat. 523.
Oct. 18, 1951, ch. 512, title III, § 301, 65 Stat. 426.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 925.

§ 4309. Rifle ranges: recommendations to Congress; regulations.

(a) The Secretary of the Army shall submit annually to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges under a plan to provide facilities for rifle practice in all sections of the country.

(b) All rifle ranges established under subsection (a) and all rifle ranges already constructed, in whole or in part with funds provided by the United States, may be used by members of the armed forces and by all able-bodied males capable of bearing arms, under regulations prescribed by the authorities controlling those ranges and approved by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 236.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4309 (a)	32: 186 (1st sentence).	June 3, 1916, ch. 134, § 113 (1st 2 sentences), 39 Stat. 211.
4309 (b)	32: 186 (less 1st sentence).	

In subsection (a), the words "such a comprehensive * * * as will ultimately result in" are omitted as surplusage.

In subsection (b), the words "United States" are substituted for the word "Congress". The words "members of the armed forces" are substituted for the words "those in any branch of the military or naval service". The words "of the United States" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4311 of this title.

§ 4310. Rifle instruction: detail of members of Army.

(a) The President may detail regular or reserve officers and noncommissioned officers of the Army to duty as instructors at rifle ranges for training civilians in the use of military arms.

(b) The Secretary of the Army may detail enlisted members of the Army as temporary instructors in the use of the rifle to organized rifle clubs requesting that instruction. (Aug. 10, 1956, ch. 1041, 70A Stat. 236.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4310 (a)	32: 183.	June 3, 1916, ch. 134, § 113 (3d sentence), 39 Stat. 211.
4310 (b)	32: 184.	May 12, 1917, ch. 12 (5th proviso under "Ordnance Department"), 40 Stat. 64.

In subsection (a), the words "under such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The word "civilians" is substituted for the word "citizenry" to conform to related sections. The word "capable" is omitted as surplusage. The words "regular or reserve" are substituted for the words "of the Regular", since, under section 682 of this title, Reserves may be detailed to duties authorized for Regulars.

CROSS REFERENCES

National Guard detail for rifle instruction of civilians, see section 316 of Title 32, National Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4311 of this title.

§ 4311. Rifle instruction: issue of rifles and ammunition.

The Secretary of the Army may provide for the issue of a reasonable number of standard military rifles, and such quantities of ammunition as are available, for use in conducting rifle practice at rifle ranges established under section 4309 of this title at which instructors have been detailed under section 4310 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 237.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4311	Uncodified.	June 3, 1916, ch. 134, § 113 (less 1st 3 sentences), 39 Stat. 211.

The word "may" is substituted for the words "shall be authorized to". The word "detailed" is substituted for the word "assigned" to conform to section 4310 of this title. Although the last sentence of section 113 of the Act of June 3, 1916, ch. 134, 39 Stat. 211, has not previously been codified, it is still in effect (see an opinion of the Judge Advocate General of the Army (JAGA 1954/7321, September 14, 1954)).

§ 4312. National rifle and pistol matches: small-arms firing school.

(a) An annual competition called the "National Matches" and consisting of rifle and pistol matches for a national trophy, medals, and other prizes shall be held as prescribed by the Secretary of the Army.

(b) The National Matches are open to members of the armed forces, National Guard, Reserve Officers' Training Corps, Air Force Reserve Officers' Training Corps, Citizens' Military Training Camps, Citizens' Air Training Camps, and rifle clubs, and to civilians.

(c) A small-arms firing school shall be held in connection with the National Matches.

(d) Competitions for which trophies and medals are provided by the National Rifle Association of America shall be held in connection with the National Matches. (Aug. 10, 1956, ch. 1041, 70A Stat. 237.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4312 (a)	32: 181a (less 29th through 34th words); 32: 181b (11th through 29th words).	Feb. 14, 1927, ch. 130; restated May 28, 1928, ch. 816, § 1, 45 Stat. 786.
4312 (b)	32: 181b (1st 10 and, 30th through 69th, words).	May 28, 1928, ch. 816, § 2 (1st 93 words), 45 Stat. 786; April 11, 1936, ch. 207, 49 Stat. 1202.
4312 (c)	32: 181a (29th through 34th words); 32: 181b (70th through 79th words).	
4312 (d)	32: 181b (80th through 99th words).	

In subsection (a), the word "as" is substituted for the words "under such regulations as may be", since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "for the purpose of competing" and "annually" are omitted as surplusage.

In subsection (b), the words "contemplated in section 181a of this title" are omitted as surplusage. The words "Organized Militia" are omitted as covered by the words "National Guard". The words "armed forces" are substituted for the words "Army, Navy, Marine Corps, Coast Guard".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4313 of this title.

§ 4313. National rifle matches and small-arms school: expenses.

(a) Competitors at the National Matches under section 4312 of this title may draw not more than $1.50 a day as a subsistence allowance. If meals are furnished, a sum not to exceed $1.50 per man per day may be spent for that purpose while the contest is in progress.

(b) A travel allowance of five cents a mile may be paid to a civilian competitor instead of traveling expenses and subsistence while traveling, and the allowance for the return trip may be paid in advance. (Aug. 10, 1956, ch. 1041, 70A Stat. 237.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4313 (a)	32: 181b (less 1st 99 words and less last proviso).	May 28, 1928, ch. 816, § 2 (less 1st 93 words), 45 Stat. 786.
4313 (b)	32: 181b (last proviso).	

In subsection (a), the appropriation authorization, in 32: 181b, is omitted as surplusage.

In subsections (a) and (b), the words "subsistence allowance" are substituted for the words "commutation of rations" to conform to the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

In subsection (b), the word "allowance" is substituted for the word "pay" to conform to the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "of the performance of the travel" are omitted as surplusage.

Chapter 403.—UNITED STATES MILITARY ACADEMY

Sec.
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AMENDMENTS

1968—Pub. L. 90-623, § 2(7), Oct. 22, 1968, 82 Stat. 1314, struck out item 4339 "Organist and choirmaster; civilian instructors in departments of foreign languages and tactics: quarters, fuel, and light."

1958—Pub. L. 85-600, § 1(12), Aug. 6, 1958, 72 Stat. 523, included the registrar in item 4336.

§ 4331. Superintendent; faculty; adjutant; chaplain.

(a) There shall be at the United States Military Academy, at West Point, New York, in this chapter called the "Academy", the following—

(1) a Superintendent;

(2) a Dean of the Academic Board, who is a permanent professor;

(3) a Commandant of Cadets;

(4) two permanent professors of each of the following subjects—

(A) Electricity;
(B) English;
(C) Foreign Languages;
(D) Mathematics;
(E) Mechanics;
(F) Military Art and Engineering;
(G) Military Topography and Graphics;
(H) Physics and Chemistry; and
(I) Social Sciences;

(5) one permanent professor of each of the following subjects—

(A) Law;
(B) Ordnance; and
(C) Physical education;

(6) a professor of Military Hygiene;

(7) an adjutant;

(8) a registrar;

(9) a chaplain; and

(10) a director of music.

(b) Upon becoming the senior commissioned officer of the Medical Corps on duty at the Academy, an officer thereby becomes the professor of Military Hygiene. (Aug. 10, 1956, ch. 1041, 70A Stat. 238; Aug. 6, 1958, Pub. L. 85-600, § 1 (8), 72 Stat. 522; Aug. 21, 1958, Pub. L. 85-723, 72 Stat. 711.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4331 (a)	10: 1061; 10: 1071; 10: 1077; 10: 1077a; 10: 1078a; 10: 1087 (less proviso); 10: 1088; 10: 1089 (1st 20 words).	R. S. 1309; Feb. 18, 1896, ch. 22 (less proviso), 29 Stat. 8. June 23, 1879, ch. 35, § 4 (less last 30 words), 21 Stat. 34, June 8, 1926, ch. 492 (1st par., less 1st proviso), 44 Stat. 703. Apr. 19, 1910, ch. 174 (1st and 2d provisos under "Permanent Establishment"), 36 Stat. 312; June 8, 1926, ch. 492 (1st proviso of 1st par.), 44 Stat. 703. Apr. 19, 1910, ch. 174 (8th par. under "Permanent Establishment"), 36 Stat. 312. May 26, 1934, ch. 353, 48 Stat. 806. June 26, 1946, ch. 495, §§ 1 (less proviso), 2, 3 (1st 20 words), 60 Stat. 312.
4331 (b)	10: 1073.	

In subsection (a), reference to the senior instructors of artillery, cavalry, and infantry, and the master of the sword, in 10: 1061, are omitted as obsolete. The duties of the former master of the sword are presently performed by the director of physical education, detailed to that duty by the superintendent of the Academy from officers assigned to duty at that installation by the Secretary under section 3012 (e) of this title. The words "and one assistant professor", in 10: 1061, are omitted as superseded by section 4333 of this title. The words "shall be constituted" are omitted as surplusage. The Act of June 8, 1926, ch. 492 (last proviso of 1st par.), 44 Stat. 703, is not contained in 10: 1077a. It is also omitted from the revised section as executed.

The word "permanent" is inserted in subsection (a) (4), pursuant to 10: 1087, which, by adding one permanent professor for each of the subjects of instruction named in clauses (A)—(I), inclusive, implies that there already was a permanent professor for each of those subjects. The subjects of instruction set forth in clauses (A)—(I), inclusive, are those for which a professor was authorized before the enactment of the source statute for 10: 1087. The names of the subjects to be taught at the Academy are changed, where necessary, to conform to the names of those presently taught, pursuant to regulations and orders issued under the general authority for the change of titles of departments of instruction, contained in section 4332 of this title. These changes, published in general orders by authority of the Secretary of War and the Secretary of the Army, are as follows:

In clause (4) (A), the word "Electricity" is substituted for the words "chemistry, mineralogy, and geology", in 10: 1061, pursuant to General Orders 38, Hq USMA, 29 June 1946.

In clause (4) (C), the word "Foreign" is substituted for the word "modern", in 10: 1071, pursuant to General Orders No. 6, Hq USMA, 14 February 1949. The Act of June 23, 1879, ch. 35, § 4 (1st 47 words) is not contained in 10: 1071. It is also omitted from the revised section as executed.

In clause (4) (E), the word "Mechanics" is substituted for the words "natural and experimental philosophy", in 10: 1061, pursuant to General Orders No. 3, Hq USMA, 11 February 1943.

In clause (4) (F), the words "Military Art and Engineering" are substituted for the words "civil and military engineering", in 10: 1061, pursuant to General Orders No. 3, Hq USMA, 11 February 1943.

In clause (4) (G), the words "Military Topography and Graphics" are substituted for the word "drawing", in 10: 1061, pursuant to General Orders No. 3, Hq USMA, 11 February 1943.

In clause (4) (H), the words "Physics and Chemistry" are substituted for the word "physics", in 10: 1078a, pursuant to General Orders No. 38, Hq USMA, 29 June 1946.

In clause (4) (I), the words "Social Sciences" are substituted for the words "economics, government, and history", in 10: 1077a, pursuant to General Orders No. 13, Hq USMA, 22 April 1947.

In clause (4) (B) and (I), the provisions of 10: 1077 and 1077a relating to the appointment of a civilian in the department of English, and a professor of economics, government, and history, by the President, by and with the advice and consent of the Senate, are omitted as executed. The provisions of 10: 1077a relating to the establishment of a Department of Economics, Government, and History are omitted as executed.

Subsection (a) (8) is inserted to complete the listing of the appointed officials of the Academy.

In subsection (a) (9), the word "director" is substituted for the word "teacher" to conform to section 4338 of this title.

AMENDMENTS

1958—Subsec. (a) (5). Pub. L. 85-723 authorized a permanent professor of physical education.

Subsec. (a) (8). Pub. L. 85-600, § 1(8) (B), added subsec. (a) (8) and redesignated former subsec. (a) (8) as (a) (9).

Subsecs. (a) (9) and (a) (10). Pub. L. 85-600, § 1(8) (A), redesignated former subsecs. (a) (8) and (a) (9) as (a) (9) and (a) (10).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3204 of this title.

§ 4332. Departments and professors: titles.

(a) The Secretary of the Army may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(b) Upon becoming the senior professor in a department, a permanent professor thereby becomes the head of that department. (Aug. 10, 1956, ch. 1041, 70A Stat. 238.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4332 (a)	10: 1061a.	Dec. 14, 1942, ch. 729, 56 Stat. 1049.
4332 (b)	10: 1087 (proviso).	June 26, 1946, ch. 495, § 1 (proviso), 60 Stat. 312.

In subsection (a), the words "now or after December 14, 1942, established at" are omitted as surplusage. The word "precedence" is omitted as covered by the word "rank". The words "pay, allowances" are omitted, since they are determined by the grade held. The words "from time to time", "shall be known", and "operate in any case or on any account" are omitted as surplusage.

§ 4333. Superintendent; faculty: appointment and detail.

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from any branch of the Army. Other officers on duty at the Academy, except the permanent professors, may be detailed from any branch of the Army.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The registrar of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(d) Any officer of the Regular Army in a regular or temporary grade above captain may be detailed to perform the duties of registrar without being appointed as registrar. Such a detail does not affect his position on the applicable promotion list.

(e) No graduate of the Academy may be appointed or detailed to serve at the Academy as a professor or instructor, or as an assistant to a professor or instructor, within two years after his graduation. (Aug. 10, 1956, ch. 1041, 70A Stat. 238; Aug. 6, 1958, Pub. L. 85–600, § 1 (9), 72 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4333 (a)	10: 1062; 10: 1063 (1st sentence, and 1st 26 words of last sentence).	R. S. 1313. R. S. 1314 (words before semicolon).
4333 (b)	10: 1063 (last sentence, less 1st 26 words).	July 26, 1894, ch. 167 (words after semicolon in 7th clause), 28 Stat. 151.
4333 (c)	10: 1064.	

In subsection (a), the word "detailed" is substituted for the word "selected", in 10: 1062, and for the word "appointed", in 10: 1063, since historically the offices of superintendent and commandant of cadets have been filled by detail. The words "assistant professors, acting assistant professors, and the adjutant", in 10: 1063, are omitted as covered by the word "officers", in 10: 1062. The words "except the permanent professors" are inserted to conform to 10: 1062.

In subsection (b), the words "by and with the advice and consent of the Senate" are inserted, since many of the statutes establishing particular permanent professorships from time to time have so provided, and historically it has been the uniform practice to make these appointments in this manner. 10: 1063 (last 14 words) is omitted as obsolete and as covered by section 4349 (b) of this title.

In subsection (c), the word "appointed" is substituted for the word "assigned".

AMENDMENTS

1958—Subsecs. (c) and (d). Pub. L. 85–600, § 1 (9) (B), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

Subsec. (e). Pub. L. 85–600, § 1 (9) (A), redesignated former subsec. (c) as (e).

DETAIL OF RETIRED OFFICER AS LIBRARIAN

Pub. L. 85–724, title III, § 301, Aug. 22, 1958, 72 Stat. 714, provided in part: "That the duties of the librarian at the United States Military Academy may be performed by a retired officer detailed on active duty."

Similar provisions were contained in the following prior acts:

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, 71 Stat. 313.
July 2, 1956, ch. 488, title III, § 301, 70 Stat. 456.
July 13, 1955, ch. 358, title III, § 301, 69 Stat. 303.
June 30, 1954, ch. 432, title IV, § 401, 68 Stat. 339.
Aug. 1, 1953, ch. 305, title III, § 301, 67 Stat. 338.
July 10, 1952, ch. 630, title III, § 301, 66 Stat. 520.
Oct. 18, 1951, ch. 512, title III, § 301, 65 Stat. 427.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, 64 Stat. 733.
Oct. 29, 1949, ch. 787, title III, § 301, 63 Stat. 998.
June 24, 1948, ch. 632, 62 Stat. 660.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 563.
July 16, 1946, ch. 583, § 1, 60 Stat. 555.
July 3, 1945, ch. 265, § 1, 59 Stat. 398.
June 28, 1944, ch. 303, § 1, 58 Stat. 588.
July 1, 1943, ch. 185, § 1, 57 Stat. 361.
July 2, 1942, ch. 477, § 1, 56 Stat. 624.
June 30, 1941, ch. 262, § 1, 55 Stat. 384.
June 13, 1940, ch. 343, § 1, 54 Stat. 370.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 610.
June 11, 1938, ch. 347, § 1, 52 Stat. 659.
July 1, 1937, ch. 423, § 1, 50 Stat. 460.
May 15, 1936, ch. 404, § 1, 49 Stat. 1297.
Apr. 9, 1935, ch. 54, title I, 49 Stat. 138.
Apr. 26, 1934, ch. 165, title I, § 1, 48 Stat. 631.

§ 4334. Command and supervision.

(a) The supervision and charge of the Academy is in the Department of the Army, under officers of the Army detailed to that duty by the Secretary of the Army.

(b) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post at West Point.

(c) The Commandant of Cadets is the immediate commander of the Corps of Cadets, and is in charge of the instruction of the Corps in tactics.

(d) The permanent professors and the registrar exercise command only in the academic department of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 239; Aug. 6, 1958, Pub. L. 85–600, § 1 (10), 72 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4334 (a)	10: 1041.	R. S. 1331.
4334 (b)	10: 1042.	R. S. 1311.
4334 (c)	10: 1065.	R. S. 1312.
4334 (d)	10: 1079.	June 28, 1902, ch. 1300 (1st proviso under "Permanent Establishment"), 32 Stat. 409.

In subsection (a), the word "detailed" is substituted for the word "assign" to conform to section 4333 of this title.

In subsection (b), the words "and, in his absence, the next in rank" are omitted as surplusage.

In subsection (c), the words "Corps of Cadets" are substituted for the words "battalion of cadets" to conform to section 4349 of this title and present terminology. The words "of artillery, cavalry, and infantry" are omitted as surplusage.

In subsection (d), reference to assimilated rank is omitted as superseded by section 4336 of this title. The words "and the associate professor" are omitted as obsolete.

AMENDMENTS

1958—Subsec. (d). Pub. L. 85–600 included the registrar of the Military Academy.

§ 4335. Dean of Academic Board.

(a) The Dean of the Academic Board shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) The Dean of the Academic Board shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army. The Dean has the grade of brigadier general while serving as such, with the benefits authorized for regular brigadier generals of the Army, except that his retirement age is that of a permanent professor of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (46) (A), 72 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4335 (a)	10: 1089 (2d sentence).	June 26, 1946, ch. 495, § 3 (less 1st 20 words), 60 Stat. 312.
4335 (b)	10: 1089 (less 1st 20 words, and less 2d sentence).	

In subsection (b), the word "grade" is substituted for the word "rank". The words "pay, allowances" are omitted, since they are determined by the grade held. The words "retirement rights" are omitted as covered by the word "benefits". The words "There is authorized", "from time to time", and "statutory" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "the grade of brigadier general" for "the regular grade of brigadier general".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

§ 4336. Permanent professors; registrar.

(a) A permanent professor of the Academy, other than the Dean of the Academic Board, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Army has the grade of colonel after the date when he completes six years of service as a professor, or after the date when a promotion-list officer, junior to him on the promotion list on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as registrar of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as registrar, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as registrar, or after the date when a promotion-list officer, junior to him on the promotion list on which his name was carried before his appointment as registrar, is promoted to the regular grade of colonel, whichever is earlier.

(c) Unless he is serving in a higher grade, an officer detailed to perform the duties of registrar has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel. (Aug. 10, 1956, ch. 1041, 70A Stat. 239; Aug. 6, 1958, Pub. L. 85-600, § 1 (11), 72 Stat. 523; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (46) (B), 72 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4336	10: 1079a (a).	Aug. 7, 1947, ch. 512, § 520 (a), 61 Stat. 912.

The word "grade" is substituted for the word "rank". The words "pay, and allowances" are omitted, since they are determined by the grade held. 10: 1079a (a) (last proviso), and the words "Hereafter each of", "who have been or may hereafter be", and "and appointed in" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-600, § 1 (11) (C), included the registrar in the catchline.

Subsec. (a). Pub. L. 85-861 substituted "has the grade of colonel" for "has the regular grade of colonel" in two instances, and "have the grade of lieutenant colonel" for "have the regular grade of lieutenant colonel".

Subsec. (a). Pub. L. 85-600, § 1 (11) (A), designated existing provisions as subsec. (a).

Subsecs. (b) and (c). Pub. L. 85-600, § 1 (11) (B), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 as effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SERVICE PERFORMED AS REGISTRAR PRIOR TO AUG. 6, 1958

Section 2 of Pub. L. 85-600 provided that: "No increase in pay or allowances accrues by reason of the enactment of this Act [amending sections 3075, 3204, 3205, 3283, 3296, 3883, 3886, 4331, 4333, 4334, 4336, 8075, 8204, 8205, 8296, 8883, 8886, 9331, 9333, 9334 and 9336 of this title] for service performed before this Act takes effect [Aug. 6, 1958]."

CROSS REFERENCES

Retirement of permanent professors—

At age 64, see section 3886 of this title.

Higher grade for service, see section 3962 (d) of this title.

More than 30 years service as a commissioned officer, see section 3920 of this title.

§ 4337. Chaplain.

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed. (Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 7, 1962, Pub. L. 87-651, title I, § 117, 76 Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4337	10: 1083; 10: 1137.	Feb. 18, 1896, ch. 22 (proviso), 29 Stat. 8; May 16, 1928, ch. 579, 45 Stat. 573; June 2, 1945, ch. 172, 59 Stat. 230.

The words "The chaplain may be reappointed" are substituted for the words "and said chaplain shall be eligible for reappointment for an additional term or terms". The figures "$5,482.80" and "$6,714" are substituted for the figures "$4,000" and "$5,000" to reflect increases in the rates of salary of that office effected by the Federal Employees Pay Act of 1945, 59 Stat. 295, the Federal Employees Pay Act of 1946, 60 Stat. 216, the Postal Rate Revision and Federal Employees Salary Act of 1948, 62 Stat. 1260, and the Classification Act of 1949, 63 Stat. 954.

AMENDMENTS

1962—Pub. L. 87-651 eliminated provisions which prescribed the salary of the chaplain upon appointment and reappointment.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(5) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 4338. Director of music.

(a) The director of music, who is also the leader of the Military Academy Band, has the rank prescribed by the Secretary of the Army.

(b) At such time as the President may direct, the director of music shall be retired in the grade equal to the highest rank in which he served on active duty satisfactorily, as determined by the Secretary, for at least six months, and with the retired pay of an officer of the Army with the same grade and length of service. His dependents are entitled to the pensions, death gratuity, and other benefits provided for the dependents of an officer of the Regular Army with corresponding grade and length of service. (Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 7, 1962, Pub. L. 87-649, § 4, 76 Stat. 493.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4338 (a)	10: 1086 (less 2d and last provisos).	May 27, 1940, ch. 219; Mar. 29, 1944, ch. 142; restated July 17, 1953, ch. 226, §1, 67 Stat. 180.
4338 (b)	10: 1086 (2d and last provisos).	

In subsection (a), 10: 1086 (1st 10 words) is omitted as executed. The words "whose grade corresponds to that rank" are substituted for the words "of such grade".

In subsection (b), the words "in the grade equal to" are substituted for the words "with the". The words "and with" are substituted for the words "and when so retired, shall be entitled to receive". The words "the dependents of" are inserted for clarity. The words "as is now or may hereafter be provided by law or regulation" and "as are now or may hereafter" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-649, § 4(1), eliminated provisions which prescribed the pay and allowances of the director and specified the service included in the computation of his pay. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (b). Pub. L. 87-649, § 4(2), eliminated words "counted under subsection (a)" which followed "with the same grade and length of service."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Allowances of director of music, see section 424 of Title 37, Pay and Allowances of the Uniformed Services.

Basic pay of director of music, see section 207 of Title 37.

§ 4339. Repealed. Pub. L. 89-716, § 1, Nov. 2, 1966, 80 Stat. 1114.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 240, authorized public quarters and fuel and light therefor for the organist and choirmaster of the Academy and for civilian instructors in the departments of foreign languages and tactics.

QUARTERS FOR ORGANIST, CHOIRMASTER AND CERTAIN CIVILIAN INSTRUCTORS APPOINTED PRIOR TO JAN. 17, 1963

Section 2 of Pub. L. 89-716 provided that: "The organist and choirmaster and the civilian instructors in the departments of foreign languages and tactics at the United States Military Academy who are serving under appointments made prior to January 17, 1963, are entitled to public quarters without charge, and to fuel and light without charge when they occupy public quarters."

§ 4340. Quartermaster.

The Secretary of the Army shall detail a commissioned officer of the Army as quartermaster for the Corps of Cadets. The quartermaster shall—

(1) buy and issue all supplies for the cadets;

(2) buy and issue all provisions for the mess; and

(3) supervise the mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4340	10: 1067.	Aug. 7, 1876, ch. 255 (last par.), 19 Stat. 126.

The words "buy and issue all provisions for the mess" and "supervise the mess" are substituted for the words "all the duties of purveying and supervision for the mess". The word "commissary" is omitted as obsolete. The words "and all supplies of all kinds and descriptions shall be furnished to the cadets at actual cost, without any commission or advance over said cost" are omitted to reflect Title IV of the National Security Act of 1947, as amended (61 Stat. 495), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses.

§ 4341. Faculty and other officers: leaves of absence.

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4341	10: 1144.	R. S. 1330.

The words "under regulations prescribed by the Secretary of the Army" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

CROSS REFERENCES

Leave allowances, see sections 501-504 of Title 37, Pay and Allowances of the Uniformed Services.

Service schools, leaves of absence for instructors, see section 4306 of this title.

§ 4342. Cadets: appointment; numbers, territorial distribution.

(a) The authorized strength of the Corps of Cadets of the Academy is as follows:

(1) 40 cadets selected in order of merit as established by competitive examinations from the sons of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service. The determination of the Veterans' Administration as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Army.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Five cadets from each Territory, nominated by the Delegate in Congress from the Territory.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) One cadet nominated by the Governor of the Panama Canal from the sons of civilians residing in the Canal Zone or the sons of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama.

(9) One cadet from American Samoa, Guam, or the Virgin Islands nominated by the Secretary of the Army upon recommendations of their respective Governors.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the sons of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay, other than those granted retired pay under section 1331 of this title;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Army from enlisted members of the Regular Army.

(3) 85 nominated by the Secretary of the Army from enlisted members of reserve components of the Army.

(4) 20 nominated by the Secretary of the Army, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Army in order of merit (prescribed pursuant to section 4343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy sons of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) All cadets are appointed by the President. An appointment is conditional until the cadet is admitted.

(e) If the annual quota of cadets under subsection (b), (1), (2), (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3)–(7) and (9) of subsection (a) must be domiciled in the State or Territory, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Army may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy, as determined by the Secretary after consulting with the Committees on Armed Services of the Senate and House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a) (3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a) (3) or (4), appointments under subsection (b) (1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b) (2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) Effective beginning with nominations for appointment to the Academy in the calendar year 1964, the Secretary of the Army shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 240; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(26), 72 Stat. 1565; Sept. 14, 1962, Pub. L. 87–663, § 1(1), (2), 76 Stat. 547; Mar. 3, 1964, Pub. L. 88–276, § 1(1), 78 Stat. 148; Oct. 13, 1966, Pub. L. 89–650, § 1(1)–(4), 80 Stat. 896; July 5, 1968, Pub. L. 90–374, 82 Stat. 283; Oct. 22, 1968, Pub. L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, Pub. L. 91–405, title II, § 204(c), 84 Stat. 852.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4342 (a)	10: 1092a (1st par., less clauses (a) through (e)); 10: 1092a (clause (a), less 14th through 52d words after 4th semicolon; and less last 32 words); 10: 1092a (1st 13 words of clause (b)); 10: 1092a (1st 26 words of clause (c)); 10: 1092a (clause (d)); 10: 1092a (clause (e), less last 53 words).	R. S. 1317. June 30, 1950, ch. 421, §§ 1, 2 (last proviso), 64 Stat. 303, 304; June 3, 1954, ch. 251, § 2, 68 Stat. 169.
4342 (b)	10: 1092a (last par.); 10: 1098.	
4342 (c)	10: 1092a (14th through 52d words after 4th semicolon of clause (a)); 10: 1092b (last proviso).	
4342 (d)	10: 1092a (last 32 words of clause (a)).	
4342 (e)	10: 1092a (clause (b), less 1st 13 words, and less 1st proviso).	
4342 (f)	10: 1092a (1st proviso of clause (b)).	
4342 (g)	10: 1092a (clause (c), less 1st 26 words).	
4342 (h)	10: 1092a (last 53 words of clause (e)).	

In subsection (a), the words "the authorized strength * * * is as follows—" are substituted for the words "shall be authorized and consist of the following". The words "at large" and "which totals two thousand four hundred and ninety-six", and 10: 1092a (clause (d)) are omitted as surplusage.

In subsection (b), the words "from whatever source of admission", in 10: 1092a, are omitted as surplusage. 10: 1098 (words before last semicolon) is omitted as obsolete.

In subsection (c), the first 15 words are substituted for the words "all of which cadets shall be". The words "domiciled in" are substituted for the words "actual residents of" to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J. A. G. 351.11, Feb. 10, 1925).

In subsection (e) (4), the words "armed forces" are substituted for the description of the land or naval forces. The date February 1, 1955, fixed by Proclamation No. 3080 (Jan. 7, 1955; 20 F. R. 173), is substituted for the words "such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress under section 745 of title 38". The words "including male and female members of * * * and all components thereof" are omitted as surplusage.

In subsection (f), the words "whether a death is service-connected" are substituted for the words "as to the service connection of the cause of death".

In subsection (g), the words "(National Guard of the United States, the Air National Guard of the United States, the Army Reserve, and the Air Force Reserve)", "Regular components", "by members of the National Guard of the United States and the Air National Guard of the United States" and "established at the competitive entrance examination" are omitted as surplusage. The word "grades" is substituted for the words "proficiency averages".

In subsection (h), the words "or shall hereafter be" are omitted as surplusage.

AMENDMENTS

1970—Subsec. (a)(5). Pub. L. 91-405 substituted "Delegate to the House of Representatives from the District of Columbia" for "Commissioner of that District".

1968—Subsec. (a). Pub. L. 90-374 increased from five to nine the number of alternates for each vacancy each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate.

Subsec. (a)(5). Pub. L. 90-623 substituted "Commissioner" for "Commissioners".

1966—Subsec. (a)(1). Pub. L. 89-650, § 1(1), provided for selection of cadets to the Military Academy from sons of members of the armed forces who have a 100 per centum service-connected disability and removed the limitation to active service during World War I or World War II or after June 26, 1950, and before Feb. 1, 1955.

Subsec. (a)(2). Pub. L. 89-650, § 1(2), provided for nominations to the Military Academy by the President pro tempore of the Senate if there is no Vice President.

Subsec. (b)(1). Pub. L. 89-650, § 1(3), increased the number of Presidential appointments to the Military Academy from 75 to 100, provided for selection of eligible persons as stated in items (A) and (B), previously chosen from sons of members of regular components, and declared persons eligible under subsec. (a)(1) ineligible under subsec. (b)(1) of this section.

Subsec. (b)(3). Pub. L. 89-650, § 1(4), substituted "reserve components of the Army" for "the Army Reserve".

1964—Pub. L. 88-276 amended section generally, and among other changes, in the noncompetitive appointments, increased the number of cadets nominated by the Vice President from three to five, each Senator, Representative, and Delegate from 4 to 5, and the Commissioner of Puerto Rico from 4 to 5, authorized the Governor of Puerto Rico to appoint one cadet, each Senator, Representative and Delegate to nominate a principal and five alternates for each vacancy, and, in the competitive appointments, permitted the President to appoint 75 cadets annually from the sons of members of the Regular components, instead of a cumulative total of 89, the Secretary of the Army to appoint 85 cadets annually from enlisted members of the Regular Army, instead of a cumulative total of 90, 85 annually from enlisted members of the Army Reserve, instead of a cumulative total of 90, 20 annually from honor graduates of designated honor schools and the R.O.T.C., instead of a cumulative total of 40 from honor schools only, 150 annually, in order of merit, from among the qualified alternates nominated by members of Congress, and when the quota of cadets selected under subsec. (b)(1), (2), (3) is not filled, to fill the vacancies by appointing those best qualified from any of the three sources, decreased the number of cadets nominated by the Commissioners of the District of Columbia from 6 to 5, and by the Governor of the Panama Canal from 2 to 1, limited appointments to the number that can be adequately accommodated at the Academy, within the limitation that congressional appointments cannot be limited to less than four, and if limited, a priority of selection is established for the other categories, and, beginning in 1964, the Secretary may upon request of a Member of Congress, furnish him the name of any nominating authority responsible for the nomination of any identified person to the Academy.

1962—Subsec. (a). Pub. L. 87-663, § 1(1), added cl. (10).

Subsec. (c). Pub. L. 87-633, § 1(2), added references to American Samoa, Guam, and the Virgin Islands, and substituted "clauses (1)—(5) and (10)" for "clauses (1)—(5)."

1958—Subsec. (c). Pub. L. 85-861 inserted a comma after "district".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, summarized in a note set out under section 25 of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4363 of this title.

§ 4343. Cadets: appointment; to bring Corps to full strength.

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Army may fill the vacancies

by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2)-(8) of section 4342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 242; Mar. 3, 1964, Pub. L. 88-276, § 1(2), 78 Stat. 150.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4343	10: 1092d.	June 30, 1950, ch. 421, § 4, 64 Stat. 305.

The words "If it is determined" are substituted for the words "When upon determination". The words "within his discretion" are omitted as covered by the word "may". The words "within the capacity of the Academy", "from the remaining sources of admission authorized by law", and "to be admitted in such class" are omitted as surplusage. The words "by the persons named in clauses (1)—(6) of section 4342 (a), and clause (2) of section 4342 (e), of this title" are substituted for the words "by the Vice President, Members of the Senate and House of Representatives of the United States, Delegates and Resident Commissioners, the Commissioners of the District of Columbia, and the Governor of the Canal Zone". The words "under any other provision of law" are substituted for the words "from sources authorized by law other than those holding such alternate appointments".

AMENDMENTS

1964—Pub. L. 88-276, among other changes, increased the percentage of nominees to be selected from two-thirds to three-fourths, and deleted "as are necessary to meet the needs of the Army and Air Force, but not more than the authorized strength of the Corps of Cadets", following "Academic Board."

NUMBER OF ALTERNATE-APPOINTEES FROM CONGRESSIONAL SOURCES NOT TO BE REDUCED BECAUSE OF ADDITIONAL PRESIDENTIAL APPOINTMENTS

Pub. L. 89-650, § 2, Oct. 13, 1966, 80 Stat. 896, provided that: "Notwithstanding any other provision of law, none of the additional appointments authorized in sections 4342(b)(1), 6954(b)(1) and 9342(b)(1) of this title as provided by this Act shall serve to reduce or diminish the number of qualified alternates from congressional sources who would otherwise be appointed by the appropriate service Secretary under the authority contained in sections 4343, 6956, and 9343 of title 10, United States Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4342 of this title.

§ 4344. Selection of persons from Canada and American Republics.

(a) Upon designation by the President, the Secretary of the Army may permit not more than 20 persons at any one time from Canada and the American Republics, other than the United States, to receive instruction at the Academy. However, not more than three persons from any one of those republics or from Canada may receive instruction under this section at any one time.

(b) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations. However, the mileage allowance payable to that person for travel to the Academy for initial admission is not limited to mileage for travel within the United States.

(c) Except as the Secretary determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. However, a person receiving instruction under this section is not entitled to an appointment in the United States Army by reason of his graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 4346 (d) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 242.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4344 (a)	10: 1093c (less 3d and last sentences).	June 26, 1946, ch. 493, § 1, 60 Stat. 311; June 1, 1948, ch. 357, § 2, 62 Stat. 280.
4344 (b)	10: 1093c (3d sentence).	
4344 (c)	10: 1093c (last sentence, less proviso).	
4344 (d)	10: 1093c (proviso of last sentence).	

In subsection (a), the words "at West Point, New York" are omitted as surplusage.

In subsection (b), the words "is entitled to" are substituted for the words "shall receive". The words "performed in proceeding" are omitted as surplusage. The words "continental limits" are omitted, since section 101 (1) of this title defines the United States to include only the States and the District of Columbia.

In subsection (c), the words "to any office or position" are omitted as surplusage.

In subsection (d), the words "and 1101" are omitted, since section 1321 of the Revised Statutes, previously codified in 10: 1101, was repealed by section 6 (b) of the Act of June 30, 1950, ch. 421, 64 Stat. 305.

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM: SERVICE ACADEMY INSTRUCTION; BENEFITS, LIMITATIONS, RESTRICTIONS, AND REGULATIONS; OATH OF TRAINEES

Pub. L. 89-802, Nov. 9, 1966, 80 Stat. 1518, provided that:

"(a) Notwithstanding any other provision of law, upon designation by the President, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, respectively, may permit persons from foreign countries to receive instruction at the Military Academy, the Naval Academy, and the Air Force Academy.

"(b) A person may not be admitted to an Academy for instruction under this Act unless his country at the time of his admission is assisting the United States in Vietnam by the provision of manpower or bases.

"(c) Not more than four persons may receive instruction under this Act at any one Academy at any one time.

"(d) No person may be admitted to an Academy under this Act after October 1, 1970.

"(e) A person receiving instruction under this Act is entitled to the pay, allowances, and emoluments of a cadet or midshipman appointed from the United States and from the same appropriations.

"(f) Except as the Secretary determines, a person receiving instruction under this Act is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal and graduaton as a cadet or midshipman appointed from the United States. However, a person receiving instruction under this Act is not entitled to an appointment in the Armed Forces of the United States by reason of his graduation from an Academy.

"(g) A person receiving instruction under this Act is not subject to section 4346(d) of title 10, United States Code."

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President, see Ex. Ord. No. 10661, Feb. 27, 1956, 21 F. R. 1315, set out as a note under section 301 of Title 3, The President.

§ 4345. Selection of Filipinos.

(a) The Secretary of the Army may permit not more than four Filipinos at any one time to receive instruction at the Academy. Of these, one may be designated by the President of the Republic of the Philippines for each entering class.

(b) A Filipino receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations. (Aug. 10, 1956, ch. 1041, 70A Stat. 242.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4345 (a)	10: 1093 (less 1st proviso of 1st sentence).	May 28, 1908, ch. 214 (33d par. under "Buildings and Grounds"), 35 Stat. 441; Aug. 11, 1916, ch. 314 (7th proviso under "Permanent Establishment"), 39 Stat. 493.
4345 (b)	10: 1093 (1st proviso of 1st sentence).	

In subsection (a), the words, "at any one time" and "entering" are inserted for clarity. The words "President of the Republic of the Philippines" are substituted for the words "Governor General of the Philippine Islands", since the office of Governor General of the Philippine Islands has not existed since the independence of the Philippines was established. Designation of Filipino cadets is now made by the President of the Republic. 10: 1093 (second proviso of first sentence, and last sentence) is omitted, since the Philippine Scouts are no longer a part of the Army.

§ 4346. Cadets: requirements for admission.

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-second birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Army, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to the following oath—

"I, _____, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the Uniform Code of Military Justice."

If a candidate for admission refuses to take this oath, his appointment is terminated. (Aug. 10, 1956, ch. 1041, 70A Stat. 242.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4346 (a)	10: 1092b (less provisos).	June 30, 1950, ch. 421, § 2 (less provisos), 64 Stat. 304.
4346 (b)	10: 1096.	R. S. 1319; restated Mar. 2, 1901, ch. 804 (1st proviso under "Permanent Establishment"), 31 Stat. 911.
4346 (c)	10: 1095.	Aug. 9, 1912, ch. 275 (2d proviso under "Permanent Establishment"), 37 Stat. 252.
4346 (d)	10: 1099.	R. S. 1320.

In subsection (a), the words "Effective January 1, 1951" are omitted as executed. The word "Calendar" is omitted as surplusage. The words "must not have passed his twenty-second birthday" are substituted for the words "not more than twenty-two years of age", to make it clear that a person whose twenty-second birthday falls on July 1 of the year of admission is eligible (see opinion of the Judge Advocate General of the Army (JAGA 1952/7083, 2 Sept. 1952)).

In subsection (b), the words "To be" are substituted for the words "before they shall be". The words "must show * * * that he is qualified" are substituted for the words "shall be required to be well versed". The words "from time to time" are omitted as surplusage.

In subsection (c), the word "shall" is substituted for the word "may", since the nominee is required to appear for the examination. The word "appear" is substituted for the words "present himself". The words "at a place" are substituted for the words "at West Point, New York, or other prescribed places".

In subsection (d), the word "county" is omitted as surplusage. The words "Uniform Code of Military Justice" are substituted for the words "rules and articles governing the armies of the United States", since the Articles of War have been superseded by the Uniform Code of Military Justice. The words "his appointment is terminated" are substituted for the words "shall be dismissed from the service", since a cadet who has not taken the oath is not yet a member.

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM; SERVICE ACADEMY INSTRUCTION: OATH OF TRAINEES

Exemption from oath requirement of subsec. (d) of this section of appointees to the Military Academy, the Naval Academy, and the Air Force Academy from countries assisting U.S. in Vietnam, see Pub. L. 89–802, § 1(g), Nov. 9, 1966, 80 Stat. 1519, set out as a note under section 4344 of this title.

CROSS REFERENCES

Persons not subject to subsec. (d) of this section, see section 4344 (d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4344 of this title.

§ 4347. Cadets; nominees: effect of redistricting of States.

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4347	10: 1091–1.	July 7, 1943, ch. 193, 57 Stat. 383.

The word "domicile" is substituted for the words "place of residence" to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J. A. G. 351.11. Feb. 10, 1925). The words "a * * * other than that from which he was nominated" are substituted for the word "another". The words "were appointed with respect to", "of the former district", "as additional numbers", "at such academy for the Representative", "temporarily", and "in attendance at such academy under an appointment from such formed district" are omitted as surplusage. The words "the district in which his domicile so falls" are substituted for the words "of the latter district". The words "to include him" are substituted for 10: 1091–1 (18 words before proviso). The words "However, the number as so increased" are substituted for 10: 1091–1 (1st 13 words of proviso). The words "if he fails to become a cadet" are inserted for clarity.

CROSS REFERENCES

Distribution of appointments among Congressmen, Delegates, etc., see section 4342 of this title.

§ 4348. Cadets: agreement to serve as officer.

(a) Each cadet who is a citizen or national of the United States shall sign an agreement that, unless sooner separated, he will—

(1) complete the course of instruction at the Academy;

(2) accept an appointment and serve as a commissioned officer of the Regular Army or the Regular Air Force for at least the five years immediately after graduation; and

(3) accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve and remain therein until the sixth anniversary of his graduation, if an appointment in the regular component of that armed force is not tendered to him, or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the cadet is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

(b) A cadet who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Army to the Army Reserve in an appropriate enlisted grade and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade for such period of time as the Secretary prescribes but not for more than four years. (Aug. 10, 1956, ch. 1041, 70A Stat. 243; Mar. 3, 1964, Pub. L. 88–276, § 5(a), 78 Stat. 153; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(9), 78 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4348	10: 1092c.	June 30, 1950, ch. 421, § 3, 64 Stat. 304.

The word "agreement" is substituted for the word "articles". The words "Hereafter", "appointed to the United States Military Academy", "engage", and 10: 1092c (1st 25 words of clause (2)) are omitted as surplusage. The word "separated" is substituted for the words "discharged by competent authority". The words "if he is permitted to resign" are substituted for the words "in the event of the acceptance of his resignation", since a resignation is effective only when accepted. The first 31 words of clause (3) are substituted for 10: 1092c (last 29 words of clause (3)). The last sentence is substituted for the words "with the consent of his parents or guardian if he be a minor, and if any he have".

AMENDMENTS

1964—Pub. L. 88–647 designated existing provisions as subsec. (a), and added subsec. (b).

Subsec. (a) (2). Pub. L. 88–276 substituted "five" for "three."

EFFECTIVE DATE OF 1964 AMENDMENT; OBLIGATED PERIOD OF SERVICE

Section 5(c) of Pub. L. 88–276 provided that: "The amendments made by this section [amending this section, sections 6959 and 9348 of this title, and section 182 of Title 14, Coast Guard] shall apply only with respect to cadets and midshipmen appointed to the service academies and the Coast Guard Academy after the date of enactment of this Act [Mar. 3, 1964], and shall not affect the obligated period of service of any cadet or midshipman appointed to one of the service academies or the Coast Guard Academy on or before the date of enactment of this Act [Mar. 3, 1964]."

CROSS REFERENCES

Effect upon enlisted status of acceptance of appointment as cadet, see section 516 of this title.

§ 4349. Cadets: organization of Corps; service; instruction.

(a) The Corps of Cadets shall be divided into companies, as directed by the Superintendent, for the purpose of military instruction. Each company shall be commanded by a commissioned officer of the Army.

(b) A cadet shall perform duties at such places and of such type as the President may direct.

(c) The course of instruction at the Academy is four years.

(d) The Secretary of the Army shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(e) The Corps of Cadets shall be trained in the duties of members of the Army, shall be encamped at least three months in each year, and shall be trained in all duties incident to a camp. (Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4349 (a)	10: 1105 (less last sentence).	R. S. 1322.
4349 (b)	10: 1102.	R. S. 1323.
4349 (c)	10: 1043.	Mar. 30, 1920, ch. 112 (1st par., less provisos, under "Miscellaneous"), 41 Stat. 548.
4349 (d)	10: 1044.	
4349 (e)	10: 1105 (last sentence).	R. S. 1324.

In subsection (a), the word "commissioned" is inserted for clarity; 10: 1105 (2d sentence) is omitted as obsolete.

In subsection (b), the word "perform" is substituted for the words "be subject at all times to do". The words "of such type" are substituted for the words "on such service".

In subsection (e), the words "members of the Army" are substituted for the words "private soldier, noncommissioned officer, and officer". The words "taught and" are omitted as surplusage.

CROSS REFERENCES

Nature and effects of alcoholic drinks and narcotics to be studied in the Military Academy, see sections 111—113 of Title 20, Education.

§ 4350. Cadets: clothing and equipment.

(a) The Secretary of the Army may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request. (Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4350 (a)	10: 1149a.	Aug. 31, 1918, ch. 166, § 9 (17th through 22d words), 40 Stat. 957.
4350 (b)	10: 1106.	Aug. 22, 1951, ch. 340, § 1, 65 Stat. 196.

In subsection (a), the words "while owing the United States for pay advanced for the purchase of" are substituted for the words "who is indebted to the United States on account of advances of pay to purchase". The words "as is necessary to repay the amount advanced" are substituted for the words "to the extent required to discharge such indebtedness".

In subsection (b), the word "accouterments" is omitted as surplusage. The words "by the Government" and "such restrictions and" are omitted as surplusage. The words "at cost" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 4351. Cadets: deficiencies in conduct or studies; effect of failure on successor.

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academic Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Academic Board within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor. (Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4351 (a)	10: 1104.	Aug. 11, 1916, ch. 314 (3d, 4th, and 5th provisos under "Permanent Establishment"), 39 Stat. 493.
4351 (b)	10: 1103.	R. S. 1325.
4351 (c)	10: 1092b (1st proviso).	June 30, 1950, ch. 421, § 2 (1st proviso), 64 Stat. 304.

In subsection (a), 10: 1104 (last 20 words) is omitted as superseded by section 3287 (d) of this title.

In subsection (b), the words "is entitled to" are substituted for the words "shall have the right to apply". The words "of equal scope and difficulty in that subject" are substituted for the words "by compliance with the requirements existing at the time of the first examination".

In subsection (c), the words "by reason of sickness, or deficiency in his studies, or other cause" are omitted as surplusage.

§ 4352. Cadets: hazing.

(a) Subject to the approval of the Secretary of the Army, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed to the Corps of Cadets, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class. (Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4352 (a)	10: 1163 (1st par.).	Mar. 2, 1901, ch. 804 (2d proviso under "Permanent Establishment"); restated Apr. 19, 1910, ch. 174 (38th par. under "Buildings and Grounds"), 36 Stat. 323.
4352 (b)	10: 1163 (1st 32 words of last par.).	
4352 (c)	10: 1163 (last par., less 1st 32 words).	

In subsection (a), the word "violations" is substituted for the words "infractions of the same". The words "to embody a clear" are omitted as surplusage.

In subsection (b), the words "the penalty for which is or may be" are substituted for the words "which would involve". The words "may not be dismissed for that offense except under sentence of such a court" are substituted for the words "shall be granted".

In subsection (c), the words "a regular component" are inserted, since the source statute historically applied only to the regular components.

§ 4353. Cadets: degree and commission on graduation.

(a) Under such conditions as the Secretary of the Army may prescribe, the Superintendent of the Academy may confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Army. (Aug 10, 1956, ch. 1041, 70A Stat. 245; Sept. 2, 1958, Pub. L. 85–861, § 1 (103), 72 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4353 (a)	10: 486a (less last sentence).	May 25, 1933, ch. 37 (less last sentence); restated Aug. 9, 1946, ch. 932 (less last sentence); restated Aug. 4, 1949, ch. 393, § 13; restated Aug. 18, 1949, ch. 476 (less last sentence), 63 Stat. 615.
4353 (b)	10: 506c (f) (1st sentence, less last 43 words).	Aug. 7, 1947, ch. 512, § 506 (f) (1st sentence, less last 43 words), 61 Stat. 892.

In subsection (a), the last 27 words are substituted for 10: 486a (last sentence). The words "rules and" and "from and after the date of the accrediting of said Academy" are omitted as surplusage. The word "conditions" is substituted for the words "rules and regulations".

In subsection (b), the words "except section 541 of this title" are inserted to reflect the authority to appoint graduates of one service academy as officers of another service.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 eliminated "except section 541 of this title" which followed "provision of law".

DEGREES FOR PERSONS WHO GRADUATED BEFORE ACCREDITING OF MILITARY ACADEMY

Section 35 of act Aug. 10, 1956, provided in part that, under conditions prescribed by the Secretary of the Army, the Superintendent of the United States Military Academy may confer the degree of bachelor of science upon living graduates of the Academy who were graduated before the date of accrediting of the Academy and who have met the requirements of the Academy for that degree.

CROSS REFERENCES

Regular Army; Army Reserve; Army National Guard: strength in grade; temporary increases, see section 3212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3212, 3285 of this title.

§ 4354. Buildings and grounds: memorial hall; buildings for religious worship.

(a) The memorial hall at the Academy is a repository for statues, busts, mural tablets, portraits of distinguished and deceased officers and graduates of the Academy, paintings of battle scenes, trophies of war, and other objects that may tend to elevate the military profession. No object may be placed in this hall without the approval of two-thirds of the members of the Academic Board of the Academy by a recorded vote taken by ayes and nays.

(b) The Secretary of the Army may authorize any denomination, sect, or religious body to erect a building for religious worship on the West Point Military Reservation, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without other expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires. (Aug. 10, 1956, ch. 1041, 70A Stat. 245.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4354 (a)	10: 1125.	July 23, 1892, ch. 237, § 6, 27 Stat. 263.
4354 (b)	10: 1126.	July 8, 1898, ch. 636, 30 Stat. 722.

In subsection (a), the words "and to prevent the introduction of unworthy subjects into this hall" and "entire" are omitted as surplusage.

In subsection (b), the words "in his discretion" and "Government of" are omitted as surplusage. The words "United States" are substituted for the word "Government".

§ 4355. Board of Visitors.

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years. Two persons shall be designated by him each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Army, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser is entitled to not more than $5 a day and shall be reimbursed under Government travel regulations for his travel expenses. (Aug. 10, 1956, ch. 1041, 70A Stat. 245.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4355 (a)	10: 1055.	June 29, 1948, ch. 714, §§ 1—6, 62 Stat. 1094; June 30, 1954, ch. 432, § 732, 68 Stat. 356.
	10: 1056 (1st sentence).	
4355 (b)	10: 1056 (less 1st sentence).	
4355 (c)	10: 1057.	
4355 (d)	10: 1058.	
4355 (e)	10: 1059 (a).	
4355 (f)	10: 1059 (b).	
4355 (g)	10: 1059 (c).	
4355 (h)	10: 1060.	

In subsections (a) and (b), the word "designated" is substituted for the word "appointed" to make it clear that the positions described are not constitutional offices.

Subsection (b) is substituted for 10: 1056 (e) (2d sentence).

In subsection (c), the words "during the term for which such member was appointed" and "Such successor shall be appointed * * * who died or resigned" are omitted as surplusage.

In subsection (g), the words "as it may deem necessary or advisable effectuate the duties imposed upon it by the provisions of sections 1055—1060 of this title" are omitted as surplusage.

In subsection (h), the words "called for consultation by the Board in connection with the business of the Board" are omitted as surplusage.

SIMILIAR PROVISIONS

Similar provisions relating to the United States Naval Academy are classified to section 6968 of this title, and those relating to the Air Force Academy are classified to section 9355 of this title.

§§ 4381 to 4387. Repealed. Pub. L. 88-647, title III, § 301(10), Oct. 13, 1964, 78 Stat. 1072.

Sections, act Aug. 10, 1956, ch. 1041, 70A Stat. 246-248, related to the Reserve Officers' Training Corps and defined "advanced training", provided for its establishment and composition, admission and training of medical, dental pharmacy and veterinary students, set out courses of training, authorized the operation and maintenance of training camps, provided for supplies and uniforms and for advanced training and compensation therefor. See chapter 103 of this title.

Section 4384 was amended by Pub. L. 85-861, § 1(104), Sept. 2, 1958, 72 Stat. 1489.

Chapter 407.—SCHOOLS AND CAMPS

Sec.
4411. Establishment: purpose.
4412. Operation.
4413. Transportation and subsistence during travel.
4414. Quartermaster and ordnance property: sales.

CROSS REFERENCES

Quartermaster supplies, military instruction camps, see section 4654 of this title.

§ 4411. Establishment: purpose.

The Secretary of the Army may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Army and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Army Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4411	10: 442 (words before 1st semicolon of 1st sentence).	June 3, 1916, ch. 134, § 47d (words before 1st semicolon of 1st sentence); added June 4, 1920, ch. 227, subch. I, § 34 (words before 1st semicolon of 1st sentence of last par.), 41 Stat. 779.

The words "upon military reservations or elsewhere" are omitted as surplusage. The words "or enlistment as" are inserted for clarity. The words "of the Army" are inserted for clarity.

CROSS REFERENCES

Hospitalization, see section 3722 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3722, 4412, 4413, 4414 of this title.

§ 4412. Operation.

In maintaining schools and camps established under section 4411 of this title, the Secretary of the Army may—

(1) prescribe the periods during which they will be operated;

(2) prescribe regulations for their administration;

(3) prescribe the courses to be taught;

(4) detail members of the Regular Army to designated duties relating to the camps;

(5) use necessary supplies and transportation;

(6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camps; and

(7) authorize necessary expenditures from proper Army funds for—

(A) water;

(B) fuel;

(C) light;

(D) temporary structures, except barracks and officers' quarters;

(E) screening;

(F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4412	10: 442 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence).	June 3, 1916, ch. 134, § 47d (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence); added June 4, 1920, ch. 227, subch. I, § 34 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence of last par.). 41 Stat. 779.

The word "supplies" is substituted for the words "such arms, ammunition, accoutrements, equipments, tentage, field equipage", since, under the definition of the word "supplies", in section 101 (26) of this title, those words are covered by the word "supplies". The words "belonging to the United States", "and imparting military instruction and training thereat", "during the period of their attendance", "theoretical and practical instruction", "persons attending the camps authorized by this section", and "as he may deem" are omitted as surplusage. The word "detail" is substituted for the word "employ". The word "members" is substituted for the words "officers, warrant officers, and enlisted men".

CROSS REFERENCES

General military law provisions respecting uniform, see section 771 et seq. of this title.

§ 4413. Transportation and subsistence during travel.

(a) There may be furnished to a person attending a school or camp established under section 4411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Army may prescribe, from the authorized starting point to the school or camp and return. (Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4413 (a) 4413 (b) 4413 (c)	10: 442 (words between 1st and 3d semicolons, less 47 words after 1st semicolon and less 72 words before 3d semicolon, of 1st sentence).	June 3, 1916, ch. 134, § 47d (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence); added June 4, 1920, ch. 227, § 34 (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence of last par.), 41 Stat. 779; Mar. 9, 1928, ch. 161, 45 Stat. 251.

In subsection (a), the introductory clause is inserted for clarity. The words "at the option of the Secretary of the Army" are omitted as surplusage.

In subsection (b), the words "of the actual performance of the same" are omitted as surplusage.

Subsection (c) is substituted for the words "the most usual and direct route within such limits as to territory as the Secretary of the Army may prescribe * * * for the distance by the shortest usually traveled route from the places from which they are authorized to proceed to the camp, and for the return travel thereto".

§ 4414. Quartermaster and ordnance property: sales.

The Secretary of the Army may sell to a person attending a school or camp established under section 4411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash. (Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4414	10: 442 (words after 3d semicolon of 1st sentence; and 2d sentence).	June 3, 1916, ch. 134, § 47d (words after 3d semicolon of 1st sentence; and 2d sentence); added June 4, 1920, ch. 227, § 34 (words after 3d semicolon of 1st sentence; and 2d sentence of last par.), 41 Stat. 779.

10: 442 (2d sentence) is omitted as superseded by section 10 of the Act of June 26, 1934, ch. 756, 48 Stat. 1229 (31 U. S. C. 725i), which limits credits to the replacing account to the actual cost of the items sold. The words "necessary for his proper equipment" are substituted for 10: 422 (last 22 words of 1st sentence). The words "and at cost price, plus 10 per centum" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

PART IV.—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
431.	Industrial Mobilization, Research, and Development	4501
433.	Procurement	4531
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CROSS REFERENCES

General military law provisions, see section 2202 et seq. of this title.

Chapter 431.—INDUSTRIAL MOBILIZATION, RESEARCH, AND DEVELOPMENT

Sec.

4501. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.

4502. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness

4503. Research and development programs.

4504. Procurement for experimental purposes.

4505. Procurement of production equipment.

4506. Sale, loan, or gift of samples, drawings, and information to contractors.

4507. Sale of ordnance and ordnance stores to designers.

4508. Tests of iron, steel, and other materials.

CROSS REFERENCES

General military law provisions respecting research and development, see section 2352 et seq. of this title.

§ 4501. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.

(a) In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the Secretary of the Army is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the Army, if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the Secretary; or

(3) to furnish them at a reasonable price as determined by the Secretary.

(d) The President, through the Ordnance Corps, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) Whoever fails to comply with this section shall be imprisoned for not more than three years and fined not more than $50,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 251.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4501 (a)	50: 80 (1st par.).	June 3, 1916, ch. 134, § 120 (1st 3 pars.), 39 Stat. 213.
4501 (b)	50: 80 (1st 53 words of 2d par.).	
4501 (c)	50: 80 (2d par., less 1st 53, and last 87, words).	
4501 (d)	50: 80 (282d through 314th words of 2d par.).	
4501 (e)	50: 80 (3d par.).	
4501 (f)	50: 80 (last 56 words of 2d par.).	

In subsections (a), (b), and (e), the word "person" is substituted for the words "individual, firm, association, company, corporation" since the word "person", as defined in section 1 of title 1, covers all of the enumerated entities.

In subsections (a) and (c), the words "in addition to the present authorized methods of purchase or procurement" are omitted as surplusage.

In subsection (b), the words "shall comply" are substituted for the words "Compliance * * * shall be obligatory".

In subsection (c), the words "and in either such case" and "or equipment" are omitted as surplusage. Clause (1) is substituted for the words "give to the United States such preference in the matter of the execution of orders".

Subsection (f) is restated to conform to the terminology of similar provisions of title 18.

CROSS REFERENCES

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

War contracts, penalties, see section 443 of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title.

§ 4502. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.

(a) The Secretary of the Army shall maintain a list of all privately owned plants in the United States, and the Territories, Commonwealths, and possessions, that are equipped to manufacture for the Army arms or ammunition, or parts thereof, and shall obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) The Secretary shall maintain a list of privately owned plants in the United States, and the Territories, Commonwealths, and possessions, that are capable of being readily transformed into factories for the manufacture of ammunition for the Army, and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and shall obtain complete information as to the equipment of each of those plants.

(c) The Secretary shall prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(d) The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary clerical assistance to organize and coordinate operations under this section and section 4501 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 252.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4502 (a)	50: 80 (4th par., less last sentence).	June 3, 1916, ch. 134, § 120 (less 1st 3 pars.), 39 Stat. 213.
4502 (b)	50: 80 (last sentence of 4th par., less last 41 words).	
4502 (c)	50: 80 (last 41 words of last sentence of 4th par.).	
4502 (d)	50: 80 (last par.).	

In subsection (a), the words "the component" are omitted as surplusage. The word "maintain" is substituted for the words "prepare, or cause to be prepared". The word "Commonwealths" is inserted to reflect the present status of Puerto Rico. The words "for the Army" are inserted, since, under section 213 of the National Security Act of 1947, as amended by section 1 (a) (as applicable to Munitions Board) of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638, overall responsibility for the function covered by the revised section is vested in the Secretary of Defense.

In subsection (b), the word "maintain" is substituted for the words "also prepare, or cause to be prepared". The words "and the Territories, Commonwealths, and possessions" and "for the manufacture of ammunition for the Army" are inserted for clarity.

In subsection (c), the words "as in the opinion of the Secretary of the Army such plant is best adapted" are omitted as surplusage.

In subsection (d), the last 11 words are substituted for the words "the work hereinbefore described".

§ 4503. Research and development programs.

The Secretary of the Army may conduct and participate in research and development programs relating to the Army, and may procure or contract for the use of facilities, supplies, and services that are needed for those programs. This section does not authorize the design or development of any prototype aircraft intended primarily for commercial use. (Aug. 10, 1956, ch. 1041, 70A Stat. 252.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4503	5: 235a. 10: 20a (as applicable to 5: 235a).	July 10, 1950, ch. 454, §§ 104, 304 (as applicable to § 104). 64 Stat. 322, 325.

The words "engage", "activities", "equipment", "as may be", and "to effectuate", in 5: 235a, are omitted as surplusage. The words "in this chapter, section 481 of this title", in 10: 20a, are omitted, since nothing contained in those references pertains to the rule stated in 10: 20a. The last sentence is substituted for 10: 20a.

CROSS REFERENCES

General military law provisions, see section 2352 et seq. of this title.

§ 4504. Procurement for experimental purposes.

The Secretary of the Army may buy ordnance, signal, and chemical warfare supplies, including parts and accessories, and designs thereof, that he considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense. Purchases under this section may be made inside or outside the United States, with or without competitive bidding, and by contract or otherwise. Chapter 137 of this title applies when such purchases are made in quantity. (Aug. 10, 1956, ch. 1041, 70A Stat. 252.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4504	50: 96.	July 15, 1939, ch. 283, 53 Stat 1042.

The words "competitive bidding" are substituted for the word "competition". The words "at his discretion" and "equipment" are omitted as surplusage. 50: 96 (last sentence) is omitted as superseded by chapter 137 of this title. Therefore, the last sentence of the revised section, which refers to that chapter, is inserted.

§ 4505. Procurement of production equipment.

The Secretary of the Army may make or procure gauges, dies, jigs, tools, fixtures, and other special aids and appliances, and specifications and drawings, necessary for the immediate manufacture of arms, ammunition, or special equipment that are necessary to equip the Army and are likely to be needed in time of war. Whenever he considers it in the best interest of the United States, the Secretary may procure any of those items without regard to laws prescribing competition in the procurement of supplies. (Aug. 10, 1956, ch. 1041, 70A Stat. 252.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4505	50: 78.	June 3, 1916, ch. 134, § 123, 93 Stat. 215.

The word "Army" is substituted for the words "land forces" for clarity. The words "make or procure" are substituted for the words "prepare or cause to be prepared, to purchase or otherwise procure". The last sentence is substituted for 50: 78 (proviso). The words "by the Government and by private manufacturers" are omitted as surplusage.

§ 4506. Sale, loan, or gift of samples, drawings, and information to contractors.

The Secretary of the Army, under regulations to be prescribed by him, may sell, lend, or give such samples, drawings, and manufacturing or other information as he considers best for the national defense—

(1) to any contractor for Army supplies under approved production plans; and

(2) to any person likely to manufacture or supply Army supplies under such plans.

(Aug. 10, 1956, ch. 1041, 70A Stat. 253.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4506	10: 1192a.	July 27, 1937, ch. 525, 50 Stat. 535.

Clause (1) is substituted for the words "contractors * * * which are * * * manufacturers or furnishers of supplies and equipment for the use of the Department of the Army or of the Army". Clause (2) is substituted for the words "private firms which * * * may likely be manufacturers or furnishers of supplies and equipment for the use of the Department of the Army or of the Army". The words "in his discretion", "rules", and "and limitations" are omitted as surplusage. The word "equipment" is omitted as covered by the word "supplies", as defined by section 101 (26) of this title.

§ 4507. Sale of ordnance and ordnance stores to designers.

The Secretary of the Army may sell to designers who are nationals of the United States serviceable ordnance and ordnance stores necessary in the development of designs for the armed forces. (Aug. 10, 1956, ch. 1041, 70A Stat, 253.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4507	50: 65.	Apr. 23, 1904, ch. 1485 (13th par. under "Ordnance Department"), 33 Stat. 276; Aug. 1, 1953, ch. 305, § 645 (5th clause), 67 Stat. 357.

The words "designers who are nationals of the United States" are substituted for the words "American designers". The first sentence of cited portion of the source statute is not contained in 50: 65. It is also omitted from the revised section as impliedly repealed by the Permanent Appropriation Repeal Act, 1934, § 4 (b) (10), 48 Stat. 1227 (31 U. S. C. 725c (b) (10)). 50: 65 (proviso) is omitted as surplusage. The words "armed forces" are substituted for the words "military service".

CROSS REFERENCES

Receipts credited to appropriation account for "Ordnance material, proceeds of sale (war)" to be covered into Treasury as miscellaneous receipts, see section 725c (b) (10) of Title 31, Money and Finance.

§ 4508. Tests of iron, steel, and other materials.

(a) The Secretary of the Army may authorize the use of the Army's machine for testing iron, steel, and other materials for industrial purposes, by any person upon payment of a suitable fee. The officer in charge of the test—

(1) shall require payment of fees for the tests authorized by this section in accordance with a table of fees approved by the Secretary;

(2) may require payment in advance;

(3) may spend the fees so received in making such tests; and

(4) shall fully report the tests and the expenditure of the fees to the Secretary.

The table of fees shall be adjusted from time to time so as to defray the cost of the tests as fully as possible.

(b) The Secretary shall consider any program of tests submitted by the American Society of Civil Engineers, and a record of the tests shall be furnished the Society for publication at its expense. (Aug. 10, 1956, ch. 1041, 70A Stat. 253; Nov. 2, 1966, Pub. L. 89-718, § 27, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4508 (a)	50: 76; 50: 77 (less last 44 words).	June 20, 1878, ch. 359, § 1 (19th par. under "Miscellaneous Objects"), 20 Stat. 223.
4508 (b)	50: 77 (last 44 words).	Mar. 3, 1885, ch. 360 (provisos under "Armories and Arsenals"), 23 Stat. 502; May 29, 1928, ch. 901 (par. 27), 45 Stat. 988.

In subsection (a), the words "may authorize the use of the Army's machine for" are substituted for the words "is authorized to cause the machine built * * * to be set up and applied to", in 50: 76. The words "who may desire to use it" and "for each test", in 50: 76, are omitted as surplusage. The words "as fully as possible" are substituted for the words "as near as may be". 50: 77 (words before proviso) is omitted as surplusage.

In subsection (b), the word "consider" is substituted for the words "shall give attention to".

AMENDMENTS

1966—Pub. L. 89-718 substituted "Secretary" for "Chief of Ordnance" in subsecs. (a)(4) and (b).

Chapter 433.—PROCUREMENT

Sec.
4531. Authorization.
4532. Factories and arsenals: manufacture at; abolition of.
4533. Army ration.
4534. Subsistence supplies: contract stipulations; place of delivery on inspection.
4535. Exceptional subsistence supplies: purchase without advertising.
4536. Equipment: post bakeries, schools, kitchens, and mess halls.
4537. Military surveys and maps: assistance of United States mapping agencies.
4538. Unserviceable ammunition: exchange and reclamation.
4540. Architectural and engineering services.

AMENDMENTS

1970—Pub. L. 91-482, § 2A, Oct. 21, 1970, 84 Stat. 1082, struck out item 4539, which read: "Horses and mules."

§ 4531. Authorization.

The Secretary of the Army may procure materials and facilities necessary to maintain and support the Army, its military organizations, and their installations and supporting and auxiliary elements, including—

(1) guided missiles;

(2) modern standard items of equipment;

(3) equipment to replace obsolete or unserviceable equipment;

(4) necessary spare equipment, materials, and parts; and

(5) such reserve of supplies as is needed to enable the Army to perform its mission.

This section does not authorize the design or development of any prototype aircraft intended primarily for commercial use. (Aug. 10, 1956, ch. 1041, 70A Stat. 253.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4531	5: 235; 10: 20a (as applicable to 5: 235).	July 10, 1950, ch. 454, §§ 103, 304 (as applicable to § 103), 64 Stat. 322, 325.

The words "but not limited to" are omitted, since, as defined in section 101 (30) of this title, the word "includes" means "includes but is not limited to". The words "divisions and", "the supply of", "the provision of", and "the maintenance of" are omitted as surplusage. The words "spare equipment, material, and parts" are substituted for the words, "spares and spare parts". The words "in this chapter, section 481 of this title", in 10: 20a, are omitted, since nothing in those references pertains to the rule stated in 10: 20a. The last sentence is substituted for 10: 20a.

§ 4532. Factories and arsenals: manufacture at; abolition of.

(a) The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis.

(b) The Secretary may abolish any United States arsenal that he considers unnecessary. (Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4532 (a)	5: 181-4 (e).	June 28, 1950, ch. 383, § 101 (e), 64 Stat. 264.
4532 (b)	50: 55.	R. S. 1666.

The words "Except as otherwise provided by law", in 5: 181-4 (e), are omitted, since there is no law within the scope of the exception. The word "made" is substituted for the words "manufactured or produced". The words "United States" are substituted for the word "Government", in 5: 181-4 (e). The words "which he considers" are substituted for the words "as, in his judgment", in 50: 55. The words "useless or", in 50: 55, are omitted as surplusage.

§ 4533. Army ration.

Under the direction of the Secretary of the Army, any branch, office, or officer designated by him shall buy the components of the Army ration and items directed by the President to be issued in place thereof. (Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4533	10: 1195a (less applicability to issue).	R. S. 1141 (less applicability to issue); June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.

The words "any * * * shall" are substituted for the words "It shall be the duty of the * * * to". The words "and items directed by the President to be issued in lieu thereof" are inserted, since section 4561 of this title authorizes the President to direct the issue of substitute articles.

CROSS REFERENCES

Issuance, see section 4561 of this title.

§ 4534. Subsistence supplies; contract stipulations; place of delivery on inspection.

Each contract for subsistence supplies for the Army that is made on public notice must provide for complete delivery, on inspection, at a specified place. (Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4534	10: 1198.	R. S. 3715; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.

The words "by the branch, office, or officers of the Army the Secretary of the Army may from time to time designate" are omitted as surplusage. The words "a specified place" are substituted for the words "such places as shall be stipulated".

§ 4535. Exceptional subsistence supplies: purchase without advertising.

Exceptional articles of subsistence supplies that are for members of the Army, and for which they are to pay regardless of condition upon arrival, may, under regulations to be prescribed by the Secretary of the Army, be bought on the open market without advertising. (Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4535	10: 1197.	Feb. 12, 1895, ch. 83 (last sentence of 1st par. under "Subsistence Department"), 28 Stat. 658.

The word "supplies" is substituted for the word "stores". The word "members" is substituted for the words "officers and enlisted men".

§ 4536. Equipment: post bakeries, schools, kitchens, and mess halls.

Money necessary for the following items for the use of enlisted members of the Army may be spent from appropriations for regular supplies:

(1) Equipment for post bakeries.

(2) Furniture, textbooks, paper, and equipment for post schools.

(3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4536	10: 1334.	June 13, 1890, ch. 423 (1st proviso under "Quartermaster's Department"), 26 Stat. 152.

The words "Money necessary * * * may be spent" are substituted for the words "There may be expended * * * the amounts required". The word "bakeries" is substituted for the words "bake house to carry on post bakeries". The words "each and all" are omitted as surplusage.

§ 4537. Military surveys and maps: assistance of United States mapping agencies.

The Secretary of the Army may obtain the assistance of the United States Geological Survey, the Environmental Science Services Administration, and other mapping agencies of the United States in—

(1) making topographic and other surveys;

(2) obtaining extra topographic data;

(3) making maps needed for military purposes;

(4) research and development of surveying by aerial photography; and

(5) developing methods of field reproduction.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254; Nov. 2, 1966, Pub. L. 89-718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4537	50: 81.	May 14, 1928, ch. 544, 45 Stat. 509.

The words "United States" are substituted for the word "Government". In clause (3), the word "making" is substituted for the words "preparation and printing of". In clause (5), the words "developing methods of" are substituted for the word "methods".

AMENDMENTS

1966—Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ——, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

CROSS REFERENCES

Coast and Geodetic Survey, see section 851 et seq. of Title 33, Navigation and Navigable Waters.

Geological Survey, see section 31 et seq. of Title 43, Public Lands.

§ 4538. Unserviceable ammunition: exchange and reclamation.

(a) The Secretary of the Army may, by contract or otherwise, reclaim deteriorated and unserviceable ammunition and components, not suitable for exchange, by conversion to usable form as complete rounds or serviceable components, and pay all or part of the costs thereof through the exchange of deteriorated and unserviceable components.

(b) Subject to applicable regulations under section 486 of title 40, the Secretary may exchange deteriorated and unserviceable ammunition and components thereof for serviceable ammunition or components. (Aug. 10, 1956, ch. 1041, 70A Stat. 255.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4538 (a)	10. 1210.	June 1, 1926. ch. 435, 44 Stat. 680; Oct. 31, 1951, ch. 654, § 2 (6), 65 Stat. 707.
4538 (b)	10: 1209.	

In subsection (a), the words "by conversion" are substituted for the words "by reworking * * * converting". The words "not suitable for exchange" are substituted for the words "as it may not be advisable to have exchanged". The words "under section 1209 of this title" and "not desired to retain" are omitted as surplusage.

In subsection (b), the word "serviceable" is substituted for the words "in condition for immediate use".

§ 4539. Repealed. Pub. L. 91-482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 255, provided for the purchase of horses and mules in the open market at Army posts, within maximum prices prescribed by the Secretary of the Army.

§ 4540. Architectural and engineering services.

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Army are inadequate, the

Secretary of the Army may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, 5101—5115, 5331—5338, 5341, 5342, and 7154 of title 5 do not apply to employment under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 255; Nov. 2, 1966, Pub. L. 89-718, § 28, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4540 (a)	5: 221 (1st sentence, less last 15 words).	Aug. 7, 1939, ch. 511, § 2, 53 Stat. 1240.
4540 (b)	5: 221 (less 1st sentence).	
4540 (c)	5: 221 (last 15 words of 1st sentence).	

In subsection (a), the words "and providing that in the opinion" are omitted as covered by the words "whenever he considers". The words "needed for" are substituted for the words "required for the accomplishment of".

In subsection (c), reference is made in substance to the Classification Act of 1949, instead of the Classification Act of 1923 referred to in the source statute, since section 1106 (a) of the Classification Act of 1949, 63 Stat. 972, provides that all references in other acts to the Classification Act of 1923 should be considered to refer to the Classification Act of 1949.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-718 substituted "Sections 305, 3324, 5101—5115, 5331—5338, 5341, 5342, and 7154 of title 5" for "Sections 1071—1153 of title 5".

Chapter 435.—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.
4561. Rations.
4562. Clothing.
4563. Clothing: replacement when destroyed to prevent contagion.
4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army.
4565. Colors, standards, and guidons of demobilized organizations: disposition.

CROSS REFERENCES

Property records, see section 2701 of this title.

§ 4561. Rations.

(a) The President may prescribe the components, and the quantities thereof, of the Army ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Army so require.

(b) Under the direction of the Secretary of the Army, the branch, office, or officer designated by him shall issue the components of the Army ration.

(c) An enlisted member of the Army on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(d) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations prescribed by the Surgeon General and approved by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 255.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4561 (a)	10: 724.	R. S. 1141 (as applicable to issue); June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.
4561 (b)	10: 1195a (as applicable to issue).	Feb. 2, 1901, ch. 192, § 40, 31 Stat. 758.
4561 (c)	10: 716b.	R. S. 1293; July 16, 1892, ch. 195 (last 15 words before proviso under "Subsistence of the Army"), 27 Stat. 178.
	10: 725.	Mar. 2, 1907, ch. 2511 (1st proviso under "Subsistence Department"), 34 Stat. 1165.
4561 (d)	10: 726.	R. S. 1175.

In subsection (a), the words "the components, and the quantities thereof" are substituted for the words "the kinds and quantities of the component articles". The words "substitutive" and "a due regard" are omitted as surplusage.

In subsection (b), the words "the components of the Army ration" are substituted for the words "such supplies as enter into the composition of the ration".

In subsection (c), the words "on active duty" are inserted for clarity. The words "under such regulations as may be prescribed by the Secretary of the Army", in 10: 725, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "or reserve", "prescribed for use on emergent occasions", and "furnished", in 10: 725, are omitted as surplusage.

In subsection (d), the words "Such quantities of" and "may be allowed" are omitted as surplusage.

§ 4562. Clothing.

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4562	10: 831.	R. S. 1296 (less 1st 9 words).

The words "members of the Army" are substituted for the words "troops of the United States".

§ 4563. Clothing: replacement when destroyed to prevent contagion.

Upon the recommendation of the Surgeon General, the Secretary of the Army may order a gratuitous issue of clothing to any enlisted member of the Army who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of an officer of the Medical Corps to prevent contagion. (Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4563	10: 834.	R. S. 1298.

The words "enlisted member" are substituted for the word "soldiers". The words "any articles of their" are omitted as surplusage. The words "while he had that disease" are inserted for clarity. The words "an officer of the Medical Corps" are substituted for the words "proper medical officers".

§ 4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army.

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Army, the officer of the Army designated by the Secretary of the Army shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment. (Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4564	10: 1259d; 10: 1259e; 34: 541.	R. S. 1143; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272. R. S. 1135; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.

The words "While * * * on shore duty" are substituted for the words "under orders to act on shore", in 10: 1259d and 1259e, and 34: 541. The word "branch, office, or" and "during the time such detachment is so acting or proceeding to act", in 10: 1259d and 1259e, and 34: 541, are omitted as surplusage. The words "their baggage, provisions, and cannon", in 10: 1259e and 34: 541, are omitted as surplusage. The words "and shall furnish the naval officer commanding any such detachment, and his necessary aides, with horses, accouterments, and forage", in 10: 1259e and 34: 541, are omitted as obsolete.

§ 4565. Colors, standards, and guidons of demobilized organizations: disposition.

(a) The Secretary of the Army may dispose of colors, standards, and guidons of demobilized organizations of the Army, as follows:

(1) Those brought into Federal service by the Army National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary for such national use as the Secretary may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Army remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care. (Aug. 10, 1956, ch. 1041, 70A Stat. 256; Nov. 2, 1966, Pub. L. 89–718, § 29, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4565 (a)	5: 202 (less 3d and last sentences).	Mar. 4, 1921, ch. 166, § 2, 41 Stat. 1438.
4565 (b)	5: 202 (3d sentence).	
4565 (c)	5: 202 (last sentence).	

In subsection (a), the words "Any which were used during their service by such organizations and" are omitted as surplusage. The first 15 words of the last sentence are substituted for 5: 202 (1st 45 words of 2d sentence).

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted the Secretary of the Army for the Quartermaster General as the officer to accept delivery of colors, standards, and guidons of demobilized organizations of the Army which cannot be disposed of under clauses (1) and (2).

Chapter 437.—UTILITIES AND SERVICES

Sec.
4591. Utilities: proceeds from overseas operations.
4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
4593. Quarters: heat and light.
4594. Furnishing of heraldic services.

AMENDMENTS

1957—Pub. L. 85–263, § 1 (2), Sept. 2, 1957, 71 Stat. 589, added item 4594.

CROSS REFERENCES

General military law provisions, see section 2481 of this title.

Property records, see section 2701 of this title.

§ 4591. Utilities: proceeds from overseas operations.

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Corps of Engineers in the field overseas are available for that utility until the close of the fiscal year following that in which they are received. (Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4591	10: 1287.	July 9, 1918, ch. 143, subch. XX (1st par.), 40 Stat. 893; May 29, 1928, ch. 901 (par. 37), 45 Stat. 989; Aug. 1, 1953, ch. 305, Title VI, § 645 (7th clause), 67 Stat. 357.

§ 4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.

In the operation of telegraph lines, cables, or radio stations, members of the Signal Corps may, in the discretion of the Secretary of the Army, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing officer for payment, or may file a claim with the General Accounting Office for the forwarding charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4592	10: 1319.	May 12, 1917, ch. 12 (proviso under "Washington-Alaska Military Cable and Telegraph System"), 40 Stat. 43.

The words "members of" are inserted for clarity. The words "Government", "and to this end", "as may be", and "amount of such" are omitted as surplusage.

§ 4593. Quarters: heat and light.

The heat and light necessary for the authorized quarters of members of the Army shall be furnished at the expense of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4593	10: 723.	Mar. 2, 1907, ch. 2511 (1st proviso under "Quartermaster's Department"), 34 Stat. 1167.

The word "members" is substituted for the words "officers and enlisted men". The words "under such regulations as the Secretary of the Army may prescribe", are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory function.

§ 4594. Furnishing of heraldic services.

(a) Under regulations to be prescribed by the Secretary of the Army, an authority designated by him may, upon the request of, and subject to approval by, the Secretary of another military department, design flags, insignia, badges, medals, seals, decorations, guidons, streamers, finial pieces for flagstaffs, buttons, buckles, awards, trophies, marks, emblems, rosettes, scrolls, braids, ribbons, knots, tabs, cords, and similar items for the requesting department.

(b) Upon request the Secretary of the Army may advise other departments and agencies of the United States on matters of heraldry.

(c) The Secretary of the Army may prescribe regulations providing for reimbursement for services furnished under this section. (Added Pub. L. 85–263, § 1 (1), Sept. 2, 1957, 71 Stat. 589.)

EFFECTIVE DATE

Section 2 of Pub. L. 85–263 provided that: "This Act [adding this section] takes effect on the first day of the first month after the month in which it is enacted [September, 1957]."

Chapter 439.—SALE OF SERVICEABLE MATERIAL

Sec.
4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices.
4622. Rations: commissioned officers in field.
4624. Medical supplies: civilian employees of Army; American National Red Cross; Soldiers' Home.
4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans.
4626. Aircraft supplies and services: foreign military or air attaché.
4627. Supplies: educational institutions.
4628. Airplane parts and accessories: civilian flying schools.
4629. Proceeds: disposition.

AMENDMENTS

1970—Pub. L. 91–482, § 2B, Oct. 21, 1970, 84 Stat. 1082, struck out item 4623, which read: "Tobacco: enlisted members of Army."

CROSS REFERENCES

Property records, see section 2701 of this title.

§ 4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices.

(a) The branch, office, or officer designated by the Secretary of the Army shall procure and sell, for cash or credit—

(1) articles specified by the Secretary of the Army or a person designated by him, to members of the Army; and

(2) items of individual clothing and equipment, to officers of the Army, under such restrictions as the Secretary may proscribe.

An account of sales on credit shall be kept and the amount due reported to any branch, office, or officer designated by the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) Subsistence supplies may be sold to members of the Army. The selling price of each article sold under this subsection is the invoice price of the last lot of that article that the officer making the sale received before the first day of the month in which the sale is made. Activities conducted under this subsection shall be consistent with section 2208 of this title.

(c) The branch, office, or officer designated by the Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Army.

(d) The branch, office, or officer designated by the Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Army.

(e) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Veterans' Administration may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Army.

(f) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Army honorably or under honorable conditions, at the prices at which like articles are sold to members of the Army. This subsection does not modify sections 772, 773, or 3612 of this title.

(g) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any branch of the Army or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash.

(h) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to officers and employees inside the United States may be made only to those residing within military installations.

(i) Appropriations for subsistence of the Army may be applied to the purchase of subsistence supplies for sale to members of the Army on active duty for the use of themselves and their families. (Aug. 10, 1956, ch. 1041, 70A Stat. 257; Sept. 7, 1962, Pub. L. 87-651, title I, § 118, 76 Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4621 (a)	10: 904; 10: 1231; 10: 1237; 32: 156.	Aug. 31, 1918, ch. 166, § 9 (less 17th through 22d words), 40 Stat. 957.
4621 (b)	10: 1238.	R. S. 1144; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.
4621 (c)	10: 1233.	June 3, 1916, ch. 134, § 109; restated June 4, 1920, ch. 227, subch. I, § 47; restated June 3, 1924, ch. 244, § 3; restated Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136; Mar. 25, 1948, ch. 157, § 5 (b), 62 Stat. 91; Oct. 12, 1949, ch. 681, § 501 (f) (2) and (3) (as applicable to § 109 of the Act of June 3, 1916, ch. 134), 63 Stat. 827; July 9, 1952, ch. 608, § 803 (12th par), 66 Stat. 505.
4621 (d)	10: 1234; 34: 539.	June 30, 1922 ch. 253, Title I (last proviso under "Clothing and Equipage"), 42 Stat. 729.
4621 (e)	10: 1235.	July 5, 1884, ch. 217 (proviso under "Subsistence of the Army"), 23 Stat. 108.
4621 (f)	10: 1395 (less last sentence).	Aug. 29, 1916, ch. 418 (words before semicolon of 3d proviso under "Subsistence of the Army"), 39 Stat. 630.
4621 (g)	10: 1253.	Mar. 4, 1915, ch. 143 (last proviso under "Clothing, and Camp and Garrison Equipage"), 38 Stat. 1079; June 28, 1950, ch. 383, § 402 (k), 64 Stat. 273.
4621 (h)	10: 1241.	June 5, 1920, ch. 240 (par. under "Purchase of Army Stores by Discharged Receiving Treatment from the Public Health Service"), 41 Stat. 976.
4621 (i)	10: 1196.	Feb. 14, 1927, ch. 134 (less last sentence), 44 Stat. 1096. Mar. 3, 1911, ch. 209 (last par. under "Subsistence Department"), 36 Stat. 1047. Aug. 8, 1953, ch. 390, § 1, 67 Stat. 499. Mar. 3, 1875, ch. 131 (proviso of 1st sentence of 1st par. under "War Department"), 18 Stat. 410.

In subsection (a), the word "members" is substituted for the words "officers and enlisted men" in 10: 1237. Clause (2) is substituted for 10: 904. 32: 156 is omitted as covered by 10: 904, since the words "officers of the Army" necessarily cover all persons named in 32: 156. The words "the Secretary of the Army or a person designated by him" are substituted for the words "by whatever branch, office, or officers of the Army the Secretary of the Army may from time to time designate", inserted by the Editors of the United States Code. R. S. 1114 which provided that this function should be invested in the Inspector General was not amended in this respect by section 402 (a) of the Army Organization Act of 1950 (64 Stat. 272). However, these functions have now been transferred to the Secretary of the Army or a person designated by him. (See memorandum of the Secretary of Defense, dated October 29, 1954, subject "Transfer of Authority from the Inspector General to the Secretary of the Army to Designate Subsistence Articles for Sale," and opinion of the Judge Advocate General of the Army (JAGA 1954/9712, 2 December 1954).) The words "Except for articles and items acquired through the use of working capital funds under sections 172—172j of title 5" are inserted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (b), the first sentence states expressly the rule which is implicit in 10: 1238. The word "members" is substituted for the words "officers and enlisted men". The words "shall be understood, in all cases of such sales" are omitted as surplusage. The last sentence is inserted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Deputy General Counsel of the Office of the Secretary of Defense, March 28, 1956.)

In subsection (c), the word "members" is substituted for the words "officers and enlisted men". The words "prices at which like property is sold to" are substituted for the words "same price as is charged the".

In subsections (c) and (d), the words "other armed forces" are substituted for the words "Navy and Marine Corps", since such sales are authorized to members of the Coast Guard by section 144 (b) of title 14.

In subsection (d), the words "other than subsistence supplies" are inserted, since the sale of subsistence supplies is covered by subsection (c).

In subsection (e), the words "a person who has been discharged" are substituted for the words "discharged officers and enlisted men". The words "Navy * * * or Marine Corps", omitted from the 1952 Edition of the United States Code, are inserted to conform to the source statute. The words "may buy" are substituted for the words "shall * * * be permitted to purchase". The words "at the prices at which like property is sold" are substituted for the words "at the same price as charged". The word "member" is substituted for the words "officers and enlisted men". The words "while undergoing such care and treatment" are omitted as surplusage.

In subsection (f), the words "person who has been discharged" are substituted for the words "former members * * * who have been separated therefrom". The words "at the prices at which like articles are sold to members" are inserted to conform to the last sentence of subsection (a) and subsection (e).

In subsection (g), the words "regulations to be prescribed by the Secretary" are substituted for the words "Army Regulations". The words "of the Government" are omitted as surplusage. 10: 1253 (last 22 words of 1st sentence) is omitted as surplusage. The words "or to another executive department of the Government" are omitted as superseded by section 7 of the Act of May 21, 1920, ch. 194, as amended (31 U. S. C. 686). The provisions of 10: 1253 relating to computation of costs are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (h), the word "outside" is substituted for the words "beyond the continental limitations". The words "or in Alaska" are omitted, since, under section 101 (1) of this title, the words "United States" are defined to include only the States and the District of Columbia. The word "continental", after the words "within the", is omitted for the same reason. The last sentence is substituted for 10: 1241 (proviso).

In subsection (i), 10: 1196 (last 30 words) is omitted as superseded by the act of April 27, 1914, ch. 72 (last proviso under "Subsistence of the Army"), 38 Stat. 361. The words "So much of the" and "as may be necessary" are omitted as surplusage. The words "members * * * on active duty, for the use of themselves and their families" are substituted for the words "officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations", to conform to 10: 1237 and 1238. Those sections provide the basic authority for procurement and sale of subsistence supplies to all members. This interpretation conforms to established administrative practice under those sections. The word "supplies" is substituted for the word "stores".

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-651 substituted "section 2208 of this title" for "sections 172—172j of title 5."

Subsec. (b). Pub. L. 87-651 substituted "section 2208 of this title" for "sections 172—172j of title 5."

PRICES CHARGED PERSONNEL OF CIVILIAN AGENCIES IN GERMANY

Act June 20, 1956, ch. 414, title I, § 101, 70 Stat. 300, provided in part: "When the Department of the Army, under the authority of the Act of March 3, 1911, as amended, furnishes subsistence supplies to personnel of civilian agencies of the United States Government serving in Germany, payment therefor by such personnel shall be made at the same rate as is paid by civilian personnel of the Department of the Army serving in Germany."

Similar provisions were contained in acts Oct. 6, 1949, ch. 621, title I, § 101, 63 Stat. 713; Sept. 6, 1950, ch. 896, ch. XI, title III, § 301, 64 Stat. 763; Nov. 1, 1951, ch. 664, ch. IX, § 901, 65 Stat. 750; July 15, 1952, ch. 758, ch. XI, title II, 66 Stat. 652; Aug. 7, 1953, ch. 340, ch. X, 67 Stat. 433; Aug. 26, 1954, ch. 935, ch. XI, 68 Stat. 823; July 7, 1955, ch. 279, title I, § 101, 69 Stat. 269.

CROSS REFERENCES

Cadets, clothing and equipment, see section 4350 of this title.

Disposal of surplus property, generally, see section 484 of Title 40, Public Buildings, Property, and Works.

Property utilization, generally, see section 483 of Title 40.

Provision permitting officers and enlisted men of Coast Guard to purchase from Army at same price as is charged members of the Army, see section 144 of Title 14, Coast Guard.

Provision permitting officers of Public Health Service to purchase from Army at same price as is charged members of the Army see section 210 of Title 42, The Public Health and Welfare.

Purchase of uniforms and equipment by officers of National Guard from Army, see section 705 of Title 32, National Guard.

Settlement of accounts, deductions from pay, see section 4837 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 1007.

§ 4622. Rations: commissioned officers in field.

Commissioned officers of the Army serving in the field may buy rations for their own use, on credit, from any officer designated by the Secretary of the Army. Amounts due for these purchases shall be reported monthly to the officer of the Army designated by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 258.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4622	10: 1232.	R. S. 1145; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.

The words "at cost prices" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 4623. Repealed. Pub. L. 91-482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 258, provided that the Quartermaster Corps sell not more than 16 ounces of tobacco a month to an enlisted member of the Army on active duty who requests it.

§ 4624. Medical supplies: civilian employees of Army; American National Red Cross; Soldiers' Home.

(a) Under regulations to be prescribed by the Secretary of the Army, a civilian employee of the Department of the Army who is stationed at an Army post may buy necessary medical supplies from the Army when they are prescribed by an officer of the Medical Corps on active duty.

(b) With the approval of the Secretary, the Army Medical Department may sell medical supplies to the American National Red Cross for cash.

(c) Any branch, office, or officer designated by the Secretary may sell medical and hospital supplies to the Soldiers' Home. (Aug. 10, 1956, ch. 1041, 70A Stat. 259; June 4, 1968, Pub. L. 90-329, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4624 (a)	10: 1236.	Apr. 23, 1904, ch. 1485 (last proviso under "Medical Department"), 33 Stat. 273; Mar. 2, 1905, ch. 1307 (last proviso under "Medical Department"), 33 Stat. 839.
4624 (b)	10: 1254.	Mar. 4, 1915, ch. 143 (2d proviso under "Medical Department"), 38 Stat. 1080.
4624 (c)	24: 58.	June 4, 1897, ch. 2 (par. under "Soldiers' Home, District of Columbia"), 30 Stat. 54; June 28, 1950, ch. 383, § 402 (d), 64 Stat. 272.

In subsection (a) the words "an officer of the Medical Corps" are substituted for the words "medical officer". The words "on active duty" are inserted for clarity.

In subsection (b) the words "rates of charge", "to cover the cost of purchase, inspection, and so forth", and "as can be spared without detriment to the military service" are omitted as surplusage. The words "the contract prices paid therefor" are omitted to reflect Title IV of the National Security Act of 1947 as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.) The word "equipments" is omitted as covered by the word "supplies".

In subsection (c), the words "in the District of Columbia" are omitted as surplusage, since there is only one Soldiers' Home. The words "Upon proper application therefor" are omitted as surplusage. The words "its contract prices" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

AMENDMENTS

1968—Subsec. (b). Pub. L. 90-329 redesignated the "Army Medical Service" as the "Army Medical Department".

§ 4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans.

(a) Any branch, office, or officer designated by the Secretary of the Army may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as those articles are sold to officers of the Army.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian

employees of the Army and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes. (Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4625 (a)	34: 540; 50: 70.	Mar. 3, 1909, ch. 252 (5th par. under "National Trophy and Medals for Rifle Contest)", 35 Stat. 750.
4625 (b)	50: 71.	Mar. 3, 1909, ch. 252 (8th par. under "National Trophy and Medals for Rifle Contests"), 35 Stat. 751; June 28, 1950, ch. 383, § 402 (h), 64 Stat. 273.
4625 (c)	50: 63.	May 11, 1908, ch. 163 (4th par. under "National Trophy and Medals for Rifle Contests"), 35 Stat. 125.

In subsection (a), the words "other armed forces" are substituted for the words "the Navy and Marine Corps", in 34: 540 and 50: 70, since those sales may be made to officers of the Coast Guard under section 114 (c) of title 14.

CROSS REFERENCES

Coast Guard officers, sale of articles of ordnance to, see section 144 (c) of Title 14, Coast Guard.

§ 4626. Aircraft supplies and services: foreign military or air attaché.

Under such conditions as he may prescribe, the Secretary of the Army may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4626	22: 259 (less last sentence).	May 31, 1939, ch. 161 (less last sentence), 53 Stat. 795.

The last sentence is substituted for the words "except for shelter for which no charge shall be made". The words "and equipment" are omitted as covered by the word "supplies" 22: 259 (last 22 words of 2d sentence) is omitted to reflect Title IV of the National Security Act of 1947 as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title.

§ 4627. Supplies: educational institutions.

Under such regulations as the Secretary of the Army may prescribe, supplies and military publications procured for the Army may be sold to any educational institution to which an officer of the Army is detailed as professor of military science and tactics, for the use of its military students. Sales under this section shall be for cash. (Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4627	10: 1179 (less proviso).	July 17, 1914, ch. 149 (less proviso), 38 Stat. 512.

The words "procured for" are substituted for the words "as are furnished to". The words "stores * * * matériel of war" are omitted as covered by the word "supplies". The words "the price listed to the Army" are omitted to reflect Title IV of the National Security Act of 1947 as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title.

§ 4628. Airplane parts and accessories: civilian flying schools.

The Secretary of the Army may sell, to civilian flying schools at which personnel of the Department of the Army or the Department of the Air Force are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Army furnished to them for flight training, the spare parts and accessories needed for those repairs. (Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4628	10: 298c	Feb. 12, 1940, ch. 27, Title I (proviso under "Air Corps"), 54 Stat. 25.

The words "under the provisions of the Act of Apr. 3, 1939, ch. 35, 53 Stat. 555" are omitted as obsolete, since training formerly performed under that act is now performed under section 4301 of this title. The words "personnel of the Department of the Army or the Department of the Air Force" are substituted for the words "flying cadets", since the authority is reciprocal, and to conform to section 4656 of this title. The words "flying cadet" are omitted as obsolete. 10: 298c (last 28 words) is omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

CROSS REFERENCES

Issuance of aircraft and equipment to civilian aviation schools, see section 4656 of this title.

§ 4629. Proceeds: disposition.

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

(1) Exterior articles of uniform sold under section 4621 of this title.

(2) Supplies and military publications sold to educational institutions under section 4627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attaché sold under section 4626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4629	10: 1179 (proviso). 10: 1395 (last sentence). 22: 259 (last sentence).	Feb. 14, 1927, ch. 134 (last sentence), 44 Stat. 1096. July 17, 1914, ch. 149 (proviso), 38 Stat. 512. May 31, 1939, ch. 161 (last sentence), 53 Stat. 796.

Chapter 441.—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
4651. Arms, tentage, and equipment: educational institutions not maintaining units of R. O. T. C.
4652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
4653. Ordnance and ordnance stores: District of Columbia high schools.
4654. Quartermaster supplies: military instruction camps.
4655. Arms and ammunition: agencies and departments of the United States.
4656. Aircraft and equipment: civilian aviation schools.

CROSS REFERENCES

General military law provisions, see sections 2541, 2542 of this title.

Property records, see section 2701 of this title.

§ 4651. Arms, tentage, and equipment: educational institutions not maintaining units of R. O. T. C.

Under such conditions as he may prescribe, the Secretary of the Army may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit male students over 14 years of age. (Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4651	10: 1180.	June 3, 1916, ch. 134, § 55c (words before semicolon); added June 4, 1920, ch. 227, subch. I, § 35 (words of last par. before semicolon), 41 Stat. 780.

The reference to schools "other than those provided for in section 381 of this title" is omitted as covered by the descriptions of the educational institutions.

§ 4652. Rifles and ammunition for target practice: educational institutions having corps of cadets.

(a) The Secretary of the Army may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4652 (a) 4652 (b) 4652 (c)	10: 1185 (1st par.). 10: 1185 (last par., less 1st 22, and last 19, words). 10: 1185 (1st 22, and last 19, words of last par.).	Apr. 27, 1914, ch. 72 (last proviso and last par. under "Manufacture of Arms"), 38 Stat. 370.

In subsection (a), the words "and carrying on military training" and "the maintenance of" are omitted as surplusage. In clause (2), the words "suitable to said arm" are omitted as surplusage.

In subsection (b), the words "shall use it for target practice" are substituted for the words "insuring the designed use of the property issued". The words "take proper care of it" are substituted for the words "providing against loss to the United States through lack of proper care".

§ 4653. Ordnance and ordnance stores: District of Columbia high schools.

The Secretary of the Army, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. The Secretary shall require a bond in double the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4653	10: 1183.	Feb. 5, 1891, J. Res. 9, 26 Stat. 1113.

The words "at his discretion and" "belonging to the Government, and which can be spared for that purpose", and "in each case" are omitted as surplusage. The words "high schools of the" are substituted for the words "High School of Washington" since the various high schools of the District of Columbia have succeeded the Washington High School that existed at the time the statute was enacted. The words "except for property properly expended" are inserted for clarity.

§ 4654. Quartermaster supplies: military instruction camps.

Under such conditions as he may prescribe, the Secretary of the Army may issue, to any educational institution at which an Army officer is detailed as professor of military science and tactics, such quartermaster supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and except for property properly expended, for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4654	10: 1182.	May 18, 1916, ch. 124, 39 Stat. 123.

The words "at his discretion and" and "belonging to the Government, and which can be spared for that purpose, as may appear to be" are omitted as surplusage. The words "except for property properly expended" are inserted for clarity. The word "stores" is omitted as covered by the word "supplies".

§ 4655. Arms and ammunition: agencies and departments of the United States.

(a) Whenever required for the protection of public money and property, the Secretary of the Army may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Army. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Army to cover the costs of—

(1) ammunition issued;

(2) replacing arms and accouterments that have been lost or destroyed, or cannot be repaired;

(3) repairing arms and accouterments returned to the Department of the Army; and

(4) making and receiving shipments by the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4655 (a)	50: 61 (less proviso).	Mar. 3, 1879, ch. 183 (2d par; under "Miscellaneous"). restated Apr. 14, 1937, ch. 79, 50 Stat. 63.
4655 (b)	50: 61 (proviso).	

In subsection (a), the word "lend" is substituted for the word "issue", with respect to arms and accouterments, since the property must be returned when the necessity for its use has expired. The words "and not properly expended" are inserted for clarity. The words "United States" are substituted for the word "Government". The word "their" is substituted for the words "suitable * * * for use therewith". The words "it is no longer needed" are substituted for the words "the necessity for their use has expired".

In subsection (b), the words "hereafter", "borrowed", and "under the authority of this section" are omitted as surplusage.

§ 4656. Aircraft and equipment: civilian aviation schools.

The Secretary of the Army, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Army or the Department of the Air Force are pursuing a course of instruction and training under detail by competent orders, and at least one of which is designated by the Civil Aeronautics Authority for the training of Negro air pilots. (Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4656	10: 298b.	Apr. 3, 1939, ch. 35, § 4, 53 Stat. 556.

The words "in his discretion and", "rules", "limitations", and "on hand and belonging to the Government, such articles as may appear to be" are omitted as surplusage. The words "Department of the Army or the Department of the Air Force" are substituted for the words "Military Establishment", since the authority is reciprocal.

Chapter 443.—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
4681. Surplus war material: sale to States and foreign governments.
4682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
4683. Obsolete or condemned rifles: loan to local units of recognized veterans' organizations.
4684. Surplus obsolete ordnance: sale to patriotic organizations.
4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes.
4686. Obsolete ordnance: gift to State homes for soldiers and sailors.

CROSS REFERENCES

Management and disposal of Government property, see section 471 et seq. of Title 40, Public Buildings, Property and Works.

Property records, see section 2701 of this title.

§ 4681. Surplus war material: sale to States and foreign governments.

Subject to regulations under section 486 of title 40, the Secretary of the Army may sell surplus war material and supplies, except food, of the Department of the Army, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient. (Aug. 10, 1956, ch. 1041, 70A Stat. 262.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4681	10: 1262.	June 5, 1920, ch. 240 (2d proviso under "Contingencies of the Army"), 41 Stat. 949; Oct. 31, 1951, ch. 654. § 2 (8), 65 Stat. 707.

The word "may" is substituted for the words "is authorized in his discretion to". The words "war material" are substituted for the word "matériel". The words "or equipment" are omitted as covered by the word "supplies". The words "of the Department of the Army" are substituted for the words "pertaining to the Military Establishment". The words "which are not needed for military purposes" are omitted as covered by the word "surplus". The words "as or may be found to be" are omitted as surplusage.

§ 4682. Obsolete or excess material: sale to National Council of Boy Scouts of America.

Subject to regulations under section 486 of title 40, the Secretary of the Army, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Army, including

packing, handling, and transportation. (Aug. 10, 1956, ch. 1041, 70A Stat. 262.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4682	10: 1259.	May 15, 1937, ch. 193, 50 Stat. 167; Oct. 31, 1951, ch. 654, § 2 (7), 65 Stat. 707.

The words "obsolete or excess material" are substituted for the words "such obsolete material as may not be needed by the Department of the Army, and such other material as may be spared" to conform to the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 471 et seq.). The words "in his discretion" are omitted as surplusage.

§ 4683. Obsolete or condemned rifles: loan to local units of recognized veterans' organizations.

(a) The Secretary of the Army, under regulations to be prescribed by him, may—

(1) lend obsolete or condemned rifles (not more than 10), slings, and cartridge belts to any local unit of any national veterans' organization recognized by the Veterans' Administration, for use by that unit for funeral ceremonies of a member or former member of the armed forces, and for other ceremonial purposes; and

(2) issue and deliver to those units blank ammunition for those rifles—

(A) without charge, if it is to be used for ceremonies at national cemeteries; and

(B) without charge, except for packing, handling, and transportation, if it is to be used for other ceremonies.

(b) The Secretary may relieve a unit to which materials are lent under subsection (a), and the surety on its bond, from liability for loss or destruction of the material lent, if there is conclusive evidence that the loss or destruction did not result from negligence. (Aug. 10, 1956, ch. 1041, 70A Stat. 262.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4683 (a)	50: 62.	Feb. 10, 1920, ch. 64; restated June 5, 1920, ch. 240 (par. under "Rifles and Accessories for Organizations of War Veterans"); restated May 26, 1952, ch. 364, 66 Stat. 94.
4683 (b)	50: 62b.	Dec. 15, 1926, ch. 10, 44 Stat. 922.

In subsection (a), the words, "rules, limitations" and "in suitable amounts" are omitted as surplusage. The words "(not more than 10)" are substituted for 50: 62 (proviso). The words "any local unit" are substituted for the words "posts or camps", before the words "of national". The words "that unit" are substituted for the word "them". The words "those units" are substituted for the words "such posts and camps". The words "a member or former member of the armed forces" are substituted for the words "soldiers, sailors, and marines". Clause (2) is substituted for 50: 62 (words between semicolon and colon).

In subsection (b), the words "a unit to which materials are lent under subsection (a)" are substituted for the description of the posts or camps covered. The words "the material lent" are substituted for the words "obsolete or condemned Army rifles, slings, and cartridge belts loaned by the Secretary of the Army under authority of section 62 of this title".

§ 4684. Surplus obsolete ordnance: sale to patriotic organizations.

Subject to regulations under section 486 of title 40, any branch, office, or officer designated by the Secretary of the Army may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4684	50: 64; 50: 68.	May 28, 1908, ch. 215, § 14, 35 Stat. 443; June 28, 1950, ch. 383, § 402 (g), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2 (26), 65 Stat. 707. Mar. 4, 1909, ch. 319, § 47, 35 Stat. 1075; June 28, 1950, ch. 383, § 402 (i), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2 (28), 65 Stat. 707.

50: 64 (proviso) and 50: 68 (proviso) are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 921; title 26 section 5845.

§ 4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes.

(a) Upon the recommendation of the governor of the State or Territory concerned, the Secretary of the Army, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State and Territorial educational institutions and to State soldiers and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 263.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4685 (a)	50: 62a (1st par. and proviso of last par.).	June 30, 1906, ch. 3938, 34 Stat. 817.
4685 (b)	50: 62a (last par., less proviso).	

In subsection (a), the words "at his discretion" and "as may be available" are omitted as surplusage. The word "lend" is substituted for the word "issue" to reflect the intent of the section. 50: 62a (1st 13 words of proviso) is omitted as surplusage. The words "and which is still in effect" are inserted for clarity.

In subsection (b), the words "to the United States" are omitted as surplusage. The words "except property properly expended" are inserted for clarity.

The words "subject to such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "to any of the 'National Homes for Disabled Volunteer Soldiers' already established or hereafter established and", in the act of February 8, 1889, ch. 116, 25 Stat. 657, are not contained in 50: 66 (1st sentence). They are also omitted from the revised section, since the National Homes for Disabled Volunteer Soldiers were dissolved by the act of July 3, 1930, ch. 863, 46 Stat. 1016. The acts of March 3, 1899, ch. 643 (1st proviso under "Ordnance Department"), 30 Stat. 1073; and May 26, 1900, ch. 586 (1st proviso under "Ordnance Department"), 31 Stat. 216, as amended, relating to disposal of ordnance to "Homes for Disabled Volunteer Soldiers" by the Chief of Ordnance, became inoperative when the Homes were dissolved. Although section 402 (e) of the Army Organization Act of 1950, ch. 383, 64 Stat. 273, amended the act of May 26, 1900, it did not have the effect of reviving that act. The word "give" is substituted for the word "deliver" to express more clearly the intent of the section. The words "serviceable" and "as may be on hand undisposed of" are omitted as surplusage. The word "may" is substituted for the words "is authorized and directed", since section 4684 of this title provides an alternative method for the disposal of obsolete cannon.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 921; title 26 section 5845.

§ 4686. Obsolete ordnance: gift to State homes for soldiers and sailors.

Subject to regulations under section 486 of title 40, the Secretary of the Army may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority. (Aug. 10, 1956, ch. 1041, 70A Stat. 263.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4686	50: 66.	Feb. 8, 1889, ch. 116, 25 Stat. 657; Oct. 31, 1951, ch. 654, § 2 (27), 65 Stat. 707. Mar. 3, 1899, ch. 423 (1st proviso under "Ordnance Department"), 30 Stat. 1073; May 26, 1900, ch. 586 (1st proviso under "Ordnance Department"), 31 Stat. 216; June 28, 1950, ch. 383, § 402 (e), 64 Stat. 273.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 921; title 26 section 5845.

Chapter 445.—INQUESTS; DISPOSITION OF EFFECTS OF DECEASED PERSONS; CAPTURED FLAGS

Sec.
4711. Inquests.
4712. Disposition of effects of deceased persons by summary court-martial.
4713. Disposition of effects of deceased persons by Soldiers' Home.
4714. Collection of captured flags, standards, and colors.

CROSS REFERENCES

General military law provisions respecting death benefits, see section 1475 et seq. of this title.

§ 4711. Inquests.

(a) When a person is found dead under circumstances that require investigation, at a place garrisoned by the Army and under the exclusive jurisdiction of the United States, the commanding officer shall direct a summary court-martial to investigate the circumstances of the death.

(b) In conducting an investigation under subsection (a), the summary court-martial may summon witnesses and examine them upon oath.

(c) The summary court-martial shall promptly submit to the commanding officer a report of the investigation and findings as to the cause of death. (Aug. 10, 1956, ch. 1041, 70A Stat. 263.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4711 (a)	10: 15a (words before semicolon of 1st sentence).	June 4, 1920, ch. 227, subch. II, § 1 (Art. 113), 41 Stat. 810; May 5, 1950, ch. 169, § 6 (d) 64 Stat. 145.
4711 (b)	10: 15a (1st sentence, less words before semicolon).	
4711 (c)	10: 15a (less 1st sentence).	

In subsection (a), the words "post, fort, camp, or other" are omitted as surplusage.

In subsection (b), the words "In conducting an investigation under subsection (a)" are substituted for the words "for this purpose". The word "may" is substituted for the words "shall have power to". The words "or affirmation" are omitted, since the word "oath", as defined in section 1 of title 1, includes "affirmation".

In subsection (c), the words "commanding officer" are substituted for the words "post or other commander" to conform to subsection (a).

CROSS REFERENCES

Summary courts-martial—
Jurisdiction, see section 820 of this title.
Persons authorized to convene, see section 824 of this title.

§ 4712. Disposition of effects of deceased persons by summary court-martial.

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Army; or

(2) an inmate of the Soldiers' Home who dies in an Army hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then in camp or quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then in camp or quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Army.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) Surviving spouse or legal representative.

(2) Son.

(3) Daughter.

(4) Father, if he has not abandoned the support of his family.

(5) Mother.

(6) Brother.

(7) Sister.

(8) Next of kin.

(9) Beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabres, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects, and articles not permitted to be sold, to the executive part of the Department of the Army for transmission to the Soldiers' Home.

(g) The summary court-martial shall make a full report of the transactions under this section, with respect to the deceased, to the Department of the Army for transmission to the General Accounting Office for action authorized in the settlement of accounts of deceased members of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 264; Nov. 2, 1966, Pub. L. 89–718, § 30, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4712 (a)	5: 150j (words before 1st semicolon of 1st par.; and last par.).	June 4, 1920, ch. 227, subch. II, § 1 (Art. 112), 41 Stat. 809; May 5, 1950, ch. 169, § 6 (c), 64 Stat. 145.
4712 (b)	5: 150j (22 words after 1st semicolon of 1st par.).	
4712 (c)	5: 150j (words between 1st and 2d semicolons of 1st par., less 1st 22 words).	
4712 (d)	5: 150j (words between 2d and 3d semicolons of 1st par.).	
4712 (e)	5: 150j (words between 3d and 4th semicolons of 1st par.).	
4712 (f)	5: 150j (1st par., less words before 4th semicolon, and less last 40 words).	
4712 (g)	5: 150j (last 40 words of 1st par.).	

In subsection (a), the words "the court-martial jurisdiction of the Army or the Air Force at a place or command under the jurisdiction of the Army" are substituted for the words "military law", to reflect the creation of a separate Air Force. Clause (2) is substituted for 5: 150j (last par.).

In subsections (a), (b), and (d), the words "surviving spouse" are substituted for the word "widow".

In subsection (c), the word "may" is substituted for the words "shall have authority to". The words "to the extent permitted" are substituted for the words "in so far as * * * will permit". The words "under this article" and "upon its transactions" are omitted as surplusage.

In subsection (d), the words "through the Quartermaster Corps" are omitted, since the functions are no longer lodged in the Quartermaster Corps. The words "if such be found by said court" are omitted as surplusage. The words "United States" are substituted for the word "Government". 5: 150j (19 words before 3d semicolon of 1st par.) is omitted as covered by subsection (g).

In subsection (e), the first 37 words are substituted for 5: 150j (33 words after 3d semicolon of 1st par.). The word "may" is substituted for the words "shall have the authority".

In subsection (f), the words "Soldiers' Home" are inserted, since, as provided in section 4713 of this title, the Home is now the place where the mentioned articles are sent.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "military law" for "the court-martial jurisdiction of the Army or the Air Force".

CROSS REFERENCES

General military law provisions respecting—

Disposition of unclaimed property, see section 2575 of this title.

Final settlement of accounts, deceased members, see section 2771 of this title.

Summary courts-martial—

Jurisdiction, see section 820 of this title.

Persons authorized to convene, see section 824 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2575, 4713 of this title; title 5 section 5564; title 37 section 554.

§ 4713. Disposition of effects of deceased persons by Soldiers' Home.

(a) The effects of a deceased person that the Department of the Army receives under section 4712 (f) of this title shall be delivered to the Soldiers' Home. The Home shall dispose of the effects as follows:

(1) A will or other paper involving property rights shall be promptly delivered to the proper court of record.

(2) If the heirs or legal representative of the deceased cannot sooner be ascertained, the Home shall retain the remaining effects until three years after the death of the deceased, and then, upon establishment of a right thereto to the satisfaction of the Home, it shall deliver them to the living person highest on the following list who can be found:

(A) Surviving spouse or legal representative.

(B) Son.

(C) Daughter.

(D) Father, if he has not abandoned the support of his family.

(E) Mother.

(F) Brother.

(G) Sister.

(H) Next of kin.

(I) Beneficiary named in the will of the deceased.

(b) After three years from the date of death, the Home may sell the effects to which a right has not been established by the heirs or legal representative, except decorations, medals, and citations, by public or private sale, as it considers most advantageous.

(c) After five years from the date of death, the Home shall dispose of effects that are not sold under subsection (b) and to which a right has not been established by the heirs or legal representative of the deceased, including decorations, medals, and citations, in the manner that it considers most appropriate in the public interest. It may retain them; deliver them to the Veterans' Administration, a State

or other military home, a museum, or other appropriate institution; or destroy them if the Board of Commissioners of the Home determines that they are valueless.

(d) The net proceeds received by the Home from the sale of the deceased's effects shall be covered into the Treasury to the credit of the fund called the "Soldiers' Home permanent fund (trust fund)", and the principal of the fund so increased shall draw interest at 3 percent a year, payable quarterly to the treasurer of the Home.

(e) A claim for the net proceeds of the sale of the deceased's effects may be filed with the General Accounting Office at any time within six years after the date of his death, for action under section 2771 of this title. If not so filed, such a claim may not be considered by a court or the General Accounting Office.

(f) A claim allowed by the General Accounting Office under subsection (e) shall be certified to the treasurer of the Home for payment from the Soldiers' Home permanent fund (trust fund) in the amount found due, including accrued interest. No claim may be allowed or paid in excess of the net proceeds, including accrued interest, of the estate covered into the Treasury under subsection (d). (Aug. 10, 1956, ch. 1041, 70A Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4713 (a)	5: 150j-1.	Feb. 21, 1931, ch. 268, §§ 1
4713 (b)	5: 150j-2 (a).	46 Stat. 1203, 1204
4713 (c)	5: 150j-2 (b).	
4713 (d)	5: 150j-2 (c).	
4713 (e)	5: 150j-3 (a).	
4713 (f)	5: 150j-3 (b).	

In subsection (a), the first sentence is substituted for 5: 150j-1 (words before 1st semicolon), since the reference to the effects in the possession of the General Accounting Office was only to those in its possession on the effective date of that act, and all such effects were transferred to the Soldiers' Home. The words "The Home shall dispose of the effects as follows" are inserted for clarity. The words "after the death" are substituted for the words "from the date of the death * * * shall have expired". The words "the deceased" are substituted for the words "the person on whose behalf they were received". The words "(in the event said period shall not have already elapsed)" are omitted as surplusage.

In subsection (b), the words "except decorations, medals, and citations" are substituted for 5: 150j-2 (a) (proviso). The words "of said deceased" are omitted as surplusage.

In subsection (c), the words "are valueless" are substituted for the words "no longer possess any value". The words "fitting, helpful, and" are omitted as surplusage.

In subsection (e), the word "within" is substituted for the words "prior to the expiration of". The words "may not be considered" are substituted for the words "are barred from being acted upon either". The words "in the settlement of the accounts of deceased officers and enlisted men of the Army" are omitted as surplusage.

In subsection (f), the words "under subsection (e)" are substituted for the words "for the net proceeds of such effects". The words "by check" are omitted as surplusage.

CROSS REFERENCES

General military law provisions respecting disposition of unclaimed property, see section 2575 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2575, 5564 of this title; title 5 section 5564; title 37 section 554.

§ 4714. Collection of captured flags, standards, and colors.

The Secretary of the Army shall have sent to him all flags, standards, and colors taken by the Army from enemies of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4714	5: 198.	R. S. 218.

The words "from time to time", "collected", and "at the seat of government" are omitted as surplusage.

CROSS REFERENCES

Collection, preservation, and display of flags captured by the Navy, see section 7216 of this title.

Chapter 447.—TRANSPORTATION

Sec.
4741. Control and supervision.
4742. Control of transportation systems in time of war.
4743. Officers: use of transportation.
4744. Persons and supplies: sea transportation.
4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service.
4746. Civilian personnel in Alaska.
4747. Passengers and merchandise to Guam: sea transport.
4749. Property: for United States surveys.

AMENDMENTS

1962—Pub. L. 87-651, title I, § 119(2), Sept. 7, 1962, 76 Stat. 513, eliminated item 4748.

CROSS REFERENCES

General military law provisions—
Property records, see section 2701 of this title.
Transportation, see section 2631 et seq. of this title.

§ 4741. Control and supervision.

The transportation of members, munitions of war, equipment, military property, and stores of the Army throughout the United States shall be under the immediate control and supervision of the Secretary of the Army and agents appointed or designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4741	10: 1363.	R. S. 220.

§ 4742. Control of transportation systems in time of war.

In time of war, the President, through the Secretary of the Army, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic. (Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4742	10: 1361.	Aug. 29, 1916, ch. 418 (last par. under "Ordnance Department"), 39 Stat. 645.

The words "as may be needful or desirable" are omitted as surplusage.

§ 4743. Officers: use of transportation.

Under such conditions as the Secretary of the Army may prescribe, officers of the Army may, in the performance of their duties, use means of transportation provided for the Army and its supplies. (Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4743	10: 749.	Mar. 3, 1911, ch. 209 (5th proviso under "Transportation of The Army and Its Supplies"), 36 Stat. 1051.

Since its legislative history shows that it was enacted because the Comptroller of the Treasury had disallowed certain accounts for travel expenses (46 Congressional Record, pp. 905—913, 4643—4645), the source statute is restated to preclude future disallowances. The words "official and military" are omitted as surplusage.

§ 4744. Persons and supplies: sea transportation.

Whenever the Secretary of the Army considers that space is available, the following persons and supplies may be transported on vessels operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any military transport agency of the Department of Defense:

(1) Members of the Navy, Marine Corps, or Coast Guard.

(2) Officers and employees of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Coast Guard.

(3) Supplies of the Department of the Navy.

(4) Members of Congress.

(5) Other officers of the United States traveling on official business.

(6) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.

(7) Officers and employees of the Commonwealth of Puerto Rico on official business.

(8) The families of persons described in clauses (1), (2), (4), (5), and (7).

However, a person described in clause (7) or (8) may be so transported only if the transportation is without expense to the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 266; July 12, 1960, Pub. L. 86-624, § 4(d), 74 Stat. 411.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4744	10: 1369; 10: 1370; 10: 1371 (less last 29 words).	Mar. 2, 1907, ch. 2511 (6th proviso, less last 29 words under "Transportation of the Army and Its Supplies"), 34 Stat. 1170. June 30, 1921, ch. 33 (8th proviso under "Transportation of the Army and Its Supplies"), 42 Stat. 81. Mar. 3, 1911, ch. 209 (3d proviso under "Transportation of the Army and Its Supplies"), 36 Stat. 1051.

Reference to the Philippine government, contained in the source statute for 10: 1371, is omitted, since the Philippine Republic now has the status of a foreign country and only possessions of the United States are intended to be covered by the source statute. The words "Armed Services Department" are substituted for the words "Army and Navy Department", in 10: 1370, to reflect the present name of that Department of the Young Men's Christian Association. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

1960—Pub. L. 86-624 eliminated former cl. (6), which authorized transportation of officers and employees of the Territory of Hawaii, redesignated former clauses (7)—(9) as (6)—(8), and substituted "clauses (1), (2), (4), (5), and (7)" for "clauses (1), (2), (4), (5), (6), and (8)" in redesignated cl. (8), and "clause (7) or (8)" for "clause (8) or (9)" in the closing sentence.

§ 4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service.

(a) Whenever space is unavailable on commercial lines and is available (1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army on vessels operated by any transport agency of the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of the Army and the chairman of the Federal Maritime Board, be transported on those vessels. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service.

(b) Amounts received under this section shall be covered into the Treasury as miscellaneous receipts. (Aug. 10, 1956, ch. 1041, 70A Stat. 267.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4745 (a)	10: 1367 (less last 20 words).	June 5, 1920, ch. 240 (6th proviso under "Transportation of the Army and Ist Supplies"), 41 Stat. 960.
4745 (b)	10: 1367 (last 20 words).	

In subsection (a), the words "Federal Maritime Board" are substituted for the words "United States Maritime Commission", since the functions of the chairman of that commission were transferred to the chairman of the Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273. The words "the same kinds of service" are substituted for the words "the same class of accommodations". The words "shipments of" and "between the same ports" are omitted as surplusage. (See also third sentence of revision note for section 4746 of this title, below.)

ABOLITION OF FEDERAL MARITIME BOARD

Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of said Reorg. Plan.

§ 4746. Civilian personnel in Alaska.

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Army considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air—

(A) the Civil Aeronautics Board has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4746	10: 1371a.	Nov. 21, 1941, ch. 483; restated July 25, 1947, ch. 321, 61 Stat. 423.

Before the enactment of the National Security Act of 1947, the transport functions covered by this section were performed only by the Army. Under section 2 (a) (3) of the National Security Act (as it existed before August 10, 1949), the sea and air transportation functions of the Army, Navy, and Air Force were respectively consolidated into the "Military Sea Transportation Service", under the Department of the Navy, and the "Military Air Transport Service", under the Department of the Air Force. Instead of having space on its own transport vessels and airplanes, the Army is now allotted bulk space on vessels and airplanes operated by those transport services. The words "or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense" are inserted, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1953/5885, 22 July 1953), to make clear that the rule applicable to Army vessels and airplanes applies to the bulk space allocated to the Army. Since the authority to perform transportation functions could again be transferred as between the military departments, the reference to "vessels or airplanes of Army transport agencies" is retained. The word "considers" is substituted for the words "in the opinion of". The words "Persons residing in Alaska who are and have been employed there by the United States" are substituted for the words "employees of the United States, residing in Alaska, who have been in such employment". The word "commercial" is substituted for the word "civil" for clarity. The words "from and after November 21, 1941", "and the carriage of all such air traffic shall be terminated", "dire", "the privilege herein granted", and "as to each eligible individual" are omitted as surplusage. The words "the continental" are omitted, since section 101 (1) of this title defines the United States as "the States and the District of Columbia".

§ 4747. Passengers and merchandise to Guam: sea transport.

Whenever space is available, passengers, and merchandise produced in the United States, or the Territories, Commonwealths, and possessions, and consigned to residents and mercantile firms of Guam, may be transported to Guam on vessels operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any transport agency of the Department of Defense, under regulations and at rates to be prescribed by the Secretary of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 267.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4747	10: 1368. 10: 1371 (last 29 words).	Mar. 3, 1911, ch. 209 (4th proviso under "Transportation of the Army and Its Supplies"), 36 Stat. 1051. Mar. 2, 1907, ch. 2511 (last 29 words of 6th proviso under "Transportation of the Army and Its Supplies"), 34 Stat. 1171.

The words "without displacing military supplies" and "of the island of", in 10: 1368 and 1371, are omitted as surplusage. The words "produced in the United States, or the Territories, Commonwealths, and possessions" are substituted for the words "of American production".

§ 4748. Repealed. Pub. L. 87-651, title I, § 119(1), Sept. 7, 1962, 76 Stat. 513.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 268, related to transportation of motor vehicles for members on permanent change of station, and is now covered by section 2634 of this title.

§ 4749. Property: for United States surveys.

Under regulations governing the transportation of Army supplies, any branch, office, or officer designated by the Secretary of the Army shall receive, transport, and be responsible for property turned over by the officers or agents of any United States survey, for the National Museum or for a department of the United States or field office thereof. The amount paid by the Army for transportation under this section shall be refunded to the Army by the National Museum or the department to which the property is consigned. (Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4749	10: 1377.	July 5, 1884, ch. 217 (9th proviso under "Quartermaster's Department"), 23 Stat. 111; June 28, 1950, ch. 383, § 402 (b), 64 Stat. 272.

The words "a department of the United States or a field office thereof" are substituted for the words "the civil or naval departments of the Government, in Washington or elsewhere". The words "National Museum or the department to which the property is consigned" are substituted for the words "bureau to which such property or stores pertain". The words "United States" are substituted for the word "Government". The words "wherever stationed" are omitted as surplusage.

Chapter 449.—REAL PROPERTY

Sec.
4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
4772. Reservation and use for air base or testing field.
4774. Construction of quarters: limitations on space and cost.
4775. Quarters: officers.
4776. Emergency construction: fortifications.
4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
4779. Use of public property.
4780. Acquisition of buildings in District of Columbia.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (105) (B), Sept. 2, 1958, 72 Stat. 1490, added item 4780.

CROSS REFERENCES

General military law provisions, see section 2661 et seq. of this title.

Property records, see section 2701 of this title.

§ 4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.

The Secretary of the Army may accept for the United States a gift of—

(1) land that he considers suitable and desirable for a permanent mobilization, training, or supply station; and

(2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4771	10: 1342; 10: 1344.	Aug. 29, 1916, ch. 418 (6th and 8th pars. under "Office of the Chief Signal Officer"), 39 Stat. 622, 623.

10: 1344 (last 40 words) is omitted as executed. The words "tract or tracts", in 10: 1342 and 1344, are omitted as surplusage. The words "and remount station", in 10: 1342, are omitted, since the property and civilian personnel of the Remount Service of the Quartermaster Corps were transferred to the Department of Agriculture by the Act of April 21, 1948, ch. 224, 62 Stat. 197 (7 U. S. C. 436—438). The words "by the United States for any purpose" are substituted for the words "for any other service of the United States which may hereafter appear desirable", in 10: 1342. The words "from any person", in 10: 1344, are omitted as surplusage.

§ 4772. Reservation and use for air base or testing field.

When ordered by the President—

(1) unappropriated public land may be reserved from entry for an air base, or a field for tests and experiments, for the Army; and

(2) such land and other property of the United States may be designated and used for either of those purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4772	10: 1341.	July 9, 1918, ch. 143 (1st proviso under "Office of the Chief Signal Officer"), 40 Stat. 848.

The words "other property of the United States" are substituted for the words "any Government property". Clause (1) relates only to "public lands", since only they may be "reserved from entry".

§ 4774. Construction of quarters: limitations on space and cost.

(a) In the construction of family quarters from appropriated funds for members of the Army, the following are the maximum limitations on net floor area for each unit:

Grade	*Square feet*
General officer	2,100
Colonel	1,670
Major or lieutenant colonel	1,400
Office below major	1,250
Enlisted member	1,080

In this section, "net floor area" means the space inside the exterior walls, excluding basement, service space instead of basement, attic, garage, and porches.

(b) The maximum limitations prescribed by subsection (a) are increased 10 percent for quarters of the commanding officer of any station, air base, or other installation, based on the grade authorized for that position.

(c) The maximum limitations for family quarters constructed from appropriated funds for civilians are the same as those for members of the Army of comparable responsibility, grade, and pay, as determined by the Secretary of the Army.

(d) Except when built by members of the Army, no permanent barrack, quarters, building, or other permanent structure may be built unless a detailed estimate of its cost has been submitted to Congress and a specific appropriation has been made therefor. No one may build such a structure without specific authority of Congress if the cost is more than $100,000.

(e) A limitation upon the cost of quarters built for members of the Army does not apply to expenditures for work and equipment outside those quarters, including expenditures for—

(1) the furnishing of electricity, gas, water, and sewage disposal;

(2) roads and walks; and

(3) grading and drainage.

(f) If the Secretary of Defense, or his designee, determines, on the basis of a survey of the family housing needs at any installation where the construction of family housing is authorized, that the construction of four-bedroom units for enlisted men is required, such units may be constructed with a net floor area of one thousand two hundred and fifty square feet or less.

(g) If the Secretary of Defense, or his designee, determines, on the basis of a survey of the family housing needs at an installation were the construction of family housing is authorized, that the construction of four-bedroom units for officers holding grades below major is required, such units may be constructed with a net floor area of one thousand four hundred square feet or less.

(h) The maximum limitations prescribed by subsections (a), (f), and (g) may be increased up to 15 per centum if the Secretary of Defense, or his designee, determines that such increase is in the best interest of the Government to permit award of a turnkey construction contract for family housing to the contractor offering the most satisfactory proposal. (Aug. 10, 1956, ch. 1041, 70A Stat. 269; Aug. 30, 1957, Pub. L. 85-241, title IV, § 404(a), 71 Stat. 555; Aug. 10, 1959, Pub. L. 86-149, title IV, § 410(a), 73 Stat. 321; July 27, 1962, Pub. L. 87-554,

title V, § 504(a), (c), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91–142, title V, § 510(b), 83 Stat. 312.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4774 (a)	10: 1337b; uncodified: June 12, 1948, ch. 450, § 3 (last par., less provisos), 62 Stat. 380.	June 12, 1948, ch. 450, § 3 (2d proviso of 1st par., and last par., less last 3 provisos), 62 Stat. 380.
4774 (b)	Uncodified: June 12, 1948, ch. 450, § 3 (1st proviso of last par.), 62 Stat. 380.	R. S. 1136; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 242; June 12, 1948, ch. 450, § 4 (2d sentence), 62 Stat. 380.
4774 (c)	Uncodified: June 12, 1948, ch. 450, § 3 (2d proviso of last par.), 62 Stat. 380.	Oct. 6, 1942, ch. 580, 56 Stat. 769.
4774 (d)	10: 1339.	
4774 (e)	10: 1337a.	

In subsection (a), the introductory clause is substituted for 10: 1337b (introductory clause). The words "Officer below major" are substituted for the words "warrant officers, flight officers, and commissioned officers of and below the rank of captain".

In subsection (b) (2), the words "grade authorized for that position" are substituted for the words "normal rank of such officers".

In subsection (c), the words "are the same as those" are substituted for the words "shall be limited to conform to the allowances". The words "responsibility, grade, and pay" are substituted for the words "status according to responsibility, rating, and pay."

In subsection (d), 10: 1339 (last 2 sentences) is omitted as covered by section 355 of the Revised Statutes (50 U. S. C. 175). The word "members" is substituted for the word "troops". The words "a specific appropriation has been made therefore" are substituted for the words "approved by a special appropriation for the same". The last sentence is substituted for 10: 1339 (last 20 words of 1st sentence).

In subsection (e), the word "members" is substituted for the words "commissioned officers, commissioned warrant or warrant officers, and enlisted men". The words "does not apply" are substituted for the words "shall not be construed to prohibit or exclude".

AMENDMENTS

1969—Subsec. (h). Pub. L. 91–142 added subsec. (h).

1963—Subsec. (b). Pub. L. 88–174 eliminated provisions which provided for a 10 percent increase in the prescribed maximum limitations for quarters outside the United States and authorized an increase for quarters of the commanding officer of an air base.

1962—Subsec. (f). Pub. L. 87–554, § 504(a), removed the limitation on four-bedroom units for enlisted men to 15 percent of family homes constructed from appropriated funds for enlisted men.

Subsec. (g). Pub. L. 87–554, § 504(c), removed the limitation on four-bedroom units for officers holding grades below major to 10 percent of family homes constructed from appropriated funds for officers.

1959—Subsec. (g). Pub. L. 86–149 added subsec. (g).

1957—Subsec. (f). Pub. L. 85–241 added subsec. (f).

FOUR-BEDROOM HOUSING UNITS

Construction cost limitations on four-bedroom units for enlisted men and officers holding grades below major, see note set out under section 1594h–1 of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Contracts for storage, handling, and distribution of liquid fuels, see section 2388 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2388 of this title; title 42 sections 1594h, 2942.

§ 4775. Quarters: officers.

If there are quarters belonging to the United States at a post or station, the post quartermaster may assign them as follows:

Grade	*Number of rooms*
Lieutenant general	10
Major general	9
Brigadier general	8
Colonel	7
Lieutenant colonel	6
Major	5
Captain	4
First lieutenant	3
Second lieutenant	2

If such quarters exist, he may assign no other quarters to commissioned officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 269.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4775	10: 728.	June 18, 1878, ch. 263, § 9; restated Mar. 2, 1907, ch. 2511 (2d proviso under "Barracks and Quarters") 34 Stat. 1168.

The words "post quartermaster" are substituted for the words "Quartermaster Corps", since this function is not necessarily performed by an officer of the Quartermaster Corps. The words "as follows" are substituted for 10: 728 (19 words before colon). The words "in such public quarters" are omitted as surplusage. The last sentence is substituted for the words "and not elsewhere". The act of June 18, 1878, ch. 263, § 9 (proviso), as restated, is not contained in 10: 728. It is also omitted from the revised section as superseded by the Career Compensation Act of 1949, § 302, 63 Stat. 812 (37 U. S. C. 252).

CROSS REFERENCES

Basic allowances for quarters, see section 403 of Title 37, Pay and Allowances of the Uniformed Services.

§ 4776. Emergency construction: fortifications.

If in an emergency the President considers it urgent, a temporary fort or fortification may be built on private land if the owner consents in writing. (Aug. 10, 1956, ch. 1041, 70A Stat. 270; Sept. 1, 1970, Pub. L. 91–393, § 5, 84 Stat. 835.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4776	50: 178.	Apr. 11, 1898, J. Res. 21, 30 Stat. 737.

The word "important" is omitted as covered by the word "urgent". The words "upon which such work is to be placed" are omitted as surplusage.

AMENDMENTS

1970—Pub. L. 91–393 eliminated sentence which provided: "In such a case, section 175 of title 50 does not apply."

§ 4777. Permits: military reservation; landing ferries, erecting bridges, driving livestock.

Whenever the Secretary of the Army considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

(1) the landing of ferries at a military reservation;

(2) the erection of bridges on a military reservation; and

(3) the driving of livestock across a military reservation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4777	10: 1348.	July 5, 1884, ch. 214, § 6, 23 Stat. 104.

The words "may permit" are substituted for the words "shall have authority, in his discretion, to permit". The words "to permit the extension of State, county, and Territorial roads across military reservations" are omitted as superseded by section 2668 of this title. In clause (3), the word "livestock" is substituted for the words "cattle, sheep or other stock animals".

§ 4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.

Under such conditions as he may prescribe, the Secretary of the Army may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain on military reservations, inside the United States and the Territories, Commonwealths, and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Army on those reservations. (Aug. 10, 1956, ch. 1041, 70A Stat. 270.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4778	10: 1346.	May 31, 1902, ch. 943, 32 Stat. 282.

The words "may issue" are substituted for the words "Authority is given to * * * in his discretion, to grant permission". The words "Under such conditions as he may prescribe" are substituted for the words "under such regulations as the Secretary of the Army may impose". The words "members of the Army" are substituted for the word "garrisons". The words "the Territories, Commonwealth, and possessions" are substituted for the words "or its island possessions" for clarity.

§ 4779. Use of public property.

(a) When the economy of the Army so requires, the Secretary of the Army shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) The Secretary shall assign suitable space for postal purposes at each military post where there is a post office.

(c) No money appropriated for the support of the Army may be spent for post gardens or Army exchanges. However, this does not prevent Army exchanges from using public buildings or public transportation that, in the opinion of the office or officer designated by the Secretary, are not needed for other purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 270.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4779 (a)	10: 1332.	June 23 1879, ch. 35, § 8, 21 Stat. 35.
4779 (b)	10: 1345.	Aug. 1, 1914, ch. 223 (2p par. under "Quartermaster Corps"), 38 Stat. 629.
4779 (c)	10: 1335.	July 16, 1892, ch. 195 (last proviso under "Quartermaster's Department"), 27 Stat, 178; June 28, 1950, ch. 383, § 402 (c), 64 Stat. 227.

In subsection (a), the words "United States" are substituted for the word "Government".

In subsection (b), the words "suitable space" are substituted for the words "proper and suitable room or rooms". The words "there is a" are substituted for the words "have been established".

§ 4780. Acquisition of buildings in District of Columbia.

(a) In time of war or when war is imminent, the Secretary of the Army may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Army, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

(1) a dwelling house occupied as such;

(2) a building occupied by any other agency of the United States; or

(3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Army, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use. (Added Pub. L. 85–861, § 1 (105) (A), Sept. 2, 1958, 72 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4780 (a)	40: 37.	July 9, 1918, ch. 143 (3d proviso under "Barracks and Quarters"), 40 Stat. 861.
4780 (b)	40: 41.	July 8, 1918, ch. 139 (2d par. under "War Department"), 40 Stat. 826.

In subsection (a), the words "may acquire by lease" are substituted for the words "is authorized, in his discretion, to rent or lease". The word "needed" is substituted for the word "required".

In subsection (b), the words "At any time" are inserted for clarity. The word "may" is substituted for the words "is authorized". The word "agency" is substituted for the word "branch". Clause (3) is inserted for clarity. The word "determine" is substituted for the word "ascertain". The words "out of funds appropriated for the payment of rent by" are substituted for the words "within the limits of the appropriations for rent made by any act making appropriations for". The word "is" is substituted for the word "be". The words "so ascertained" and "in the manner provided by sections 41 (20) and 250 of Title 28" are omitted as surplusage, since those sections were repealed in 1948 and replaced by sections 1346, 1491, 1496, 1501, 1503, 2401, 2402, and 2501 of that title.

Chapter 451.—MILITARY CLAIMS

Sec.
4801. Definition.
4802. Damage by United States vessels; towage and salvage of United States vessels.
4803. Admiralty claims by United States.
4804. Salvage claims by United States.
4806. Settlement or compromise: final and conclusive.

AMENDMENTS

1960—Pub. L. 86-533, § 1(8)(B), June 29, 1960, 74 Stat. 247, repealed item 4805.

CROSS REFERENCES

General military law provisions, see section 2731 et seq. of this title.

Suits in admiralty by or against vessels or cargoes of United States, see section 741 et seq. of Title 46, Shipping.

§ 4801. Definition.

In this chapter, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance. (Aug. 10, 1956, ch. 1041, 70A Stat. 270.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4801	No source.	No source.

The revised section is inserted for clarity, and is based on usage in the source laws for this revised chapter.

§ 4802. Damage by United States vessels; towage and salvage of United States vessels.

(a) Under the direction of the Secretary of Defense, the Secretary of the Army may settle or compromise a claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Army; or

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Army.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Army may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $10,000, the Secretary of the Army may delegate his authority under subsection (a) to any person in the Department of the Army designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 271; July 7, 1965, Pub. L. 89-67, 79 Stat. 212.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4802 (a)	10: 1861 (less 35 words before 1st proviso, and less last proviso).	Oct. 20, 1951, ch. 524, §§ 1 (less 35 words before 1st proviso), 6 (as applicable to § 1), 65 Stat. 572, 573.
4802 (b)	10: 1861 (last proviso).	
4802 (c)	10: 1866 (as applicable to 10: 1861).	

In subsection (a), the words "considered, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 4801 of this title. 10: 1861 (1st proviso) is omitted as unnecessary, since other applicable claims laws are restated in this title. 10: 1861 (2d proviso) is omitted as surplusage.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-67 substituted "$10,000" for "$1,000."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4806 of this title.

§ 4803. Admiralty claims by United States.

(a) Under the direction of the Secretary of Defense, the Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Army or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Army may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Army may delegate his authority under subsections (a) and (b) to any person in the Department of the Army designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 271; July 7, 1965, Pub. L. 89-67, 79 Stat. 212.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4803 (a)	10: 1862 (1st sentence; 2d sentence, less last 32 words; and provisos of last sentence).	Oct. 20, 1951, ch. 524, §§ 2 (less last 32 words of 2d sentence), 6 (less applicability to § 1), 65 Stat. 572, 573.
4803 (b)	10: 1862 (3d sentence; and last sentence, less provisos).	
4803 (c)	10: 1866 less applicability to 10: 1861).	

In subsection (a), the words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 4801 of this title. The words "receive payment" are substituted for 10: 1862 (2d sentence, less last 32 words). The words "of a kind that is within the admiralty jurisdiction" are substituted for the words "cognizable in admiralty". Clause (2) is substituted for 10: 1862 (last proviso of last sentence). 10: 1862 (1st proviso of last sentence) is omitted as unnecessary, since other applicable claims laws are restated in this title. The words "by contract or otherwise" are omitted as surplusage.

In subsection (b), the words "of the United States as miscellaneous receipts" and "to deliver" are omitted as surplusage.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-67 substituted "$10,000" for "$1,000."

CROSS REFERENCES

Admiralty and maritime jurisdiction, see Const. Art. 3, § 2, cl. 1, section 1333 of Title 28, Judiciary and Judicial Procedure, and section 740 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4806 of this title.

§ 4804. Salvage claims by United States.

Under the direction of the Secretary of Defense, the Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Army for any vessel. Amounts received under this section shall be covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 271.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4804	10: 1863.	Oct. 20, 1951, ch. 524, § 3, 65 Stat. 573.

The words "under this section" are substituted for the words "for salvage services rendered". The words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 4801 of this title. The words "and receive payment of" are inserted for clarity and to conform to section 4803 of this title. The words "as miscellaneous receipts" are omitted as surplusage.

§ 4805. Repealed. Pub. L. 86-533, § 1(8)(A), June 29, 1960, 74 Stat. 247.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 271, related to reports to the Congress with respect to claims under sections 4802, 4803, and 4804 of this title.

§ 4806. Settlement or compromise: final and conclusive.

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 4802 or 4803 of this title is final and conclusive. (Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4806	10: 1861 (35 words before 1st proviso); 10: 1862 (last 32 words of 2d sentence).	Oct. 20, 1951, ch. 524, §§ 1 (35 words before 1st proviso), 2 (last 32 words of 2d sentence), 65 Stat. 572, 573.

The words "for all purposes" and "to the contrary", in 10: 1861 and 1862; "by the claimant and not until then", in 10: 1861; and "but not until then", in 10: 1862; are omitted as surplusage.

Chapter 453.—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
4831. Custody of departmental records and property.
4832. Property accountability: regulations.
4834. Fidelity bonds: accountable officers; Quartermaster Corps.
4835. Reports of survey.
4836. Individual equipment: unauthorized disposition.
4837. Settlement of accounts: deductions from pay.
4838. Settlement of accounts: affidavit of company commander.
4839. Settlement of accounts: oaths.
4840. Final settlement of officer's accounts.

AMENDMENTS

1962—Pub. L. 87-480, § 1(3), June 8, 1962, 76 Stat. 94, struck out item 4833.

CROSS REFERENCES

Audit and settlement of accounts, see section 71 et seq. of Title 31, Money and Finance.

General Accounting Office, see section 41 et seq. of Title 31.

General military law provisions, see sections 2771, 2773 of this title.

Property records, see section 2701 of this title.

§ 4831. Custody of departmental records and property.

The Secretary of the Army has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Army. (Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4831	5: 191.	R. S. 217.

The words "under the lawful control of the executive part of the Department of the Army" are substituted for the words "appertaining to the Department".

§ 4832. Property accountability: regulations.

The Secretary of the Army may prescribe regulations for the accounting for Army property and the fixing of responsibility for that property. (Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4832	10: 1301.	Aug. 29, 1916, ch. 418 (3d proviso under "Clothing and Camp and Garrison Equipage"), 39 Stat. 635.

The word "supplies" is omitted as covered by the word "property".

§ 4833. Repealed. Pub. L. 87-480, § 1(2), June 8, 1962, 76 Stat. 94.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 272, related to the accountability of Army officers for public money, and is now covered by section 2773 of this title.

§ 4834. Fidelity bonds: accountable officers; Quartermaster Corps.

Before entering upon the duties of his office, each commissioned officer of the Quartermaster Corps shall give a good and sufficient bond to the United States to account faithfully for all public money and property received by him. A bond required by this subsection shall be in the amount directed by the Secretary of the Army, but the President may at any time direct that the amount be increased. However, the Secretary may excuse an officer of the Quartermaster Corps who is not accountable for public money or property from giving bond. (Aug. 10, 1956, ch. 1041, 70A Stat. 272; Nov. 2, 1966, Pub. L. 89-718, § 31, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4834 (a)	10: 1312 (less last sentence); 10: 1313.	R. S. 1191; Feb. 27, 1877, ch. 69 (28th par.), 19 Stat. 243.
4834 (b)	10: 1312 (last sentence).	Aug. 29, 1916, ch. 418 (proviso under "Quartermaster Corps"), 39 Stat. 626.

In subsection (a), the words "chief medical purveyor and assistant medical purveyors, and all storekeepers", in section 1191 of the Revised Statutes, are not contained in 10: 1312. They are also omitted from the revised section, since these offices have been abolished. The words "and Finance Department" are omitted. Those words were substituted by the editors of the United States Code for the words "Subsistence, and Pay Departments", in R. S. 1191. They are omitted from the revised section, since the Finance Corps [Department] is not a continuation of the "Subsistence, and Pay Departments" (see opinion of the Judge Advocate General of the Army (SPJG 168, 27 Mar. 1942)). The word "commissioned"

is inserted for clarity. The words "direct that the amount be increased" are substituted for the words "increase the sums so prescribed". The last sentence is substituted for 10: 1313.

In subsection (b), the words "received by" are substituted for the words "that may come into the hands of".

AMENDMENTS

1966—Pub. L. 89–718 removed the designation "(a)" from the beginning of the section and struck out subsec. (b) which provided that the Quartermaster General would not be liable for money or property received by a subordinate officer of the Quartermaster Corps.

§ 4835. Reports of survey.

(a) Under such regulations as the Secretary of the Army may prescribe, any officer of the Army designated by him may act upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of or damage to property of the United States under the control of the Department of the Army.

(b) Action taken under subsection (a) is final, except that action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary or an officer of the Army designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 273.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4835 (a)	10: 1304 (less 16 words before proviso, and less proviso).	Oct. 30, 1941, ch. 465, 55 Stat. 758; June 28, 1950, ch. 383, § 402 (n), 64 Stat. 273.
4835 (b)	10: 1304 (16 words before proviso and proviso).	

In subsection (b), the words "or concern" are omitted as covered by the definition of "person", in section 1 of title 1. The words "branch, office" are omitted, since a branch or office could not take the action required.

§ 4836. Individual equipment: unauthorized disposition.

(a) No enlisted member of the Army may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished him by the United States to any person other than a member of the Army, or an officer of the United States, authorized to receive it.

(b) If a member of the Army has disposed of property in violation of subsection (a) and it is in the possession of a person who is neither a member of the Army, nor an officer of the United States, authorized to receive it, that person has no right to or interest in the property, and any civil or military officer of the United States may seize it, wherever found. Possession of such property furnished by the United States to a member of the Army, by a person who is neither a member of the Army nor an officer of the United States, is prima facie evidence that it has been disposed of in violation of subsection (a).

(c) If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, he shall deliver it to a person who is authorized to retain it. (Aug. 10, 1956, ch. 1041, 70A Stat. 273.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4836 (a)	10: 1316 (words before semicolon of 1st sentence); 10: 1317 (words before semicolon of 1st sentence).	R. S. 1242; R. S. 3748.
4836 (b)	10: 1316 (less words before semicolon, and less last 16 words, of 1st sentence); 10: 1317 (less words before semicolon of 1st sentence, and less last 16 words of last sentence).	
4836 (c)	10: 1316 (last 16 words of 1st sentence); 10: 1317 (last 16 words of last sentence).	

In subsection (a), the word "equipment" is substituted for the words "military outfits, and accouterments", in 10: 1316 and 1317. The word "exchanged" is omitted as surplusage. The last 21 words are inserted to reflect various provisions authorizing transfer of the numerated items of property.

In subsections (a) and (b), the words "enlisted member" and "member" are substituted for the word "soldier", in 10: 1316 and 1317.

In subsection (b), the first 15 words of the first sentence are inserted for clarity. The words "authorized to receive it" are substituted for the words "duly authorized", in 10: 1316. The words "such property furnished by the United States" are substituted for the words "any such clothes, arms, military outfits, or accouterments", in 10: 1316.

In subsection (c), the first 19 words are inserted for clarity. The words "person who is authorized to retain it" are substituted for the words "quartermaster [,], or other officers authorized to receive the same", in 10: 1316 and 1317.

CROSS REFERENCES

Federal offenses—

Embezzlement and theft of public property, see section 641 of Title 18, Crimes and Criminal Procedure.

Malicious mischief, government property, see section 1361 of Title 18.

Purchase or receipt of military property, see section 1024 of Title 18.

§ 4837. Settlement of accounts: deductions from pay.

(a)—(c) Repealed. Pub. L. 87–649, § 14c(10), Sept. 7, 1962, 76 Stat. 501.

(d) If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge. (Aug. 10, 1956, ch. 1041, 70A Stat. 273; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(27), 72 Stat. 1566; Sept. 7, 1962, Pub. L. 87–649, § 14c(10), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4837 (a)	10: 875; 10: 875b.	R. S. 1300.
4837 (b)	10: 875a (less 3d and last provisos).	R. S. 1301. May 22, 1928, ch. 676, 45 Stat. 698; June 26, 1934, ch. 751, 48 Stat. 1222.
4837 (c)	10: 875a (last proviso).	R. S. 1303.
4837 (d)	10: 875a (3d proviso).	R. S. 1304.
4837 (e)	10: 871.	R. S. 1299.
4837 (f)	10: 872.	
4837 (g)	10: 875c.	

In subsection (a), the words "sold to the member on credit under section 4621 (a) (1) of this title" are substituted for the words "articles designated by the inspectors general of the Army, and sold to him on credit by

officers of the Quartermaster Corps", in 10: 875. The words "at cost prices" are omitted to reflect section 4623 of this title.

In subsection (b), the last sentence is substituted for 10: 875a (1st and 2d provisos). The words "on current payrolls" are omitted as surplusage.

In subsection (c), the words "Subject to subsection (b)" are substituted for the words "in the proportions hereinbefore indicated".

In subsection (d), the words "If he considers it in the best interest of the United States" are substituted for the words "when in his opinion the interests of the Government are best served by such action". The words "before, or at the time of" are substituted for the words "either on * * * or prior thereto".

In subsection (e), the words "member" and "his" are substituted for the words "officer or soldier". The words "or implement" are omitted as surplusage.

In subsection (f), the words "or if an article of military supply with whose issue a commissioned officer is charged is damaged" are substituted for 10: 872 (last sentence). The words "that he was not at fault" are substituted for the words "that said deficiency [such damage] was not occasioned by any fault on his part".

In subsection (g), the words "bought on credit under section 4621 (a) (1) of this title" are substituted for the words "designated by the officers of the Inspector-General's Department of the Army and purchased on credit from commissaries of subsistence".

AMENDMENTS

1962—Pub. L. 87-649 repealed subsecs. (a)—(c) and (e)—(g), which related to deductions from pay, and are now covered by subsecs. (b)—(g), respectively, of section 1007 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (b). Pub. L. 85-861, § 33 (a) (27) (A), substituted "his pay for that month" for "his basic pay for that month".

Subsec. (f). Pub. L. 85-861, § 33 (a) (27) (B), substituted "an officer" for "a commissioned officer" in two instances.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Military property of United States—loss, damage, destruction or wrongful disposition; punishment, see section 908 of this title.

Property returns by officers, see sections 89—92 of Title 31, Money and Finance.

Public accounts to be settled in General Accounting Office; rendition of current accounts, see sections 72 and 78 of Title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5514.

§ 4838. Settlement of accounts: affidavit of company commander.

In the settlement of the accounts of the commanding officer of a company for clothing and other military supplies, his affidavit may be received to show—

(1) that vouchers or company books were lost;

(2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or

(3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Army to be just and proper under the circumstances. (Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4838	10: 1302.	R. S. 225 (less 1st sentence); added Feb. 27, 1877, ch. 69 (3d par.), 19 Stat. 241.

The word "anything" is substituted for the words "any matter or circumstance". The words "properly used" are substituted for the words "legally used and appropriated". The words "of the case" are omitted as surplusage.

§ 4839. Settlement of accounts: oaths.

The Secretary of the Army may detail any employee of the Department of the Army to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered. (Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4839	10: 1303.	R. S. 225 (1st sentence).

The words "and other military supplies" are substituted for the words "camp and garrison equipage, quartermaster's stores, and ordnance" to conform to section 4838 of this title. The words "person to whom administered" are substituted for the words "parties taking them". The words "for the purpose of" are omitted as surplusage.

§ 4840. Final settlement of officer's accounts.

Before final payment upon discharge may be made to an officer of the Army who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
4840	10: 878.	Jan. 12, 1899, ch. 46, § 2, 30 Stat. 784.

The words "Before final payment upon discharge may be made" are substituted for the words "shall warrant their final payment". The words "at any time" are omitted as surplusage. The word "must" is substituted for the words "shall be required * * * to". The words "He must also make" are substituted for the words "accompanied by". The words "from each officer to whom

he was accountable or responsible for property" are substituted for the words "from only such of the bureaus of the Department of the Army to which the property for which they were accountable or responsible pertains", since there is no longer a bureau structure within the Department of the Army. The words "that he is not accountable or responsible for property to any other officer" are substituted for the words "accompanied by the affidavits of officers, of nonaccountability or nonresponsibility to other bureaus of the Department of the Army", for the same reason. The reference to certificates from the General Accounting Office is omitted as obsolete. The last sentence is substituted for 10: 878 (last 18 words). The last proviso of section 2 of the act of January 12, 1899, ch. 46, 30 Stat. 784, is not contained in 10: 878. It is also omitted from the revised section, since it related to authority of mustering officers to administer oaths and the general authority to administer oaths is now contained in section 936 of this title (article 136 of the Uniform Code of Military Justice).

Subtitle C—Navy and Marine Corps

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AMENDMENTS

1967—Pub. L. 90-110, title X, § 1001(2), Oct. 21, 1967, 81 Stat. 310, added chapter 516.

1966—Pub. L. 89-718, § 34(b), Nov. 2, 1966, 80 Stat. 1119, struck out item 511: "Office of the Chief of Naval Material..... 5111."

1962—Pub. L. 87-533, § 2, July 10, 1962, 76 Stat. 155, substituted "United States Naval Oceanographic" for "Hydrographic" in the heading of chapter 639.

1958—Pub. L. 85-861, § 1 (134), Sept. 2, 1958, 72 Stat. 1507, added chapter 549.

PART I.—ORGANIZATION

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AMENDMENTS

1967—Pub. L. 90-110, title X, § 1001(2), Oct. 21, 1967, 81 Stat. 310, added chapter 516.

1966—Pub. L. 89-718, § 34(b), Nov. 2, 1966, 80 Stat. 1119, struck out item 511 which read: "Office of the Chief of Naval Material..... 5111".

Chapter 501.—DEFINITIONS

Sec.
5001. Definitions.

§ 5001. Definitions.

(a) In this subtitle:

(1) "Navy" means the United States Navy. It includes the Regular Navy, the Fleet Reserve, and the Naval Reserve.

(2) "Marine Corps" means the United States Marine Corps. It includes the Regular Corps, the Fleet Marine Corps Reserve, and the Marine Corps Reserve.

(3) "Member of the naval service" means a person, male or female, appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

(4) "Enlisted member" means a member of the naval service serving in an enlisted grade or rating. It excludes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(5) "Officer" means a member of the naval service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(6) "Commissioned officer" means a member of the naval service serving in a grade above warrant officer, W-1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W-1, and a temporary appointment in a grade above warrant officer, W-1.

(7) "Warrant officer" means a member of the naval service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade.

(8) "Officer restricted in the performance of duty" means an officer of the Navy designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or an officer of the Marine Corps designated for limited duty.

(9) "Active list of the Navy" means the list of officers of the Regular Navy, other than retired officers, holding permanent appointments in grades above chief warrant officer, W-4.

(10) "Active list of the Marine Corps" means the list of officers of the Regular Marine Corps, other than retired officers, holding permanent appointments in grades above chief warrant officer, W-4.

(b) For the purposes of this subtitle, a member of the naval service who holds a temporary appointment in a grade higher than his permanent grade is considered, unless otherwise specified, to be serving in the higher grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 276; Aug. 3, 1961, Pub. L. 87-123, § 5(1), 75 Stat. 264.)

AMENDMENTS

1961—Subsec. (a)(8). Pub. L. 87-123 eliminated provisions which related to Marine Corps officers designated for supply duty.

CROSS REFERENCES

General military law provisions, see section 101 of this title.

Chapter 503.—DEPARTMENT OF THE NAVY

Sec.
5011. Composition.
5012. United States Navy: composition; functions.
5013. United States Marine Corps: composition; functions.

AMENDMENTS

1964—Pub. L. 88-426, title III, § 305(40)(B), Aug. 14, 1964, 78 Stat. 427, eliminated item 5014.

1958—Pub. L. 85-861, § 1(106)(B), Sept. 2, 1958, 72 Stat. 1490, added item 5014.

§ 5011. Composition.

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense. It is composed of the executive part of the Department of the Navy; the Headquarters, United States Marine Corps; the entire operating forces, including naval aviation, of the United States Navy and of the United States Marine Corps, and the reserve components of those operating forces; and all field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy. It includes the United States Coast Guard when it is operating as a service in the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 277; Sept. 7, 1962, Pub. L. 87-651, title II, § 212, 76 Stat. 524.)

HISTORICAL AND REVISION NOTES

The act of July 26, 1947, ch. 343, as amended (5 U. S. C. 411a (a)) which is the National Security Act of 1947, defined "Department of the Navy". The acts of Mar. 5, 1948, ch. 98 (5 U. S. C. 423a (a)), and Aug. 2, 1946, ch. 756 (5 U. S. C. 421g) is defined "Naval Establishment". The terms "Department of the Navy" and "Naval Establishment" are considered to be synonymous. All three definitions were considered, but the phraseology adopted is that of the National Security Act of 1947. The phrase "as a service in the Navy" is substituted for "as a part of the Navy" to conform to the provisions of Title 14.

AMENDMENTS

1962—Pub. L. 87-651 inserted sentences providing that the Department of the Navy is separately organized under the Secretary of the Navy, and that it operates under the authority, direction, and control of the Secretary of Defense.

CROSS REFERENCES

Coast Guard, operation as service in Navy, see section 4 of Title 14, Coast Guard.

Cooperation with Office of Secretary of Defense in carrying out this section, see section 136 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 136 of this title.

§ 5012. United States Navy: composition; functions.

(a) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and is generally responsible for naval reconnaissance, antisubmarine warfare, and protection of shipping.

(b) All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation consists of combat and service and training forces, and includes land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the Navy, and the entire remainder of the aeronautical organization of the Navy, together with the personnel necessary therefor.

(c) The Navy shall develop aircraft, weapons, tactics, technique, organization, and equipment of

naval combat and service elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

(d) The Navy is responsible, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war. (Aug. 10, 1956, ch. 1041, 70A Stat. 277.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5012	5 U. S. C. 411a (b).	July 26, 1947, ch. 343, § 206 (b), 61 Stat. 501.

CROSS REFERENCES

Transfer, reassignment, consolidation or abolition of functions, powers and duties, see section 125 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

§ 5013. United States Marine Corps: composition; functions.

(a) The Marine Corps, within the Department of the Navy, shall be so organized as to include not less than three combat divisions and three air wings, and such other land combat, aviation, and other services as may be organic therein. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall perform such other duties as the President may direct. However, these additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

(b) The Marine Corps shall develop, in coordination with the Army and the Air Force, those phases of amphibious operations that pertain to the tactics, technique, and equipment used by landing forces.

(c) The Marine Corps is responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war. (Aug. 10, 1956, ch. 1041, 70A Stat. 278.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5013	5 U. S. C. 411a (c) (less last 32 words of 1st sentence).	July 26, 1947, ch. 343, § 206 (c), (less last 32 words of 1st sentence), 61 Stat. 502; as amended June 28, 1952, ch. 479, § 1, 66 Stat. 282.

CROSS REFERENCES

Transfer, reassignment, consolidation or abolition of functions, powers and duties, see section 125 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

§ 5014. Repealed. Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427.

Section, Pub. L. 85–861, § 1(106)(A), Sept. 2, 1958, 72 Stat. 1490, prescribed the compensation of the General Counsel of the Department of the Navy, and is now covered by section 5316(84) of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first pay period which begins on or after July 1, 1964, see section 501 of Pub. L. 88–426.

Chapter 505.—SECRETARY, UNDER SECRETARY, AND ASSISTANT SECRETARIES OF THE NAVY

Sec.
5031. Secretary of the Navy: responsibilities.
5032. Secretary of the Navy: powers with respect to Coast Guard.
5033. Under Secretary of the Navy: appointment; duties.
5034. Assistant Secretaries of the Navy: appointment; duties.
5036. Secretary of the Navy: succession to duties.

AMENDMENTS

1964—Pub. L. 88–426, title III, § 306(j) (4), (6), Aug. 14, 1964, 78 Stat. 432, eliminated "; compensation" from items 5031 and 5033.

1958—Pub. L. 85–599, § 8(b)(3), Aug. 6, 1958, 72 Stat. 520, struck out "; compensation" which followed "duties" in item 5034, and eliminated item 5035.

§ 5031. Secretary of the Navy: responsibilities.

(a) There is a Secretary of the Navy, who is the head of the Department of the Navy. He shall administer the Department of the Navy under the direction, authority, and control of the Secretary of Defense. The Secretary is responsible to the Secretary of Defense for the operation and efficiency of the Department. After first informing the Secretary of Defense, the Secretary may make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

(b) The Secretary of the Navy shall execute such orders as he receives from the President relative to—

(1) the procurement of naval stores and material;

(2) the construction, armament, equipment, and employment of naval vessels; and

(3) all matters connected with the Department of the Navy.

(c) The Secretary of the Navy has custody and charge of all books, records, and other property of the Department. (Aug. 10, 1956, ch. 1041, 70A Stat. 278; Sept. 2, 1958, Pub. L. 85–861, § 1(107), 72 Stat. 1409; Sept. 7, 1962, Pub. L. 87–651, title II, § 211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(4), 306(j)(3), 78 Stat. 422, 431.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5031 (a)	5 U. S. C. 411.	R. S. 415.
5031 (b)	5 U. S. C. 412.	R. S. 417.
5031 (c)	5 U. S. C. 413.	R. S. 418.
5031 (d)	5 U. S. C. 411b.	July 26, 1947, ch. 343, § 301 (b) (last sentence), 61 Stat. 507; added Aug. 10, 1949, ch. 412, § 10 (a), 63 Stat. 585; Oct. 15, 1949, ch. 695, § 1 (words after 2d semicolon), 63 Stat. 880.

In subsection (a) the words "There shall be at the seat of government an executive department, to be known as the Department of the Navy" are omitted as superseded by 5 U. S. C. 171 (b). The second sentence is added to reflect the provisions of § 202 (c) (4) of the National Security Act of 1947, as amended (5 U. S. C. 171a (c) (4)).

In subsection (d) the word "basic" is omitted as surplusage, since the compensation of the civilian officers is computed without additions or allowances.

AMENDMENTS

1964—Pub. L. 88-426, § 306(j)(3), eliminated "; compensation" from the catchline.

Subsec. (d). Pub. L. 88-426, §305(4), repealed subsec. (d), which prescribed the compensation of the Secretary. See section 5313(18) of Title 5, Government Organization and Employees.

1962—Subsec. (a). Pub. L. 87-651 inserted sentences providing that the Secretary is responsible to the Secretary of Defense for the operation and efficiency of the Department, and permitting the Secretary, after first informing the Secretary of Defense, to make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

1958—Subsec. (d). Pub. L. 85-861 substituted "$22,000" for "$18,000".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

CROSS REFERENCES

Active duty report to Congress, see section 686 of this title.

Armed Forces Policy Council, member of, see section 171 (a) (4) of this title.

Compensation of Secretary, see section 5313(18) of Title 5, Government Organization and Employees.

Cooperation with Office of Secretary of Defense in carrying out this section, see section 136 of this title.

Establishment of advisory committees and panels for research and development activities, see section 174 (a) of this title.

Lease of real and personal property, see section 2661 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 136 of this title.

§ 5032. Secretary of the Navy: powers with respect to Coast Guard.

(a) Whenever the Coast Guard operates as a service in the Navy under section 3 of title 14, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary of the Treasury has when the Coast Guard is not so operating.

(b) While operating as a service in the Navy, the Coast Guard is subject to the orders of the Secretary of the Navy, who may order changes in Coast Guard operations to make them uniform, to the extent he considers advisable, with Navy operations. (Aug. 10, 1956, ch. 1041, 70A Stat. 279.)

HISTORICAL AND REVISION NOTES

Subsection (a) is derived from 14 U. S. C. 5, and subsection (b) from the second sentence of 14 U. S. C. 3. These provisions are duplicated in this title for the purpose of producing a statement of the general powers of the Secretary of the Navy in this important area.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

CROSS REFERENCES

Relationship of Coast Guard to Navy Department, see section 3 of Title 14, Coast Guard.

§ 5033. Under Secretary of the Navy: appointment; duties.

(a) There is an Under Secretary of the Navy, appointed from civil life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties as the Secretary of the Navy prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 279; Sept. 2, 1958, Pub. L. 85-861, § 1(108), 72 Stat. 1490; Aug. 14, 1964, Pub. L. 88-426, title III, §§ 305(5), 306(j)(5), 78 Stat. 422, 432.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5033 (a)	5 U. S. C. 421b (less 2d, 3d, and 4th sentences).	June 20, 1940, ch. 400, § 3 (1st sentence), 54 Stat. 494; May 15, 1947, ch. 60, § 1, 61 Stat. 93.
5033 (b)	5 U. S. C. 421b (2d sentence, 1st 24 words).	June 20, 1940, ch. 400, § 3 (2d sentence, 1st 24 words), 54 Stat. 494; July 26, 1947, ch. 343, § 302, 61 Stat. 507; Aug. 10, 1949, ch. 412, § 10 (b), 63 Stat. 585 (as applicable to duties of Under SecNav).
5033 (c)	5 U. S. C. 421b (3d sentence).	June 20, 1940, ch. 400, § 3 (3d sentence), 54 Stat. 494; May 15, 1947, ch. 60, § 1, 61 Stat. 93; July 26, 1947, ch. 343, § 302 (as applicable to compensation of Under SecNav), 61 Stat. 507; Aug. 10, 1949, ch. 412, § 10 (b), 63 Stat. 585.

In subsection (a) the discretionary language is omitted. Section 302 of the National Security Act of 1947, as amended, recognizes the office and prescribes the duties of the Under Secretary of the Navy. The Office of Under Secretary is, therefore, an office which it is the President's duty to fill.

In subsection (b) the words "required by law" are omitted as surplusage.

In subsection (c) that part of § 302 of the National Security Act of 1947, as amended, which specifies a salary of $10,330 a year for the Under and Assistant Secretaries of the Navy is omitted as superseded by § 5 (a) of the act of Oct. 15, 1949, ch. 695, 63 Stat. 880 which specifies the salary of assistant secretaries of executive departments (made applicable to the Under Secretary and Assistant Secretaries by § 302 of the National Security Act of 1947).

AMENDMENTS

1964—Pub. L. 88-426, § 306(j)(5), eliminated "; compensation" from the catchline.

Subsec. (c). Pub. L. 88-426, § 305(5), repealed subsec. (c), which prescribed the compensation of the Under Secretary. See section 5315(9) of Title 5, Government Organization and Employees.

1958—Subsec. (c). Pub. L. 85-861 substituted "$20,000 a year" for "that prescribed by law for assistant secretaries of executive departments".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

CROSS REFERENCES

Compensation of Under Secretary, see section 5315 of Title 5, Government Organization and Employees.

Succession to duties of Secretary, see section 5036 of this title.

§ 5034. Assistant Secretaries of the Navy: appointment; duties.

(a) There are four Assistant Secretaries of the Navy in the Department of the Navy. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Assistant Secretaries shall perform such duties as the Secretary of the Navy prescribes. One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affainrs of the Department of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 279; Aug. 6, 1958, Pub. L. 85–599, § 8(b)(1), 72 Stat. 519; Dec. 1, 1967, Pub. L. 90–168, § 2(13), (14), 81 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5034 (a)	5 U. S. C. 420.	July 11, 1890, ch. 667, 26 Stat. 254 (1st 26 words of 2d sentence under "Navy Department").
5034 (b)	5 U. S. C. 421a–1 (less 3d and last sentences).	Aug. 3, 1954, ch. 652, § 2 (less 3d and last sentences), 68 Stat. 649.
5034 (c)	5 U. S. C. 421; 5 U. S. C. 520a (last 10 words); 5 U. S. C. 421a–1 (1st 21 words of 3d sentence).	Mar. 3, 1891, ch. 541, 26 Stat. 934 (12th through 37th words of 1st par. under "Navy Department").
5034 (d)	5 U. S. C. 420a (less last 10 words); 5 U. S. C. 421a–1 (3d sentence, less 1st 21 words).	July 26, 1947, ch. 343, § 302 (as applicable to duties of Asst. SecNav), 61 Stat. 507; Aug. 10, 1949, ch. 412, § 10 (b), 63 Stat. 585. Aug. 3, 1954, ch. 652, § 2 (1st 21 words of 3d sentence), 68 Stat. 649. July 26, 1947, ch. 343, § 302 (as applicable to compensation of Asst. SecNav), 61 Stat. 507; Aug. 10, 1949, ch. 412, § 10 (b), 63 Stat. 585. Aug. 3, 1954, ch. 652, § 2 (3d sentence, less 1st 21 words), 68 Stat. 649.

In subsection (b) the words "In addition to the Assistant Secretaries appointed under subsection (a) of this section and under section 5035 of this title" are substituted for the words "Such Assistant Secretaries shall be in addition * * * authorized under section 4 of the Act of June 24, 1926 (44 Stat. 767), as amended" for clarity and accuracy. The words "making a total of four Assistant Secretaries" are omitted as surplusage.

In subsection (c) the words "required by law" are omitted as surplusage.

In subsection (d) the language in 5 U. S. C. 420a specifying the amount of the salary of the Assistant Secretary required by that section is omitted for the reason shown in the revision note on § 5033 of this title.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–168, § 2(13), raised from three to four the number of Assistant Secretaries of the Navy.

Subsec. (b). Pub. L. 90–168, § 2(14), added provision for an Assistant Secretary of the Navy for Manpower and Reserve Affairs with the principal duty of overall supervision of manpower and reserve component affairs of the Department of the Navy.

1958—Pub. L. 85–599 amended section generally by consolidating provisions authorizing three Assistant Secretaries, and eliminating provisions which authorized the Secretary to designate one of the Assistant Secretaries as Assistant Secretary of the Navy for Financial Management and as Comptroller of the Navy, and which related to compensation of the Assistant Secretaries.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calandar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–599 effective six months after Aug. 6, 1958, see section 13 of Pub. L. 85–599, set out as a note under section 3013 of this title.

COMPENSATION OF ASSISTANT SECRETARIES

Pub. L. 87–651, title III, § 304, Sept. 7, 1962, 76 Stat. 526, which prescribed the compensation of the Assistant Secretaries of the Navy, was repealed by Pub. L. 88–426, title III, § 305(6), Aug. 14, 1964, 78 Stat. 423.

CROSS REFERENCES

Compensation of Assistant Secretaries, see section 5315 of Title 5, Government Organization and Employees.

Succession to duties of Secretary, see section 5036 of this title.

§ 5035. Repealed. Pub. L. 85–599, § 8 (b) (2), Aug. 6, 1958, 72 Stat. 519.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 279, authorized an Assistant Secretary of the Navy for Air, provided for his appointment and duties, and prescribed his compensation. Subsec. (c) was also repealed by Pub. L. 85–861, § 36B (12), Sept. 2, 1958, 72 Stat. 1571.

EFFECTIVE DATE OF REPEAL

Repeal of section effective six months after Aug. 6, 1958, see section 13 of Pub. L. 85–599, set ous as a note under section 3013 of this title.

§ 5036. Secretary of the Navy: succession to duties.

(a) When there is a vacancy in the Office of Secretary of the Navy, or during the absence or disability of the Secretary, the Under Secretary of the Navy, and, in the order prescribed by the Secretary of the Navy, the Assistant Secretaries of the Navy succeed to the duties of the Secretary. If the Secretary does not prescribe an order for succession to his duties by the Assistant Secretaries, they succeed to those duties in the order in which they took office as Assistant Secretaries.

(b) During the temporary absence of the officials named in subsection (a), the Chief of Naval Operations or, in his absence, the Vice Chief of Naval Operations succeeds to the duties of the Secretary.

(c) Performance of the duties of the Secretary by the Chief of Naval Operations, the Vice Chief of Naval Operations, or any officer of the Navy or Marine Corps designated under section 6 of title 5 shall not be considered as the holding of a civil office within the meaning of section 973(b) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat 280; Nov. 2, 1966, Pub. L. 89–718, § 32, 80 Stat. 1119; Jan. 2, 1968, Pub. L. 90–235, § 4(a)(8), 81 Stat. 759.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5036	5 U. S. C. 423j; 5 U. S. C. 421b (2d sentence, less 1st 24 words, and 4th sentence); 5 U. S. C. 421a–1 (last sentence).	Mar. 5, 1948, ch. 98, § 10, 62 Stat. 69. June 20, 1940, ch. 400, § 3 (2d sentence, less 1st 24 words, and 4th sentence), 54 Stat. 494; May 15, 1947, ch. 60, § 1, 61 Stat. 93. Aug. 3, 1954, ch. 652, § 2 (last sentence), 68 Stat. 649.

The distinction between succession when there is a vacancy in the office and when there is a temporary absence is preserved in subsection (b) by authorizing

the Chief and Vice Chief of Naval Operations to succeed to the duties of the Secretary only in the temporary absence of the civilian officials.

REFERENCES IN TEXT

Section 6 of title 5, referred to in subsec. (c), probably refers to section 6 of Title 5 prior to the revision and codification of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378. The subject matter of said section 6 is now covered by section 3347 of Title 5, Government Organization and Employees.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90-235 added subsec. (c).

1966—Subsec. (a). Pub. L. 89-718 struck out reference to the Assistant Secretary of the Navy for Air wherever appearing.

ORDER OF SUCCESSION

For order of succession in the event of death, disability, or absence of the Secretary, see Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, set out as a note under section 3347 of Title 5, Government Organization and Employees.

Chapter 507.—OFFICE OF THE COMPTROLLER OF THE NAVY

Sec.
5061. Comptroller of the Navy: appointment; functions.
5062.[1] Deputy Comptroller: pay and allowances.
5063. Office of Budget and Reports: duties.
5064. Office of Budget and Reports: Director; Assistant.

§ 5061. Comptroller of the Navy: appointment; functions.

(a) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Navy shall have the following matters in the Department of the Navy organized and conducted consistently with the operations of the Office of the Comptroller of the Department of Defense:

(1) Budgeting.

(2) Accounting.

(3) Progress and statistical reporting.

(4) Internal audit.

(5) Administrative organization structure, and managerial procedures, relating to the matters covered by clauses (1)—(4).

(b) There are a Comptroller of the Navy and a Deputy Comptroller of the Navy in the Department of the Navy. They shall be appointed by the Secretary of the Navy. The Secretary may appoint either civilian or military personnel to these offices. If either the Comptroller or the Deputy Comptroller is not a civilian, the other must be a civilian.

(c) Subject to the authority of the Secretary of the Navy, the Comptroller is responsible for the matters in the Department of the Navy named in subsection (a) (1)—(5).

(d) The Comptroller is under the direction and supervision of, and is directly responsible to, either the Secretary of the Navy, the Under Secretary, or an Assistant Secretary. However, this subsection does not prevent the Comptroller from having concurrent responsibility to the Chief of Naval Operations, the Vice Chief of Naval Operations, or a Deputy Chief of Naval Operations, if the Secretary so prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 280.)

[1] Section 5062 was repealed but analysis was not amended to reflect such repeal.

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5061 (a)	5 U. S. C. 172a (a).	July 26, 1947, ch. 343, § 402 (a), added Aug. 10, 1949, ch. 412, § 11, 63 Stat. 586.
5061 (b)	5 U. S. C. 172a (b) (less 3d and 5th sentences).	July 26, 1947, ch. 343, § 402 (b) (less 3d and 5th sentences); added Aug. 10, 1949, ch. 412, § 11, 63 Stat. 586.
5061 (c)	5 U. S. C. 172a (b) (3d sentence).	July 26, 1947, ch. 343, § 402 (b) (3d sentence); added Aug. 10, 1949, ch. 412, § 11, 63 Stat. 586.
5061 (d)	5 U. S. C. 172a (b) (5th sentence).	July 26, 1947, ch. 343, § 402 (b) (5th sentence); added Aug. 10, 1949, ch. 412, § 11 63 Stat. 586.

In subsection (b) the second sentence of the revised text is inserted for clarity. The last two sentences make express the rule, necessarily implied in the source text, that the Deputy Comptroller may be appointed from either civilian or military personnel, and that if the Deputy Comptroller is not a civilian, the Comptroller must be.

In subsection (c) the words "matters in the Department of the Navy named in subsection (a) (1)—(5)" are substituted for the words "all budgeting, accounting, progress, and statistical reporting, and internal audit in their respective departments and for the administrative organization structure and managerial procedures relating thereto", to avoid repetition.

§ 5062. Repealed. Pub. L. 87-649, § 14c(11), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 281, prescribed the pay and allowances of the Deputy Comptroller, and is now covered by section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5063. Office of Budget and Reports: duties.

(a) There is in the Office of the Secretary of the Navy an Office of Budget and Reports, which is charged with such duties pertaining to naval budgetary matters and statistical and work reporting as the Secretary prescribes.

(b) Duties of the Office of Budget and Reports shall be performed under the authority of the Secretary, and its orders are considered as coming from him. (Aug. 10, 1956, ch. 1041, 70A Stat. 281.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5063	5 U. S. C. 471 (less (a) and (b)).	Aug. 25, 1941, ch. 409, § 201 (less (a) and (b)), 55 Stat. 680.

The words "and shall have full force and effect as such" are omitted as surplusage.

§ 5064. Office of the Budget and Reports: Director; Assistant Director.[1]

(a) The Director of Budget and Reports is the head of the Office of Budget and Reports. He shall be appointed by the President, by and with the advice and consent of the Senate, for a term of three years, from officers on the active list in the line of the Navy not below the grade of lieutenant commander.

[1] Section catchline does not conform to analysis.

(b) The Director is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(c) An officer in the line of the Navy may be detailed as Assistant Director of Budget and Reports.

(d) When there is a vacancy in the office of Director, or during the absence or disability of the Director, the Assistant Director, unless otherwise directed by the President, shall perform the duties of the Director until a successor is appointed or the absence or disability ceases. (Aug. 10, 1956, ch. 1041, 70A Stat. 281; Sept. 7, 1962, Pub. L. 87-649, § 14(c) (12), (13), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5064 (a) (b).	5 U. S. C. 471 (a).	Aug. 25, 1941, ch. 409, § 201 (a), 55 Stat. 680.
5064 (c) (d).	5 U. S. C. 471 (b).	Aug. 25, 1941, ch. 409, § 201 (b), 55 Stat. 680.

Subsection (d) is phrased to conform to the succession provision in § 5135 of this title. The words "unless otherwise directed by the President" are added in view of 5 U. S. C. 6.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-649, § 14c(12), repealed the words, "pay, allowances,", which followed "same rank." See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87-649, § 14c(13), repealed the last sentence which provided that a person detailed as Assistant Director of Budget and Reports is entitled to the highest pay of his grade. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

Chapter 509.—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

Sec.
5081. Chief of Naval Operations: appointment; term of office; powers; duties.
5082. Chief of Naval Operations: coordinating duties.
5083. Chief of Naval Operations: retirement.
5084. Chief of Naval Operations: quarters.
5085. Vice Chief of Naval Operations: appointment; powers; duties.
5086. Deputy Chiefs of Naval Operations: detail; duties.
5087. Assistant Chiefs of Naval Operations: detail; duties.
5088. Naval Inspector General: detail; duties.

AMENDMENTS

1966—Pub. L. 89-718, § 33, Nov. 2, 1966, 80 Stat. 1119, struck out "and Chief of Naval Material" following "Chief of Naval Operations" in item 5082.

§ 5081. Chief of Naval Operations: appointment; term of office; powers; duties.

(a) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, to serve at the pleasure of the President, for a term of four years, from officers on the active list in the line of the Navy, eligible to command at sea and not below the grade of rear admiral. In time of war or national emergency declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

(b) The Chief of Naval Operations, while so serving, has the rank of admiral. He takes precedence above all other officers of the naval service, except an officer of the naval service who is serving as Chairman of the Joint Chiefs of Staff.

(c) Under the direction of the Secretary of the Navy, the Chief of Naval Operations shall exercise supervision over such of the members and organizations of the Navy and the Marine Corps as the Secretary of the Navy determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title.

(d) The Chief of Naval Operations is the principal naval adviser to the President and to the Secretary of the Navy on the conduct of war, and the principal naval adviser and naval executive to the Secretary on the conduct of the activities of the Department of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 281; Aug. 6, 1958, Pub. L. 85-599, § 4(b), 72 Stat. 516; Sept. 7, 1962, Pub. L. 87-651, title I, §§ 114, 120, 76 Stat. 513; June 5, 1967, Pub. L. 90-22, title IV, § 402, 81 Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5081 (a)	5 U. S. C. 423b (a) (less 2d sentence).	Mar. 5, 1948, ch. 98, § 2 (a) (less 2d sentence), 62 Stat. 67.
5081 (b)	5 U. S. C. 423b (a) (2d sentence); 5 U. S. C. 424.	Mar. 5, 1948, ch. 98, § 2 (a) (2d sentence), 62 Stat. 67.
5081 (c)	5 U. S. C. 423b (b) (less 2d sentence); 5 U. S. C. 427.	Aug. 29, 1916, ch. 417, 39 Stat. 558 (1st sentence, and 1st proviso of 3d sentence, of 2d par.).
5081 (d)	5 U. S. C. 423b (b) (2d sentence).	Mar. 5, 1948, ch. 98, § 2 (b) (less 2d sentence), 62 Stat. 67.
5081 (e)	5 U. S. C. 423a (c).	Aug. 29, 1916, ch. 417, 39 Stat. 558 (2d par., 2d sentence). Mar. 5, 1948, ch. 98, § 2 (b) (2d sentence), 62 Stat. 67. Mar. 5, 1948, ch. 98, § 1 (c), 62 Stat. 67.

That part of 5 U. S. C. 424 starting with the words "to take rank" to the end of the sentence is superseded by 5 U. S. C. 423b, enacted by the act of Mar. 5, 1948, ch. 98, § 2 (a), 62 Stat. 67. 10 U. S. C. 22a, referred to in 5 U. S. C. 424, is repealed by the act of June 28, 1950, ch. 383, § 401 (1), 64 Stat. 271. The second sentence of 5 U. S. C. 424 is omitted as surplusage. The exception is written into subsection (b) to conform the last sentence of 5 U. S. C. 423b (a) to § 211 (d) of the National Security Act of 1947, as amended (5 U. S. C. 171f (d)).

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-22 inserted the provision that the initial term of the Chief of Naval Operations be subject to the pleasure of the President, and changed the requirement that the Chief be reappointed with the advice and consent of the Senate by providing for his reappointment for a term of not more than four years by the President without such advice and consent in a time of war or national emergency as declared by the Congress.

1962—Subsec. (c). Pub. L. 87-651, § 114, substituted "under section 124 of this title" for "pursuant to section 202(j) of the National Security Act of 1947, as amended."

Subsec. (e). Pub. L. 87-651, § 120, eliminated subsec. (e), which defined "operating forces." See section 5082 (b) of this title.

1958—Subsec. (c). Pub. L. 85-599 substituted provisions requiring the Chief of Naval Operations to exercise supervision only as the Secretary of the Navy determines and in a manner consistent with the full operational command vested in unified or specified commanders for provisions which gave the Chief of Naval Operations command over the operating forces and made him re-

sponsible to the Secretary of the Navy for their use, and provided that orders issued by the Chief of Naval Operations should be considered as coming from the Secretary.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–22 effective January 1, 1969, see section 405 of Pub. L. 90–22, set out as a note under section 3034 of this title.

CROSS REFERENCES

Armed Forces Policy Council, member of, see section 171 (a) (9) of this title.

Chairman of the Joint Chiefs of Staff, see section 142 of this title.

Courts-martial, authority to convene, see sections 822—824 of this title.

Performance of duties by Vice Chief of Naval Operations during vacancy in office, see section 5085 of this title.

Personal money allowance, see section 414 of Title 37, Pay and Allowances of the Uniformed Services.

Rank with Chiefs of Staff of Army and Air Force, see section 743 of this title.

Succession to duties of Secretary, see section 5036 of this title.

§ 5082. Chief of Naval Operations: coordinating duties.

(a) To coordinate military operations and their support effectively, the Chief of Naval Operations, under the direction of the Secretary of the Navy, shall—

(1) determine the personnel and the material requirements of the operating forces, including the order in which ships, aircraft, surface craft, weapons, and facilities are to be constructed, maintained, altered, repaired, and overhauled; and

(2) coordinate and direct the efforts of the bureaus and offices of the executive part of the Department of the Navy as may be necessary to make available and distribute, when and where needed, the personnel and material required.

(b) As used in this section, "operating forces" means the several fleets, sea-going forces, sea-frontier forces, district forces, and such of the shore establishment of the Navy and other forces and activities as may be assigned thereto by the President or the Secretary of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 282; Sept. 7, 1962, Pub. L. 67–651, title I, § 121, 76 Stat. 513; Nov. 2, 1966, Pub. L. 89–718, § 33, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5082	5 U. S. C. 423i; 5 U. S. C. 423a (b), (c).	Mar. 5, 1948, ch. 98, § 9, 62 Stat. 68. Mar. 5, 1948, ch. 98, § 1 (b), (c), 62 Stat. 67.

AMENDMENTS

1966—Pub. L. 89–718 struck out reference to the Chief of Naval Material in the section catchline and, in subsec. (a), struck out provisions relating to the duties of the Chief of Naval Material.

1962—Pub. L. 87–651 designated existing provisions as subsec. (a), eliminated from cls. (1)(A) and (2)(A) the words "as defined in section 5081 of this title", and added subsec. (b).

TRANSFER OF FUNCTIONS

The Department of Defense Reorganization Order, eff. May 1, 1966, 31 F.R. 7188, issued by the Secretary of Defense, abolished the statutory basis for the Office of Naval Material and the Offices of Chief of Naval Material and Vice Chief of Naval Material, the Bureau of Naval Weapons, the Bureau of Ships, the Bureau of Supplies and Accounts, the Bureau of Yards and Docks, and the offices of the chief, deputy chief, and other officials in the abolished bureaus, and transferred their functions to the Secretary of the Navy, giving him authority to assign any transferred functions or authorize their performance by other officers, offices, agencies, or personnel of the Department of the Navy. See note set out under section 5111 of this title.

§ 5083. Chief of Naval Operations: retirement.

An officer who is retired while serving as Chief of Naval Operations, or who, after serving at least two and one-half years as Chief of Naval Operations, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of admiral. The retired pay of such an officer shall be computed at the highest rates of basic pay applicable to him while he served in that office. (Aug. 10, 1956, ch. 1041, 70A Stat. 282; May 20, 1958, Pub. L. 85–422, § 6 (2), 72 Stat. 129.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5083	5 U. S. C. 425a (less applicability to Chiefs of Bureaus, JAG, and Comdt MarCorps).	June 22, 1938, ch. 567, 52 Stat. 839 (less applicability to Chiefs of Bureaus, JAG, and Comdt MarCorps).

The words "with the rank, pay, and allowances authorized by law for the highest grade or rank held by him as such Chief of Naval Operations" are changed to "be retired with the grade of admiral and with retired pay based on that grade" because the grade authorized for the Chief of Naval Operations is the grade of admiral.

The first and second provisos of 5 U. S. C. 425a are omitted as executed.

AMENDMENTS

1958—Pub. L. 85–422 permitted computation of retired pay at the highest rates of basic pay applicable to the officer while he served as Chief of Naval Operations.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

APPLICATION OF 1958 AMENDMENT TO RETIRED PERSONS

Amendment by Pub. L. 85–422 as inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see note under section 3991 of this title.

§ 5084. Chief of Naval Operations: quarters.

The Secretary of the Navy may assign to the Chief of Naval Operations the public quarters constructed under the authority of the Act of March 2, 1891, ch. 494 (26 Stat. 806), located at the United States Naval Observatory in the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 282.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5084	5 U. S. C. 427a.	Dec. 10, 1928, ch. 18, 45 Stat. 1018.

The words "in his discretion" are omitted as surplusage. The reference to the statute is made in order to identify the particular quarters.

CROSS REFERENCES

Quarters generally, see section 7571 et seq. of this title.

§ 5085. Vice Chief of Naval Operations: appointment; powers; duties.

(a) There is a Vice Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, from officers on the active list in the line of the Navy serving in grades above captain and eligible to command at sea.

(b) The Vice Chief of Naval Operations has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Vice Chief of Naval Operations in performing such duties have the same effect as those issued by the Chief of Naval Operations.

(c) When there is a vacancy in the office of Chief of Naval Operations, or during the absence or disability of the Chief of Naval Operations, the Vice Chief of Naval Operations, unless otherwise directed by the President, shall perform the duties of the Chief until a successor is appointed or the absence or disability ceases.

(d) The President may designate the Vice Chief of Naval Operations as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 283; Aug. 6, 1958, Pub. L. 85–599, § 6 (b), 72 Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5085 (a) (b) (c).	5 U. S. C. 423c.	Mar. 5, 1948, ch. 98, § 3, 62 Stat. 67.
5085 (d)	5 U. S. C. 423k (less applicability to Deputy CNO's, Naval Inspector General, and Chief of Naval Material).	Mar. 5, 1948, ch. 98, § 11, 62 Stat. 69 (less applicability to Deputy CNO's, Naval Inspector General, and Chief of Naval Material).

In subsection (b) the words "all" and "and shall have full force and effect as such" are omitted as surplusage.

In subsection (c) the words "as provided by section 179 of the Revised Statutes" are omitted as unnecessary, and the subsection is phrased to conform to the phraseology in § 5135 of this title, relating to succession to duties of chiefs of bureaus.

Subsection (d) is worded to make clear that the Vice Chief of Naval Operations may be designated, under 34 U. S. C. 211d, as an officer who performs unusual or special duty, and if so designated, is entitled to the grade, pay, and retirement privilege accompanying the special designation. The words "under section 5231 of this title" are substituted for the words "grade, rank, pay, and allowances provided under any provision of law heretofore or hereafter enacted which authorizes such grade, rank, pay, and allowances for officers so designated".

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–599 substituted "has such authority and duties" for "shall exercise such executive authority", "may delegate to or prescribe for him" for "delegates to him", and "performing such duties have the same effect as those issued by" for "performing the duties assigned him are considered as coming from".

CROSS REFERENCES

Succession to duties of Secretary, see section 5036 (b) of this title.

§ 5086. Deputy Chiefs of Naval Operations: detail; duties.

(a) There are in the Office of the Chief of Naval Operations not more than six Deputy Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active list in the line of the Navy serving in grades above captain.

(b) The Deputy Chiefs of Naval Operations are charged, under the direction of the Chief of Naval Operations, with the execution of the functions of their respective divisions. Orders issued by the Deputy Chiefs of Naval Operations in performing the duties assigned them are considered as coming from the Chief of Naval Operations.

(c) The President may designate any Deputy Chief of Naval Operations as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 283.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8686 (a)(b)	5 U. S. C. 423d.	Mar. 5, 1948, ch. 98, § 4, 62 Stat. 67.
5050 (c)	5 U. S. C. 423k (as applicable to Deputy CNO's).	Mar. 5, 1948, ch. 98, § 11, 62 Stat. 69 (as applicable to Deputy CNO's).

In subsection (b) the words "all" and "and shall have full force and effect as such" are omitted as surplusage.

Subsection (c) is worded to make clear that a Deputy Chief of Naval Operations may be designated, under 34 U. S. C. 211d, as an officer who performs unusual or special duty, and, if so designated, is entitled to the grade, pay, and retirement privilege accompanying the special designation. The words "under section 5231 of this title" are substituted for the words "grade, rank, pay, and allowances provided under any provision of law heretofore or hereafter enacted which authorizes such grade, rank, pay, and allowances for officers so designated".

§ 5087. Assistant Chiefs of Naval Operations: detail; duties.

(a) Officers on the active list in the line of the Navy and officers on the active list of the Marine Corps, in numbers considered by the Chief of Naval Operations to be necessary, shall, with the approval of the Secretary of the Navy, be detailed as Assistant Chiefs of Naval Operations.

(b) The Assistant Chiefs of Naval Operations shall perform such duties as the Chief of Naval Operations prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 283.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5087	5 U. S. C. 423e.	Mar. 5, 1948, ch. 98, § 5, 62 Stat. 68.

In subsection (a) the words "appropriate and" are omitted as surplusage.

§ 5088. Naval Inspector General: detail; duties.

(a) There is in the Office of the Chief of Naval Operations the Office of the Naval Inspector General. The Naval Inspector General shall be detailed from officers on the active list in the line of the Navy serving in grades above captain.

(b) The Naval Inspector General, when directed, shall inquire into and report upon any matter that affects the discipline or military efficiency of the Department of the Navy. He shall make such inspections, investigations, and reports as the Secretary of the Navy or the Chief of Naval Operations directs.

(c) The Naval Inspector General shall periodically propose programs of inspections to the Chief of Naval Operations and shall recommend additional inspections and investigations as may appear appropriate.

(d) The President may designate the Naval Inspector General as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 283.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5088(a),(b), and(c).	5 U. S. C. 423f.	Mar. 5, 1948, ch. 98, § 6, 62 Stat. 68.
5088(d)	5 U. S. C. 423k (as applicable to the Naval Inspector General).	Mar. 5, 1948, ch. 98, § 11, 62 Stat. 69 (as applicable to the Naval Inspector General).

In subsection (a) the words "In addition to the divisions herein created" are omitted as surplusage. The word "detailed" is added in order to show that the position of the Inspector General is not an appointive office.

In subsection (c) the words "from time to time" are omitted as surplusage.

Subsection (d) is worded to make clear that the Naval Inspector General may be designated, under 34 U. S. C. 211d, as an officer who performs unusual or special duty, and, if so designated, is entitled to the grade, pay, and retirement privilege accompanying the special designation. The words "under section 5231 of this title" are substituted for the words "grade, rank, pay, and allowances provided under any provision of law heretofore or hereafter enacted which authorizes such grade, rank, pay, and allowances for officers so designated".

§§ 5111, 5112. Repealed. Pub. L. 89-718, § 34(a), Nov. 2, 1966, 80 Stat. 1119.

AMENDMENTS

1966—Pub. L. 89-718 struck out chapter 511 which read: "Office of the Chief of Naval Material."

Section 5111, acts Aug. 10, 1956, ch. 1041, 70A Stat. 284; Sept. 7, 1962, Pub. L. 87-649, § 14(c)(14), 76 Stat. 501, created an Office of Naval Material, established the position of Chief of Naval Material, and set out the powers and duties of the Chief of Naval Materials.

Section 5112, act Aug. 10, 1956, ch. 1041, 70A Stat. 284, provided for the detailing of an officer as Vice Chief of Naval Material to serve in the event of the absence or disability of the Chief of Naval Material.

DEPARTMENT OF DEFENSE REORGANIZATION ORDER

Eff. May 1, 1966, 31 F.R. 7188

REORGANIZATION OF THE DEPARTMENT OF THE NAVY

By virtue of the authority vested in me by section 125 of title 10 of the United States Code, and as Secretary of Defense, it is hereby ordered as follows:

SECTION 1. *Abolition of Office of Naval Material and Transfer of Functions.*—The Office of Naval Material and the offices of Chief of Naval Material and Vice Chief of Naval Material named in sections 5111 and 5112, title 10, United States Code, are hereby abolished and their functions, including those functions described in sections 5111 and 5082(a)(2), title 10, United States Code, are transferred to the Secretary of the Navy.

SEC. 2. *Abolition of Certain Bureaus and Transfer of Functions.*—The following bureaus, named in chapter 513 of title 10, United States Code, and the offices of the chiefs, deputy chiefs, and other officials of such bureaus are hereby abolished and all their functions are transferred to the Secretary of the Navy:

(a) Bureau of Naval Weapons;
(b) Bureau of Ships;
(c) Bureau of Supplies and Accounts; and
(d) Bureau of Yards and Docks.

SEC. 3. *Performance of Transferred Functions.*—Subject to the provisions of sections 5012 and 5013, title 10, United States Code, the Secretary of the Navy may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any office, agency, or employee, of the Department of the Navy of any function transferred to the Secretary by the provisions of this order, or assigning any such function to any other officer, or to any office, agency, or employee, of the Department of the Navy.

SEC. 4. *Transitional Provisions.*—In order to assist in the orderly transfer of functions and to promote continuity of operations, the Secretary of the Navy may, if he considers it necessary, delay beyond the effective date of this order the abolition of any office or the transfer of any function.

SEC. 5. *Effective Date.*—The provisions of this order shall take effect on the date determined under section 125, title 10, United States Code, or the first day of May 1966, whichever is later.

ROBERT S. MCNAMARA.

Chapter 513.—BUREAUS; OFFICE OF THE JUDGE ADVOCATE GENERAL; OFFICE OF NAVAL RESEARCH

Sec.
5131. Bureaus: names; location.
5132. Bureaus: distribution of business; orders; records; expenses.
5133. Bureau Chiefs and Judge Advocate General: rank; pay and allowances; retirement.
5134.[1] Deputy Bureau Chiefs: pay.
5135. Bureau Chiefs: succession to duties.
5137. Bureau of Medicine and Surgery: Chief; Deputy Chief.
5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions.
5139. Bureau of Medicine and Surgery: Chief of the Medical Service Corps.[2]
5140. Bureau of Medicine and Surgery: Nurse Corps, Director.
5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel.
5142. Bureau of Naval Personnel: Chief of Chaplains.
5143. Bureau of Naval Personnel: Assistant Chief for Women.
5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties.
5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General.
5150. Office of Naval Research: Chief, appointment, term, emoluments; Assistant Chief; succession to duties.
5151. Office of Naval Research: duties.
5152. Office of Naval Research: appropriations; time limit.
5153. Naval Research Advisory Committee.

AMENDMENTS

1967—Pub. L. 90-179, § 2(3), Dec. 8, 1967, 81 Stat. 547, inserted the reference to Judge Advocate General's Corps in item 5148 and inserted the reference to Deputy Judge Advocate General and substituted "Advocates General" for "Advocate General; succession to duties" following "Assistant Judge" in item 5149.

1966—Pub. L. 89-718, §§ 35(2), (5), 36, Nov. 2, 1966, 80 Stat. 1120, inserted "and Judge Advocate General" after "Bureau Chiefs" in item 5133, struck out items 5145, 5146, 5147, and 5154 which related to Bureau of Ships and the Chief, Deputy Chief, and Division Heads thereof, Bureau of Supplies and Accounts and the Chief and Deputy Chief thereof, Bureau of Yards and Docks and the Chief and Deputy Chief thereof, and Bureau of Naval Weapons

[1] Section 5134 repealed and analysis was not amended to reflect such repeal.

[2] So in original. Analysis does not correspond with section catchline.

and the Chief and Deputy Chief thereof, respectively, and struck out "pay," in item 5149.

1959—Pub. L. 86–174, §§ 1(3), (2)4, Aug. 18, 1959, 73 Stat. 395, 396, added item 5154 and eliminated items 5136 and 5144.

§ 5131. Bureaus: names; location.

There are in the executive part of the Department of the Navy the following bureaus:

(1) Bureau of Medicine and Surgery.

(2) Bureau of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Aug. 18, 1959, Pub. L. 86–174, §§ 1(1), 2(1), 73 Stat. 395; Nov. 2, 1966, Pub. L. 89–718, § 35(1), 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5131	5 U. S. C. 429 (less applicability to distribution of business among bureaus).	R. S. 419 (less applicability to distribution of business among bureaus); July 19, 1892, ch. 206, 27 Stat. 243 (6th par.); June 30, 1914, ch. 130, 38 Stat. 408 (4th par.); July 12, 1921, ch. 44, § 8 (1st 17 words of 1st par.), 42 Stat. 140; June 20, 1940, ch. 400, § 1 (a), (b), 54 Stat. 492; May 13, 1942, ch. 303, § 1, 56 Stat. 276.

The bureaus are listed alphabetically for convenience. This listing has no effect on the precedence of the bureaus.

AMENDMENTS

1966—Pub. L. 89–718 struck out clauses (3)—(6) which related to the Bureau of Naval Weapons, the Bureau of Ships, the Bureau of Supplies and Accounts, and the Bureau of Yards and Docks, respectively.

1959—Pub. L. 86–174 inserted the Bureau of Naval Weapons and eliminated the Bureau of Aeronautics and the Bureau of Ordnance.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86–174 provided in part that the amendment of this section and section 5133 of this title, and the repeal of sections 5136 and 5144 of this title shall be effective on July 1, 1960, or on any earlier date on which the Secretary of the Navy makes a formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance have been transferred to the Bureau of Naval Weapons or elsewhere.

BUREAU OF NAVAL WEAPONS; TRANSFER OF FUNDS

Section 3 of Pub. L. 86–174 provided that; "The unexpended balances of appropriations and funds available for use in connection with the exercise of any function transferred to the Bureau of Naval Weapons shall be transferred in the manner provided by section 407 of the National Security Act of 1947, as amended (5 U.S.C. 172f), for use in connection with the transferred functions."

§ 5132. Bureaus: distribution of business; orders; records; expenses.

(a) Except as otherwise provided by law, the business of the executive part of the Department of the Navy shall be distributed among the bureaus as the Secretary of the Navy considers expedient and proper.

(b) Each bureau shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(c) Under the Secretary, each bureau has custody and charge of its records and accounts.

(d) Each bureau shall furnish to the Secretary estimates for its specific, general, and contingent expenses. (Aug. 10, 1956, ch. 1041, 70A Stat. 285.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5132 (a)	5 U. S. C. 429 (as applicable to distribution of business among bureaus); 5 U. S. C. 455 (1st 23 words).	R. S. 419 (as applicable to distribution of business among bureaus). July 12, 1921, ch. 44, § 8 (1st par., 1st 37 words), 42 Stat. 140.
5132 (b)	5 U. S. C. 430 (last 39 words); 5 U. S. C. 430b; 5 U. S. C. 455 (less 1st 23 words).	R. S. 420 (last 39 words).
5132 (c)	5 U. S. C. 430 (less last 39 words).	June 20, 1940, ch. 400, § 1 (b) (2d sentence), 54 Stat. 493.
5132 (d)	5 U. S. C. 431.	July 12, 1921, ch. 44, § 8 (1st par., less 1st 37 words), 42 Stat. 140. R. S. 420 (less last 39 words). R. S. 430.

In subsection (a) the phrase "Except as otherwise provided by law" is added to preserve provisions direction that the Chief of Naval Operations and other statutory offices and boards share in the business of the executive part of the Department of the Navy. The words "The Bureau of Aeronautics shall be charged with matters pertaining to naval aeronautics" in 5 U. S. C. 455 are omitted as implied in the name of the bureau and covered by the authority granted to the Secretary to distribute the business of the Department.

In subsection (b) the words "and shall have full force and effect as such" are omitted as surplusage.

In subsection (c) the words "Under the Secretary" are inserted to make the provisions of 5 U. S. C. 413 and 5 U. S. C. 430, the latter of which is here codified, harmonious and to give meaning to each provision.

TRANSFER OF FUNCTIONS

The Department of Defense Reorganization Order, eff. May 1, 1966, 31 F.R. 7188, issued by the Secretary of Defense, abolished the statutory basis for the Office of Naval Material and the Offices of Chief of Naval Material and Vice Chief of Naval Material, the Bureau of Naval Weapons, the Bureau of Ships, the Bureau of Supplies and Accounts, the Bureau of Yards and Docks, and the offices of the chief, deputy chief, and other officials in the abolished bureaus, and transferred their functions to the Secretary of the Navy, giving him authority to assign any transferred functions or authorize their performance by other officers, offices, agencies, or personnel of the Department of the Navy. See note set out under section 5111 of this title.

§ 5133. Bureau Chiefs and Judge Advocate General: rank; pay and allowances; retirement.

(a) Unless appointed to a higher grade under another provision of law, an officer of the Navy, while serving as a chief of bureau or the Judge Advocate General, has the rank of rear admiral. Unless appointed to a higher grade under another provision of law, an officer of the Marine Corps, while serving as Judge Advocate General, has the rank of major general.

(b) Except for an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, an officer who is retired while serving as a chief of bureau or the Judge Advocate General, or who, after serving at least two and one-half years as chief of bureau or the Judge Advocate General, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of rear admiral or major general, as appropriate, and with retired pay based on that grade. If he is retired with the grade of rear admiral, he is entitled to the retired pay of a rear admiral in the upper half of that grade. An officer who is serving or

has served in the grade of vice admiral under section 5137(a) of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list and with retired pay based on that grade.

(c) Except in time of war, any officer of a staff corps who has served as a chief of bureau for a full term is exempt from sea duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 285; Aug. 18, 1959, Pub. L. 86-174, § 2(2), 73 Stat. 396; Sept. 7, 1962, Pub. L. 87-649, § 14c(15), 76 Stat. 501; Oct. 22, 1965, Pub. L. 89-288, § 3, 79 Stat. 1050; Nov. 2, 1966, Pub. L. 89-718, § 35 (2)-(4), 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5133 (a)	5 U. S. C. 441 (less applicability to JAG); 5 U. S. C. 441a (as applicable to rank, pay and allowances); 5 U. S. C. 439 (last 39 words).	July 1, 1918, ch. 114, 40 Stat. 717 (1st sentence on p. 717, less applicability to JAG). June 20, 1940, ch. 400, § 1 (c) (2d sentence, less applicability to retirement), 54 Stat. 493. July 12, 1921, ch. 44, § 8 (2d par., last 42 words), 42 Stat. 140.
5133 (b)	5 U. S. C. 525a (as applicable to Chiefs of Bureaus); 5 U. S. C. 441a (as applicable to retirement).	June 22, 1938, ch. 567, 52 Stat. 839 (as applicable to Chiefs of Bureaus). June 20, 1940, ch. 400, § 1 (c) (2d sentence as applicable to retirement), 54 Stat. 493.
5133 (c)	34 U. S. C. 225.	R. S. 1436.

In subsection (a), the language that incorporates the rank, pay, and allowances of chiefs of bureaus of the War Department for chiefs of bureaus is executed. Creation of the Department of the Air Force by the National Security Act of 1947, and the saving provisions in § 305 of that act, would relate chiefs of bureaus of the Navy to the corresponding officers of both the other military departments. Since there is now positive organizational law for both of those departments providing the grades of the departmental officers, and, since in the reorganization of the departments, there is no precise counterpart of the chief of a Navy bureau, it is inappropriate to continue the incorporation by reference. Subsection (a), therefore, provides that bureau chiefs are entitled to have the rank of rear admiral with pay and allowances of a rear admiral in the upper half, which, under § 516 of the Officer Personnel Act of 1947, corresponds with major general. The subsection also recognizes the possibility of appointing an officer of the Marine Corps as Chief of the Bureau of Aeronautics by providing that such an appointee has the rank, pay, and allowances of a major general.

AMENDMENTS

1966—Pub. L. 89-718 inserted reference to the Judge Advocate General in the section catchline, substituted "Judge Advocate General" for "Chief of the Bureau of Naval Weapons", inserted "or the Judge Advocate General" after "chief of bureau" in subsec. (a), and "or the Judge Advocate General" after "chief of bureau" in subsec. (b).

1965—Subsec. (b). Pub. L. 89-288 permitted an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, upon retirement, to be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list and with the retired pay based on that grade.

1962—Subsec. (a). Pub. L. 87-649 repealed provisions which prescribed the pay and allowances of a chief of bureau and of the Chief of the Bureau of Naval Weapons, in the Marine Corps. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

1959—Pub. L. 86-174 substituted "Bureau of Naval Weapons" for "Bureau of Aeronautics."

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-174 effective on July 1, 1960, or any earlier date on which the Secretary of the Navy makes a formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance have been transferred to the Bureau of Naval Weapons or elsewhere, see note under section 5131 of this title.

TRANSFER OF FUNCTIONS

The Department of Defense Reorganization Order, eff. May 1, 1966, 31 F.R. 7188, issued by the Secretary of Defense, abolished the stautory basis for the Office of Naval Material and the Offices of Chief of Naval Material and Vice Chief of Naval Material, the Bureau of Naval Weapons, the Bureau of Ships, the Bureau of Supplies and Accounts, the Bureau of Yards and Docks, and the offices of the chief, deputy chief, and other officials in the abolished bureaus, and transferred their functions to the Secretary of the Navy, giving him authority to assign any transferred functions or authorize their performance by other officers, offices, agencies, or personnel of the Department of the Navy. See note set out under section 5111 of this title.

CROSS REFERENCES

Officers entitled to benefits—

Chief of Dental Division, see section 5138 (b) of this title.

Chief of Naval Research, see section 5150 of this title.

Director of Budget and Reports, see section 5064 (b) of this title.

Judge Advocate General, see section 5148 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5064, 5138, 5148, 4159, 5150 of this title.

§ 5134. Repealed. Pub. L. 87-649, § 14c(16), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 286, prescribed the pay of deputy chiefs of bureaus, and is now covered by section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective No. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5135. Bureau Chiefs: succession to duties.

(a) When there is a vacancy in the office of chief of a bureau, or during the absence or disability of the chief of a bureau, the deputy chief of that bureau, unless otherwise directed by the President, shall perform the duties of the chief until a successor is appointed or the absence or disability ceases.

(b) When subsection (a) cannot be complied with because of the absence or disability of the deputy chief of the bureau, the heads of the major divisions of the bureau, in the order directed by the Secretary of the Navy, shall perform the duties of the chief, unless otherwise directed by the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 286.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5135 (a)	5 U. S. C. 445 (less 1st 43 words); 5 U. S. C. 446 (last 49 words); 5 U. S. C. 447 (25th through 74th words); 5 U. S. C. 448a; 5 U. S. C. 449 (last 51 words); 5 U. S. C. 452 (less 1st 35 words).	Aug. 29, 1916, ch. 417, 39 Stat. 558 (3d par., 45th through 95th words). Mar. 3, 1893, ch. 212, 27 Stat. 717 (1st par., last 53 words); May 13, 1942, ch. 303, § 1, 56 Stat. 276.
5135 (b)	5 U. S. C. 432a (less applicability to JAG).	May 4, 1898, ch. 234, § 1, 30 Stat. 373 (12th par., 41st through 92d words). June 20, 1940, ch. 400, § 1 (f), 54 Stat. 493. July 26, 1894, ch. 165, § 1, 28 Stat. 132 (3d par., last 56 words); July 11, 1919, ch. 9, 41 Stat. 147 (1st proviso). July 12, 1921, ch: 44, § 8 (3d par., less 1st 35 words), 42 Stat. 140. Feb. 3, 1942, ch. 35, § 1 (less applicability to JAG), 56 Stat. 47.

In subsection (a) all the provisions covering succession in case of the absence of the chiefs of the various bureaus are integrated and uniformly stated.

That part of 5 U. S. C. 448a, enacted in the act of June 20, 1940, ch. 400, § 1 (f), 54 Stat. 493, relating to the succession by heads of major divisions of the Bureau of Ships is superseded by the act of Feb. 3, 1942, ch. 35, § 1 (5 U. S. C. 432a).

TRANSFER OF FUNCTIONS

The Department of Defense Reorganization Order, eff. May 1, 1966, 31 F.R. 7188, issued by the Secretary of Defense, abolished the statutory basis for the Office of Naval Material and the Offices of Chief of Naval Material and Vice Chief of Naval Material, the Bureau of Naval Weapons, the Bureau of Ships, the Bureau of Supplies and Accounts, the Bureau of Yards and Docks, and the offices of the chief, deputy chief, and other officials in the abolished bureaus, and transferred their functions to the Secretary of the Navy, giving him authority to assign any transferred fnuctions or authorize their performance by other officers, offices, agencies, or personnel of the Department of the Navy. See note set out under section 5111 of this title.

§ 5136. Repealed. Pub. L. 86-174, § 2(3), Aug. 18, 1959, 73 Stat. 396.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 286, related to the appointment, qualifications and term of the Chief of the Bureau of Aeronautics, and authorized the detail of an officer as Deputy Chief of the Bureau.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on July 1, 1960, or any earlier date on which the Secretary of the Navy makes formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance have been transferred to the Bureau of Naval Weapons or elsewhere, see note under section 5131 of this title.

§ 5137. Bureau of Medicine and Surgery: Chief; Deputy Chief.

(a) The Chief of the Bureau of Medicine and Surgery shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active list of the Navy in the Medical Corps. He has the title of Surgeon General. The Surgeon General, while so serving has the grade of vice admiral.

(b) An officer on the active list of the Navy in the Medical Corps may be detailed as Deputy Chief of the Bureau of Medicine and Surgery. (Aug. 10. 1956, ch. 1041, 70A Stat. 286; Oct. 22, 1965, Pub. L. 89-288, § 4, 79 Stat. 1050.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5137 (a)	5 U. S. C. 432; 5 U. S. C. 438; 5 U. S. C. 440 (less applicability to Paymaster General).	R. S. 421. R. S. 426. R. S. 1471 (less applicability to Paymaster General); June 20, 1940, ch. 400, § 1 (a), 54 Stat. 492.
5137 (b)	5 U. S. C. 451 (less last 10 words).	R. S. 1375 (less last 10 words); Feb. 27, 1877, ch. 69, § 1, 19 Stat. 244.

In subsection (a) the words "from officers on the active list of the Navy in the Medical Corps" are substituted for the words "from the list of Surgeons of the Navy" to conform to present statutory terminology, and the words "or from officers having the rank of captain in the staff corps of the Navy" are omitted as obsolete in view of the subsequent changes in staff corps grades and the establishment of grades and ranks higher than captain in the staff corps. R. S. 421 and 426 were derived from the act of July 5, 1862, ch. 134, 12 Stat. 510, and the act of Mar. 3, 1871, ch. 117, § 10, 16 Stat. 537. The act of July 5, 1862, provided that the Chief of the Bureau of Medicine and Surgery should be appointed from the list of surgeons in the Navy. At that time the senior medical officers were "surgeons" who "ranked with" commanders. Next junior to them were "surgeons" who "ranked with" lieutenants. The rank of lieutenant commander did not exist. The act of Mar. 3, 1871, established five grades in the Medical Corps of which two, medical director and medical inspector, were higher than the grade of surgeon. Medical directors were given the relative rank of captain, medical inspectors the relative rank of commander, and surgeons the relative rank of lieutenant commander or lieutenant. The 1871 act further provided that chiefs of bureaus might be appointed from officers having the relative rank of captain in the staff corps. This provision was probably intended to insure that the assignment of new grades and titles to senior staff corps officers should not be construed as a bar to their appointment as bureau chiefs. However, it was interpreted by the Commissioners who drafted the Revised Statutes as setting up a new category of officers from which bureau chiefs could be appointed, and it was therefore stated, in R. S. 421, as an alternative to each of the other categories specified for the various Bureaus in the 1862 act and reenacted in R. S. 422—426. Thus the Chief of the Bureau of Medicine and Surgery could be appointed from surgeons, who had the relative rank of lieutenant commander or lieutenant in the Medical Corps, or from officers having the relative rank of captain in the Medical Corps, Pay Corps, or Engineer Corps. Section 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a) abolished the grade of surgeon and other staff corps grades and replaced them with grades having the same titles as the grades and ranks in the line. Officers who were "surgeons" are now "lieutenant commanders and lieutenants in the Medical Corps." If this literal translation is made in R. S. 426 and the eligibility of all staff corps captains, as stated in R. S. 421, is retained, an absurd result is reached; i. e., lieutenants, lieutenant commanders, and captains in the Medical Corps are eligible for appointment as Chief of the Bureau of Medicine and Surgery; but commanders and rear admirals in that corps are ineligible; captains, but not rear admirals, in other staff corps are eligible by virtue of their rank alone, regardless of their lack of training in medicine. It appears, therefore, that the only reasonable meaning that can be given to R. S. 421 and 426 at the present time is that the Chief of the Bureau of Medicine and Surgery must be an officer of the Medical Corps.

In subsection (b) the words "Deputy Chief of the Bureau" are substituted for the words "assistant to the Bureau" for uniformity. The words "An officer on the active list of the Navy in the Medical Corps" are substituted for the words "A surgeon, assistant surgeon, or passed assistant surgeon" to conform to present statutory terminology and to decribe clearly the class of officers eligible for detail under this subsection. When the

source statute was enacted there was no class of officers exactly corresponding to officers of the present Naval Reserve, and retired officers could be called to active duty only in time of war, so that the detailing of an officer not on the active list as assistant to the bureau chief was probably not contemplated. Further, since the assistant or deputy must at times perform the duties of the chief, it is reasonable to assume that he was intended to be in the same category of officers. Later statutes relating to the Assistant Chiefs of the Bureau of Aeronautics and the Bureau of Ships, enacted at a time when there were Reserve officers and when retired officers could be called to duty at any time with their consent, specify that the assistant chiefs shall be officers on the active list.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89-288 provided the Surgeon General, while so serving, with the grade of vice admiral.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5133 of this title.

§ 5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions.

(a) There is a Dental Division in the Bureau of Medicine and Surgery. An officer of the Dental Corps in the grade of rear admiral shall be detailed as Chief of the Dental Division.

(b) The Chief of the Dental Division is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(c) The dental functions of the Bureau of Medicine and Surgery shall be so defined and prescribed by Bureau directives, and if necessary by regulations of the Secretary of the Navy, that all such functions will be under the direction of the Dental Division. All matters relating to dentistry shall be referred to that Division.

(d) The Dental Division shall—

(1) establish professional standards and policies for dental practice;

(2) conduct inspections and surveys for maintenance of such standards;

(3) initiate and recommend action pertaining to complements, appointments, advancement, training assignment, and transfer of dental personnel; and

(4) serve as the advisory agency for the Bureau on all matters relating directly to dentistry.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Sept. 7, 1962, Pub. L. 87-649, § 14c(17), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5138	5 U. S. C. 456b; 5 U. S. C. 456c.	Dec. 28, 1945, ch. 604, § 2, 59 Stat. 666. Dec. 28, 1945, ch. 604, § 3, 59 Stat. 666; Aug. 7, 1947, ch. 512, § 427, 61 Stat. 880; Oct. 18, 1951, ch. 513, 65 Stat. 450.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-649 repealed words "pay, allowances, and" which followed "entitled to the same", and is now covered by section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5139. Bureau of Medicine and Surgery: Medical Service Corps, Chief.

(a) There is a chief of the Medical Service Corps appointed by the Secretary of the Navy, upon the recommendation of the Surgeon General, from officers on the active list of the Navy in the Medical Service Corps holding permanent appointments in grades not below lieutenant commander. The Chief shall be appointed for a term of not more than four years, to serve at the pleasure of the Secretary. While so serving, he has the rank of captain in the Navy. His permanent status as a commissioned officer in the Medical Service Corps is not disturbed by his appointment as Chief.

(b) An officer who is retired for any reason while serving as Chief of the Medical Service Corps or who, after serving at least two and one-half years as chief of that corps, is retired after completion of that service while serving in a lower rank or grade may, in the discretion of the President, be retired with the grade of captain and with retired pay based on that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 287; Sept. 7, 1962, Pub. L. 87-649, § 6(c)(1), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5139	34 U. S. C. 30a-1.	Aug. 4, 1947, ch. 459, § 208, 61 Stat. 738; Aug. 7, 1947, ch. 512, § 433 (a), 61 Stat. 881; added Aug. 23, 1954, ch. 822, 68 Stat. 763.

In subsection (b) the words "with the grade of captain and with retired pay based on that grade" are substituted for the words "with the rank held by him while serving as Chief of the Medical Service Corps and with retired pay based on the active-duty pay of that rank" for brevity and clarity.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-649 eliminated provisions which authorized the pay and allowances of a captain for the Chief of the Medical Service Corps.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(8) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 5140. Bureau of Medicine and Surgery: Nurse Corps, Director.

(a) There is a Director of the Nurse Corps appointed by the Secretary of the Navy, upon the recommendation of the Surgeon General, from officers on the active list of the Navy in the Nurse Corps holding permanent appointments in the grade of lieutenant commander or above. The Director shall be appointed for a term of not more than four years, to serve at the pleasure of the Secretary. An officer of the Navy, while serving as Director of the Nurse Corps, has the rank of captain unless otherwise entitled to a higher rank or grade. An appointment as director does not disturb an officer's permanent status as a commissioned officer in the Nurse Corps

(b) An officer who, after serving at least two and one-half years as Director of the Nurse Corps, is retired for any reason while serving as Director or while serving in a lower rank or grade after completion of that service may, in the discretion of the President, be retired with the grade of captain and with retired pay based on that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 287; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(23), 71 Stat. 385; Sept. 7, 1962, Pub. L. 87–649, § 6(c)(2), 76 Stat. 494; Sept. 30, 1966, Pub. L. 89–609, § 1(6), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, § 1(14)(A), 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5140 (a)	34 U. S. C. 43a.	Apr. 16, 1947, ch. 38, § 202, 61 Stat. 47.
5140 (b)	34 U. S. C. 43g (b).	Apr. 16, 1947, ch. 38, § 207 (c), 61 Stat. 49; renumbered § 207 (b), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882.

In subsection (a) the words "holding permanent appointments in the grade of commander or lieutenant commander" are substituted for the words "of the permanent grade or rank of lieutenant commander or above" because the grade of commander is the only grade above lieutenant commander in which an officer of the Nurse Corps may have a permanent appointment.

In subsection (b) the proviso of 34 U. S. C. 43g (b) is omitted as executed.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 authorized a rank of higher than captain for the Director of the Nurse Corps if the Director is otherwise entitled to a higher rank or grade.

1966—Subsec. (a). Pub. L. 89–609 substituted "the Director" and "The Director's" for "she" and "Her" and struck out "her" preceding "appointment".

1962—Subsec. (a). Pub. L. 87–649 eliminated provisions which authorized the pay and allowances of a captain for the Director of the Nurse Corps.

1957—Subsec. (a). Pub. L. 85–155 substituted "lieutenant commander or above" for "commander or lieutenant commander".

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 43g (b) of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

§ 5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel.

(a) The Chief of the Bureau of Naval Personnel shall be known as the Chief of Naval Personnel. The Chief of Naval Personnel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active list in the line of the Navy not below the grade of commander.

(b) The Deputy Chief of the Bureau of Naval Personnel shall be known as the Deputy Chief of Naval Personnel. An officer on the active list in the line of the Navy not below the grade of commander may be detailed as Deputy Chief of Naval Personnel. (Aug. 10, 1956, ch. 1041, 70A Stat. 287.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5141 (a)	5 U. S. C. 432; 5 U. S. C. 434 (less applicability to Chief of BuOrd).	R. S. 421.
5141 (b)	5 U. S. C. 446 (less last 49 words).	R. S. 422 (less applicability to Chief of BuOrd, Bureau of Equipment and Recruiting, and BuDocks); May 13, 1942, ch. 303, § 1, 56 Stat. 276. Mar. 3, 1893, ch. 212 (1st par., less last 53 words), 27 Stat. 717; May 13, 1942, ch. 303, § 1, 56 Stat. 276.

In subsection (a) the words "from officers on the active list in the line of the Navy" are substituted for the words "from the list of officers of the Navy" to conform to current terminology. Line officers alone had the "grade" of commander when the source statute was enacted. The words "or from officers having the rank of captain in the staff corps of the Navy" are omitted as obsolete in view of subsequent changes in the staff corps and in the staff corps ranks and grades. These words were derived from the act of Mar. 3, 1871, ch. 117, § 10, 16 Stat. 537, which established new staff corps grades and assigned to officers in the highest grade the relative rank of captain. They were probably intended merely to assure the eligibility of senior staff corps officers for appointment as chiefs of appropriate staff bureaus. However, as incorporated in R. S. 421, they provide a category of eligible officers which is an alternative to each of the categories listed in R. S. 422—426. Thus R. S. 421 and R. S. 422, as originally enacted, provided that the chiefs of the four "line" bureaus, Yards and Docks, Navigation, Ordnance, and Equipment and Recruiting, could be appointed from line officers not below the grade of commander or from officers having the relative rank of captain in any staff corps. Pursuant to these sections the Attorney General held in 1898 that an officer having the relative rank of captain in the Civil Engineer Corps could legally be appointed as Chief of the Bureau of Yards and Docks (22 Op. Atty. Gen. 47, 17 Mar. 1898). There is some confusion in the opinion as to which corps was meant. The proposed appointee was a member of the Civil Engineer Corps, but the Corps of Engineers is the corps mentioned in the conclusion of the opinion. A provision in the act of June 29, 1906, ch. 3590, 34 Stat. 564, requires that the Chief of the Bureau of Yards and Docks be selected from officers of the Civil Engineer Corps, so that there is no longer any question as to that bureau. The Bureau of Equipment and Recruiting has been abolished, leaving only the Bureau of Naval Personnel (formerly Navigation) and the Bureau of Ordnance of the four "line" bureaus originally listed in R. S. 422. The statutes establishing new "line" bureaus, the Bureau of Ships and the Bureau of Aeronautics, contain their own requirements as to the qualifications of the chiefs. The abolition of the Corps of Engineers and the Construction Corps, with the transfer of officers in those corps to the line, has eliminated the only staff corps whose members had duties closely related to those of line officers. The present staff corps, with the possible exception of the Supply Corps, are all highly specialized. Furthermore, in five of the seven corps, captain is no longer the highest grade. In view of these facts it is considered that the provision of R. S. 421 making staff corps captains eligible for appointment as Chief of the Bureaus of Naval Personnel and Ordnance is obsolete.

In subsection (b) the words "An officer on the active list in the line of the Navy not below the grade of commander" are substituted for the words "An officer of the Navy not below the rank of commander" to conform to current terminology and for clarity. When the source statute was enacted only line officers had the actual rank of commander. The words "on the active list" are inserted for the reasons stated in the revision note on § 5137 (b) of this title. The words "Deputy Chief" are substituted for the words "assistant to the Chief" for the reason stated in the revision note on § 5134 of this title.

§ 5142. Bureau of Naval Personnel: Chief of Chaplains.

There is a Chief of Chaplains in the Bureau of Naval Personnel, detailed by the Chief of Naval Personnel from officers on the active list of the Navy in the Chaplains Corps not below the grade of rear admiral. (Aug. 10, 1956, ch. 1041, 70A Stat. 288; Sept. 7, 1962, Pub. L. 87–649, § 14c(18), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5142	34 U. S. C. 97.	May 15, 1947, ch. 59, § 1, 61 Stat. 93; Aug. 7, 1947, ch. 512, § 428, 61 Stat. 880.

The word "detailed" is substituted for the word "designated" to reflect administrative practice and to retain for the word "designation" the special statutory meaning given to it in 34 U. S. C. 211b and other provisions. The word "basic" is inserted before "pay" to conform to the terminology of the Career Compensation Act of 1949.

AMENDMENTS

1962—Pub. L. 87–649 repealed last sentence which provided that the Chief of Chaplains is entitled to the basic pay and allowances of a rear admiral in the upper half of that grade, and is now covered by section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Pay and allowances, see section 202 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5143. Bureau of Naval Personnel: Assistant Chief for Women.

(a) A woman officer on the active list of the Navy, appointed under section 5590 of this title, serving in a grade not below lieutenant commander may be detailed as an assistant to the Chief of Naval Personnel. While so serving, she has the rank of captain in the Navy unless otherwise entitled to a higher rank or grade. Her permanent status as a commissioned officer is not disturbed by her detail under this section.

(b), (c) Repealed. Pub. L. 90–130, § 1(14)(C), Nov. 8, 1967, 81 Stat. 376.

(d) An officer detailed as an assistant to the Chief of Naval Personnel under subsection (a) who has served at least two and one-half years as such assistant, and who is retired for any reason, either while so serving or after completion of that service while serving in a lower grade or rank, may, in the discretion of the President, be retired with the grade of captain and with retired pay based on that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 288; Sept. 7, 1962, Pub. L. 87–649, § 6(c)(3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, § 1(14)(B), (C), 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5143 (a)	34 U. S. C. 105d.	June 12, 1948, ch. 449, § 205, 62 Stat. 364.
5143 (b)	34 U. S. C. 410r (b) (proviso, less applicability to rank).	June 12, 1948, ch. 449, § 207 (b) (proviso, less applicability to rank), 62 Stat. 366.
5143 (c)	34 U. S. C. 410r (b) (as applicable to woman assistant to ChNavPers, less applicability to grade, and less proviso).	June 12, 1948, ch. 449, § 207 (b) (as applicable to woman assistant to ChNavPers, less applicability to grade, and less proviso), 62 Stat. 366.
5143 (d)	34 U. S. C. 410r (b) (proviso, as applicable to rank), and 34 U. S. C. 410r (d).	June 12, 1948, ch. 449, § 207 (b) (proviso, as applicable to rank), and § 207 (d), 62 Stat. 366, 367.
5143 (e)	34 U. S. C. 410r (b) (as applicable to retired grade of woman assistant to ChNavPers).	June 12, 1948, ch. 449, § 207 (b) (as applicable to retired grade of woman assistant to ChNavPers), 62 Stat. 366.
5143 (f)	34 U. S. C. 410r (e), (g), (h), (k) (as applicable to retired pay of woman assistant to ChNavPers).	June 12, 1948, ch. 449, § 207 (e), (g), (h), (k) (as applicable to retired pay of woman assistant to ChNavPers), 62 Stat. 367, 368.

In subsection (a) the words "on the active list of the Navy" are supplied, since the context indicates that the woman assistant to the Chief of Naval Personnel shall be detailed from officers of the Regular Navy. The words "appointed under section 5590 of this title" are added to exclude from eligibility for detail under this subsection officers in the Nurse Corps and women officers appointed in the Medical Corps, Dental Corps, and Medical Service Corps under laws authorizing the appointment of male officers in these corps as made applicable to women by the act of June 24, 1952, ch. 457 (34 U. S. C. 21e). Nurses are specifically excluded by § 217 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105k). Women officers whose appointment is authorized by the 1952 act are, by the terms of that act, subject to the same laws relating to promotion, retirement, etc.. as male officers in their respective corps; they may hold permanent appointments in grades up to and including rear admiral and are not required to retire, except for failures of selection, until they become 62 years of age. It is, therefore, apparent that there was no intent to bring these officers within the scope of this section.

In subsection (d) the words "with the grade of captain" are substituted for the words "in the rank held by her while serving as such assistant to the Chief of Naval Personnel". The proviso in 34 U. S. C. 410r (d) relating to the woman officer first detailed as assistant to the Chief of Naval Personnel is omitted as being no longer necessary since the officer concerned served in the position for more than 2½ years and is now retired.

In subsection (f) the words "under this section" are substituted for the words "for other than physical disability incurred in line of duty". The provisions of 34 U. S. C. 410r (e), (g), (h), and (k), as they relate to other women officers appointed under § 5590 of this title are codified in the chapter on involuntary retirement. Their application to a woman officer who serves as assistant to the Chief of Naval Personnel is stated in subsection (f) of the revised section for completeness. In connection with the minimum rate of retired pay stated in 34 U. S. C. 410r (k), reference to the act of April 18, 1946, ch. 141, § 5, 60 Stat. 92, is omitted as surplusage, since a woman officer appointed under § 204 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105c), rather than under the act of April 18, 1946, as made applicable to women by § 201 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105a), cannot become eligible for or subject to retirement until she completes at least the 20 years of service needed to qualify her for retired pay at the rate of 50 percent of her basic pay.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130, § 1(14)(B), authorized a rank of higher than captain for the Assistant Chief for Women while so serving if she is otherwise entitled to such higher rank or grade.

Subsec. (b). Pub. L. 90–130, § 1(14)(C), struck out subsec. (b) which provided for the retirement of the Assistant Chief for Women when she stops serving as Assistant after becoming 50 years of age during her service as Assistant.

Subsec. (c). Pub. L. 90–130, § 1(14)(C), struck out subsec. (c) which provided for the retirement of the Assistant Chief for Women upon becoming 55 years of age or completing 30 years of active commissioned service in the Navy.

Subsec. (e). Pub. L. 90–130, § 1(14)(C), struck out subsec. (e) which provided that an officer retired under this section be retired in the permanent grade held by her at the time of retirement.

Subsec. (f). Pub. L. 90–130, § 1(14)(C), struck out subsec. (f) which provided the formula for computing the pay for officers retired under this section.

1962—Subsec. (a). Pub. L. 87–649 eliminated provisions which authorized the pay and allowances of a captain for the assistant to the Chief of Naval Personnel.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 410r (d) of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, set out as a note under section 301 of Title 3, The President.

§ 5144. Repealed. Pub. L. 86–174, § 2(3), Aug. 18, 1959, 73 Stat. 396.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, related to the appointment and term of the Chief of the Bureau of Ordinance, and authorized the detail of an officer as Deputy Chief of the Bureau.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on July 1, 1960, or any earlier date on which the Secretary of the Navy makes a formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance have been transferred to the Bureau of Naval Weapons or elsewhere, see note under section 5131 of this title.

§§ 5145 to 5147. Repealed. Pub. L. 89–718, § 35(5), Nov. 2, 1966, 80 Stat. 1120.

Section 5145, acts Aug. 10, 1956, ch. 1041, 70A Stat. 289; May 13, 1960, Pub. L. 86–454, 74 Stat. 103; Sept. 7, 1962, Pub. L. 87–649, § 14(c)(19), 76 Stat. 501, provided for the appointment of the Chief of the Bureau of Ships, the detailing and rank of the Deputy Chief, and the detailing of the heads of the major divisions of the Bureau of Ships.

Section 5146, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for the appointment of the Chief of the Bureau of Supplies and Accounts and the detailing of the Deputy Chief.

Section 5147, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for the appointment of the Chief of the Bureau of Yards and Docks and the detailing of the Deputy Chief.

§ 5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties.

(a) The Judge Advocate General's Corps is a Staff Corps of the Navy, and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the Office of the Judge Advocate General of the Navy. The Judge Advocate General shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State or Territory and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General of the Navy is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall—

(1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;

(2) perform the functions and duties and exercise the powers prescribed for the Judge Advocate General in chapter 47 of this title;

(3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and

(4) perform such other duties as may be assigned to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 289; Sept. 7, 1962, Pub. L. 87–649, § 14c(20), 76 Stat. 501; Dec. 8, 1967, Pub. L. 90–179, § 2(1), 81 Stat. 546.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5148	5 U. S. C. 428; 50 U. S. C. 741 (as applicable to Navy JAG); 5 U. S. C. 441 (as applicable to JAG); 5 U. S. C. 425a (as applicable to JAG).	June 8, 1880, ch. 129, 21 Stat. 164; June 5, 1896, ch. 331, 29 Stat. 251. May 5, 1950, ch. 169, § 13 (as applicable to Navy JAG), 64 Stat. 147. July 1, 1918, ch. 114, 40 Stat. 717 (1st sentence on p. 717, as applicable to JAG). June 22, 1938, ch. 567 (as applicable to JAG), 52 Stat. 839.

In subsection (b) the rank, pay, allowances, and privileges of retirement of chiefs of bureaus of the Navy are incorporated. 5 U. S. C. 441 apparently relates the Judge Advocate General of the Navy to the Judge Advocate General of the Army, as well as to bureau chiefs. However, since the creation of the Department of the Air Force by the National Security Act of 1947, if the incorporation to the Army provision is retained, the saving provisions in the act require an incorporation also to the rank, etc., of the Judge Advocate General of the Air Force. The rank of the Judge Advocate General of each of the other departments is now specified in organizational law to be major general. Since it is possible that these ranks may at some future time not be the same, incorporation by reference to them is no longer appropriate. Instead, the section relates the Judge Advocate General's rank, pay, allowances, and privileges of retirement to those of bureau chiefs as does 5 U. S. C. 441, in part.

In subsection (c), clauses (1) and (4) are substituted for the words "and perform such other duties as have heretofore been performed by the Solicitor and Naval Judge Advocate General" to describe the duties of the Judge Advocate General directly instead of by reference to the duties performed by an officer whose office was abolished more than 75 years ago.

Subsection (c) (2) is substituted for the reference, in 5 U. S. C. 428, to courts-martial and courts of inquiry, since the Uniform Code of Military Justice has superseded prior law as to the duties of the Judge Advocates General relating to these courts.

AMENDMENTS

1967—Pub. L. 90–179, § 2(1)(A), inserted reference to Judge Advocate General's Corps in the section catchline.

Subsec. (a). Pub. L. 90–179, § 2(1)(B), added subsec. (a). Former subsec. (a) redesignated subsec. (b).

Subsec. (b). Pub. L. 90–179, § 2(1)(B), (C), redesignated former subsec. (a) as subsec. (b) and in subsec. (b) as so redesignated substituted "judge advocates" for "officers".

Subsecs. (c), (d). Pub. L. 90–179, § 2(1)(B), redesignated former subsecs. (b) and (c) as subsecs. (c) and (d), respectively.

1962—Subsec. (b). Pub. L. 87–649 repealed words ", pay, allowances," which followed "same rank". See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Section 8 of Pub. L. 90–179 provided that:

"(a) In this section 'law specialist' means a line officer on the active or retired list of the Regular Navy or of the Naval Reserve designated for special duty (law) or a line officer of the Naval Reserve assigned a numerical designator indicating a special duty officer (law).

"(b) All law specialists in the Navy are redesignated as judge advocates in the Judge Advocate General's Corps of the Navy. Each law specialist of the Navy who is on a promotion list on the day before the effective date of this Act [Dec. 8, 1967] shall be placed on the appropriate promotion list for the Judge Advocate General's Corps and shall be eligible for promotion when the officer who is to be his running mate in the next higher grade becomes eligible for promotion in that grade."

SAVINGS PROVISIONS

Section 10 of Pub. L. 90–179 provided that: "This Act [enacting sections 5578a and 5587a of this title, amending this section and sections 801, 806, 815, 827, 865, 936, 5149, 5404, 5508, 5581, 5587, 5600, 5652a, 5702, 5708, 5753, 5762, 5896, 5897 and 6378 of this title, and section 202 of Title 37, and enacting provisions set out as notes under this section and section 5149 of this title] does not affect rights accrued, duties matured, or proceedings commenced before its effective date. Redesignation of an officer under section 8(b) of this Act [set out as a note under this section] shall not operate to change the computation of his service for any purpose."

WOMEN OFFICERS IN JUDGE ADVOCATE GENERAL'S CORPS OF NAVY

Section 11 of Pub. L. 90–179 provided that: "Notwithstanding any other provision of law, all provisions of law applicable to a male officer in the Judge Advocate General's Corps of the Navy, including the Naval Reserve, are applicable to a woman officer in that corps."

CROSS REFERENCES

Pay and allowances, see section 202 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5149 of this title.

§ 5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General.

(a) A judge advocate of the Navy or Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title shall be detailed as Deputy Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of rear admiral (upper half) or major general, as appropriate, unless entitled to a higher rank or grade under another provision of law. The Deputy Judge Advocate General is entitled to the same privileges of retirement as provided for Corps who has the qualifications prescribed for the chiefs of bureaus in section 5133 of this title.

(b) An officer of the Judge Advocate General's Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of rear admiral (lower half), unless entitled to a higher rank or grade under another provision of law. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of rear admiral (lower half). If he is retired as a rear admiral, he is entitled to retired pay in the lower half of that grade, unless entitled to higher pay under another provision of law.

(c) A judge advocate of the Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of brigadier general, unless entitled to a higher rank or grade under another provision of law. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of brigadier general. If he is retired as a brigadier general, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(d) When there is a vacancy in the Office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(e) When subsection (d) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the Assistant Judge Advocates General, in the order directed by the Secretary of the Navy, shall perform the duties of the Judge Advocate General. (Aug. 10, 1956, ch. 1041, 70A Stat. 290; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(28), 72 Stat. 1566; Sept. 7, 1962, Pub. L. 87–649, § 14(c)(21), 76 Stat. 501; Dec. 8, 1967, Pub. L. 90–179, § 2(2), 81 Stat. 546; Oct. 22, 1968, Pub. L. 90–623, § 2(9), 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5149 (a)	5 U. S. C. 444 (less last 19 words); 5 U. S. C. 453 (as applicable to Asst. JAG).	Aug. 29, 1916, ch. 417 (3d par., 96th through 121st word), 39 Stat. 558.
5149 (b)	5 U. S. C. 444 (last 19 words).	Mar. 4, 1925, ch. 536, § 15 (as applicable to Asst. JAG), 43 Stat. 1275.
5149 (c)	5 U. S. C. 432a (as applicable to JAG).	Aug. 29, 1916, ch. 417 (3d par., 122d word to end of par.), 39 Stat. 558. Feb. 3, 1942, ch. 35, § 1 (as applicable to JAG), 56 Stat. 47.

Changes in phraseology are made to conform to the language used in § 5135 of this title.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90-623 substituted "5148(b)" for "4158(b)".

1967—Pub. L. 90-179, in section catchline, inserted reference to Deputy Judge Advocate General and substituted "Advocates General" for "Advocate General; succession to duties" following "Assistant Judge".

Subsec. (a). Pub. L. 90-179 substituted provisions relating to the detailing of a judge advocate of the Navy or Marine Corps as Deputy Judge Advocate General of the Navy, his rank while so serving and retirement privileges for provisions relating to the detailing of an officer of the Navy or Marine Corps as Assistant Judge Advocate General.

Subsec. (b). Pub. L. 90-179 added subsec. (b). Former subsec. (b) redesignated subsec. (d).

Subsec. (c). Pub. L. 90-179 added subsec. (c). Former subsec. (c) redesignated subsec. (e).

Subsec. (d). Pub. L. 90-179 redesignated former subsec. (b) as subsec. (d) and in subsec. (d) as so redesignated substituted "Deputy Judge Advocate General" for "Assistant Judge Advocate General, unless otherwise directed by the President,".

Subsec. (e). Pub. L. 90-179 redesignated former subsec. (c) as subsec. (e) and in subsec. (e) as so redesignated substituted provisions relating to the performance of the duties of the Judge Advocate General by the Assistant Judge Advocates General in the event of the absence or disability of the Deputy Judge Advocate General for provisions relating to the performance of such duties by the heads of the major divisions of the Office of the Judge Advocate General in the event of the absence or disability of the Assistant Judge Advocate General.

1966—Pub. L. 89-718, § 36, Nov. 2, 1966, 80 Stat. 1120, struck out "pay," preceding "succession" in the section catchline.

1962—Subsec. (a). Pub. L. 87-649 repealed last sentence which provided that a person detailed as Assistant Judge Advocate General is entitled to the highest pay of his rank. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (b). Pub. L. 85-861 substituted "office" for "Office"

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

OFFICER SERVING AS DEPUTY AND ASSISTANT JUDGE ADVOCATE OF THE NAVY ON DEC. 7, 1967; RANK; RETIREMENT BENEFITS

Section 9 of Pub. L. 90-179 provided that: "Nothing in this Act [enacting sections 5578a and 5587a of this title, amending this section and sections 801, 806, 815, 827, 865, 936, 5148, 5404, 5508, 5581, 5587, 5600, 5652a, 5702, 5708, 5753, 5762, 5896, 5897 and 6378 of this title, and section 202 of Title 37, and enacting provisions set out as notes under this section and section 5184 of this title] shall operate to terminate or reduce the term of an officer who was serving as Deputy and Assistant Judge Advocate General of the Navy on the day before the effective date of this Act [Dec. 8, 1967] or to deprive him of the rank, pay, allowances, or retirement privileges to which he was then entitled. Notwithstanding any other provision of law, an officer who was so serving on the day before the effective date of this Act [Dec. 8, 1967] shall be deemed to be detailed as Deputy Judge Advocate General, pursuant to section 5149 of title 10, United States Code, as amended by this Act [this section], and, in addition to rights and benefits then accrued, to be entitled to the rank and retirement benefits authorized by that section. For the purposes of determining his eligibility for the retirement benefits authorized by section 5149 of title 10, United States Code, as amended by this Act [this section], an officer who is serving as Deputy Judge Advocate General on the effective date of this Act [Dec. 8, 1967] shall be credited with all service performed under appointment or detail as Deputy and Assistant Judge Advocate General before the effective date of this Act [Dec. 8, 1967]."

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(8) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Pay and allowances, see section 202 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5150. Office of Naval Research: Chief; appointment, term, emoluments; Assistant Chief; succession to duties.

(a) There is in the Office of the Secretary of the Navy an Office of Naval Research, headed by the Chief of Naval Research.

(b) The Chief of Naval Research shall be appointed by the President, by and with the advice and consent of the Senate, for a term of not more than three years, from officers on the active list of the Navy not below the grade of commander.

(c) The Chief of Naval Research is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(d) An officer on the active list of the Navy may be detailed as Assistant Chief of Naval Research.

(e) When there is a vacancy in the office of Chief of Naval Research, or during the absence or disability of the Chief, the Assistant Chief, unless otherwise directed by the President, shall perform the duties of the Chief until a successor is appointed or the absence or disability ceases. (Aug. 10, 1956, ch. 1041, 70A Stat. 290; Sept. 7, 1962, Pub. L. 87-649, § 14(c) (22), (23), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5150 (a)	5 U. S. C. 475 (less 20th through 111th words and less 2d sentence); 5 U. S. C. 475a (less 18th through 56th words and less 2d sentence).	Aug. 1, 1946, ch. 727, § 1 (less 22d through 114th words and less 2d sentence), 60 Stat. 779. Aug. 1, 1946, ch. 727, § 2 (less 18th through 56th words and less 2d sentence), 60 Stat. 779.
5150 (b)	5 U. S. C. 475a (18th through 56th words).	
5150 (c)	5 U. S. C. 475a (2d sentence).	Aug. 1, 1946, ch. 727, § 2 (18th through 56th words), 60 Stat. 779.
5150 (d)	5 U. S. C. 475b (less 30th through 78th words).	
5150 (e)	5 U. S. C. 475b (30th through 78th words).	Aug. 1, 1946, ch. 727, § 2 (2d sentence), 60 Stat. 779. Aug. 1, 1946, ch. 727, § 3 (less 30th through 78th words), 60 Stat. 779. Aug. 1, 1946, ch. 727, § 3 (30th through 78th words), 60 Stat. 779.

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-649, § 14c(22), repealed words ", pay, allowances," which followed "same rank." See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (d). Pub. L. 87-649, § 14c(23), repealed last sentence which provided that a person detailed as Assistant Chief of Naval Research is entitled to the highest pay of his rank. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a

note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Pay and allowances, see section 202 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5151. Office of Naval Research: duties.

(a) The Office of Naval Research shall perform such duties as the Secretary of the Navy prescribes relating to—

(1) the encouragement, promotion, planning, initiation, and coordination of naval research;

(2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the bureaus and other agencies and offices of the Department of the Navy; and

(3) the supervision, administration, and control of activities within or for the Department relating to patents, inventions, trademarks, copyrights, and royalty payments, and matters connected therewith.

(b) Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Office of Naval Research to assist it in coordinating naval research and carrying out its other duties.

(c) The Office of Naval Research shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 291.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5151 (a)	5 U. S. C. 475 (20th through 111th words).	Aug. 1, 1946, ch. 727, § 1 (22d through 114th words), 60 Stat. 779.
5151 (b)	5 U. S. C. 475d (a) (2d sentence).	Aug. 1, 1946, ch. 727, § 5 (a) (2d sentence), 60 Stat. 780.
5151 (c)	5 U. S. C. 475 (2d sentence).	Aug. 1, 1946, ch. 727, § 1 (2d sentence), 60 Stat. 779.

In subsection (c) the words "shall have full force and effect as such" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5152 of this title.

§ 5152. Office of Naval Research: appropriations; time limit.

(a) Sums appropriated for the Office of Naval Research may be used to pay the cost of performing its duties under section 5151 of this title including the cost of—

(1) administration;

(2) conduct of research and development work in Government facilities; and

(3) conduct of research and development work under contracts with individuals, corporations, and educational or scientific institutions.

(b) Sums appropriated for the purposes of this section, if obligated during the fiscal year for which appropriated, remain available for expenditure for four years after the end of that fiscal year. Any balance not spent after that four-year period shall be carried to the surplus fund and covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 291.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5152	5 U. S. C. 475d (a) (less 2d sentence); 5 U. S. C. 475d (b).	Aug. 1, 1946, ch. 727, § 5 (a) (less 2d sentence), 60 Stat. 780. Aug. 1, 1946, ch. 727, § 5 (b), 60 Stat. 780.

The authorization to make appropriations for the Office of Naval Research is omitted as unnecessary. The word "administration" is substituted for the words "administrative expenses" for brevity.

§ 5153. Naval Research Advisory Committee.

(a) The Secretary of the Navy may appoint a Naval Research Advisory Committee consisting of not more than 15 civilians preeminent in the fields of science, research, and development work. One member of the Committee must be from the field of medicine. Each member serves for such term as the Secretary specifies.

(b) The Committee shall meet at such times as the Secretary specifies to consult with and advise the Chief of Naval Operations and the Chief of Naval Research.

(c) Each member of the Committee is entitled to compensation of $50 for each day or part of a day he attends any regularly called meeting of the Committee and to reimbursement for all travel expenses incident to his attendance.

(d) No law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, the payment or receipt of compensation in connection with any claim proceeding or matter involving the United States applies to members of the Committee solely by reason of their membership on the Committee. (Aug. 10, 1956, ch. 1041, 70A Stat. 291.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5153	5 U. S. C. 475c.	Aug. 1, 1946, ch. 727, § 4, 60 Stat. 779; Sept. 3, 1954, ch. 1263, § 12, 68 Stat. 1229.

In subsection (c) the words "in the amount" are omitted as unnecessary.

In subsection (d) references to sections of title 18 and to R. S. 190 are omitted as unnecessary and the words "No law" are substituted for the words "Nothing * * * in any other provision of Federal law".

§ 5154. Repealed. Pub. L. 89–718, § 35(5), Nov. 2, 1966, 80 Stat. 1120.

Section, act Aug. 10, 1956, ch. 1041, as added Pub. L. 86–174, § 1(2), Aug. 18, 1959, 73 Stat. 395, provided for the appointment of the Chief of the Bureau of Naval Weapons and the detailing of the Deputy Chief.

Chapter 515.—COMMANDANT OF THE MARINE CORPS; HEADQUARTERS, MARINE CORPS

Sec.
5201. Commandant: appointment; terms; emoluments.
5202. Assistant Commandant: detail; pay; succession to duties.
5203. Director of Personnel: detail.
5204. Quartermaster General: detail.
5206. Director of Women Marines: detail; retirement.

AMENDMENTS

1961—Pub. L. 87–123, § 5(4), Aug. 3, 1961, 75 Stat. 264, substituted "detail" for "appointment; term, pay and allowances" in item 5204, and eliminated item 5205: "Heads of Staff Departments: retirement."

§ 5201. Commandant: appointment; term; emoluments.

(a) There is a Commandant of the Marine Corps, appointed by the President, for a term of four years, by and with the advice and consent of the Senate, to serve at the pleasure of the President, from officers on the active list of the Marine Corps, not below the rank of colonel. In time of war or national emergency declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

(b) The Commandant of the Marine Corps, while so serving, has the rank of general.

(c) An officer who is retired while serving as Commandant of the Marine Corps, or who, after serving at least two and one-half years as Commandant, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of general. The retired pay of such an officer shall be computed at the highest rates of basic pay applicable to him while he served in that office.

(d) Under the direction of the Secretary of the Navy, the Commandant of the Marine Corps shall exercise supervision over such of the members and organizations of the Marine Corps and Navy as the Secretary of the Navy determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 292; May 20, 1958, Pub. L. 85–422, § 6(3), 72 Stat. 129; Aug. 6, 1958, Pub. L. 85–599, § 4(c), 72 Stat. 517; Sept. 7, 1962, Pub. L. 87–651, title I, § 114, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, § 404, 81 Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5201 (a)	34 U. S. C. 621.	Dec. 19, 1913, ch. 3 (1st 66 words), 38 Stat. 241; Aug. 29, 1916, ch. 417, 39 Stat. 609 (4th proviso); May 29, 1934, ch. 367, § 13, 48 Stat. 813; Jan. 20, 1942, ch. 10, § 1 (1st sentence), 56 Stat. 10.
5201 (b)	34 U. S. C. 622.	Jan. 20, 1942, ch. 10, § 1, 56 Stat. 10; Aug. 7, 1947, ch. 512, § 429, 61 Stat. 880.
5201 (c)	34 U. S. C. 685a; 5 U. S. C. 425a (as applicable to ComdtMarCorps).	June 22, 1938, ch. 567, 52 Stat. 839; Jan. 20, 1942, ch. 10, § 1 (1st sentence), 56 Stat. 10. June 22, 1938, ch. 567 (as applicable to ComdtMarCorps), 52 Stat. 839; Jan. 20, 1942, ch. 10, § 1 (1st sentence), 56 Stat. 10.

34 U. S. C. 685a is exhausted with the codification of provisions relating to the Commandant of the Marine Corps, as this section is indentical with 5 U. S. C. 425a which was used as source credit for other offices concerned.

In subsection (a) the existence of the office of Commandant is stated positively. The office was first created by the act of June 30, 1834, ch. 132, 4 Stat. 712, and its continued existence has been recognized in the enactment of the Revised Statutes (R. S. 1601) and in subsequent statutes, the most recent of which (Jan. 20, 1942, ch. 10, 56 Stat. 10) is here codified. This treatment brings the Marine Corps provision into uniformity with those establishing various offices in the Navy. The words "unless sooner relieved" are omitted as surplusage. The power to remove an officer from an executive office, without specific statutory authority, is beyond question. The retention of the quoted language here would place in doubt the removal power in the case of the many other offices of the Department established by laws not specifically providing that power. Since the quoted language does not indicate, nor has it been interpreted as meaning, that the power to relieve vests in any one other than the appointing power, the language is unnecessary.

In subsection (b) the rank of the Commandant is stated affirmatively to be the rank of general. The grade of general was established in the Marine Corps by section 2 of the act of Mar. 23, 1946, ch. 112, 60 Stat. 59, which gave the grade to the officer who served as Commandant between named dates. Its existence in the Marine Corps is recognized by the Career Compensation Act of 1949 and the Officer Personnel Act of 1947. There is, therefore, no necessity of stating the rank of the Commandant in terms corresponding to Army rank. The provision relating to the pay and allowances of the Commandant is omitted as surplusage, since the Career Compensation Act of 1949 prescribes the pay and allowances of officers serving in the rank of general.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–22 inserted the provision that the initial term of the Commandant be subject to the pleasure of the President, and changed the requirement that the Commandant be reappointed with the advice and consent of the Senate by providing for his reappointment for a term of not more than four years by the President without such advice and consent in a time of war or national emergency as declared by the Congress.

1962—Subsec. (d). Pub. L. 87–651 substituted "under section 124 of this title" for "pursuant to section 202(j) of the National Security Act of 1947, as amended."

1958—Subsec. (c). Pub. L. 85–422 permitted computation of retired pay at the highest rates of basic pay applicable to the officer while he served as Commandant of the Marine Corps.

Subsec. (d). Pub. L. 85–599 added subsec. (d).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–22 effective Jan. 1, 1969, see section 405 of Pub. L. 90–22, set out as a note under section 3034 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

APPLICATION OF 1958 AMENDMENT TO RETIRED PERSONS

Amendment by Pub. L. 85–422 as inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see section 6 of Pub. L. 85–442, set out as a note under section 3991 of this title.

CROSS REFERENCES

Indication by Commandant to Joint Chiefs of Staff of matters directly concerning the Marine Corps, see section 141 (c) of this title.

Personal money allowance, see section 414 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5202. Assistant Commandant: detail; pay; succession to duties.[1]

(a) An officer on the active list of the Marine Corps not restricted in the performance of duty may be detailed as Assistant Commandant of the Marine Corps.

(b) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant, the Assistant Commandant and then the officers of the Marine Corps not restricted in the performance of duty on duty

[1] Section was amended by Pub. L. 87–649 to eliminate provisions relating to pay without amending catchline to reflect such change.

at Headquarters, Marine Corps, in order of seniority, shall perform the duties of the Commandant, unless otherwise directed by the President.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general, at the discretion of the President, by and with the advice and consent of the Senate: *Provided, however,* That the total active duty strength of the Marine Corps exceeds two hundred thousand, at the time of the appointment.

(e) Notwithstanding the strength proviso in subsection (d), an officer once appointed to the grade of general under this section shall retain that grade so long as his appointment as the Assistant Commandant remains in effect. (Aug. 10, 1956, ch. 1041, 70A Stat. 292; Aug. 6, 1958, Pub. L. 85–599, § 6(c), 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–649, § 14c(24), 76 Stat. 501; May 2, 1969, Pub. L. 91–11, 83 Stat. 8.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5202	34 U. S. C. 623a.	Feb. 3, 1942, ch. 35, § 2, 56 Stat. 48.

R. S. 1598, based on the act of June 30, 1834, ch. 132, § 6, 4 Stat. 713, as amended, provided that "The staff of the Marine Corps shall be separate from the line." The act of Aug. 29, 1916, ch. 417, 39 Stat. 610, prohibited further permanent appointments in any grade in any staff department and provided that vacancies in the lower grades of staff departments be filled by "line" officers and upper grades of staff departments by colonels of permanent grade in the staff department or a colonel of the "line." R. S. 1598 was expressly repealed by the act of Mar. 3, 1933, ch. 202, 47 Stat. 1428, as being obsolete. All Marine Corps officers then were considered to be "line" officers and unrestricted in the performance of duty, except for staff officers appointed before Aug. 29, 1916.

The act of Feb. 3, 1942, ch. 35, § 2, 56 Stat. 48, used the term "line" officer and "line" officers in providing for an assistant to the Commandant, because at that time there were still a few high-ranking staff officers who would otherwise be eligible for that assignment.

Section 1 of the act of July 1, 1947, ch. 189 (34 U. S. C. 625c) and § 404 of the Officer Personnel Act of 1947 (34 U. S. C. 211c), respectively, authorize the designation of Marine Corps officers for supply duty only and for limited duty only. Both acts make it clear, however, that officers so designated continue to be line officers. Since all officers now on the active list of the Marine Corps are line officers, use of the word "line" to describe them is redundant. Furthermore, to speak of line officers of the Marine Corps could give rise to the erroneous inference that a category of officers other than line exists in the corps. For these reasons the word "line" is not used in this subtitle in connection with Marine Corps officers.

Officers designated for limited duty or for supply duty are ineligible to command or to succeed to command, and in that respect they are like the staff officers of former times. In this section and in others based on statutes in which the word "line" is used to distinguish officers eligible to command from officers not so eligible, the words "not restricted in the performance of duty" are substituted for the word "line".

The title of the assistant to the Commandant is stated as "Assistant Commandant" to reflect the current title of that office.

AMENDMENTS

1969—Subsecs. (d), (e). Pub. L. 91–11 added subsecs. (d) and (e).

1962—Subsec. (a). Pub. L. 87–649 repealed last sentence which provided that a person detailed as Assistant Commandant is entitled to the highest pay of his grade. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (c). Pub. L. 85–599 added subsec. (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Pay and allowances, see section 202 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5203. Director of Personnel: detail.

The Director of Personnel, Marine Corps, shall be detailed by the Commandant from officers of the Marine Corps on active duty who are not restricted in the performance of duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 292.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U S. Code)	Source (Statutes at Large)
5203	34 U. S. C. 632b (less 1st par.).	May 25, 1943, ch. 100, § 1 (c), 57 Stat. 84.

The words "of the Marine Corps" following "Commandant" are omitted as surplusage. The words "not restricted in the performance of duty" are substituted for the word "line" for the reasons given in the revision note on § 5202 of this title.

§ 5204. Quartermaster General: detail.

The Quartermaster General of the Marine Corps shall be detailed by the Commandant from officers of the Marine Corps on active duty. (Aug. 10, 1956, Ch. 1041, 70 A Stat. 292; Aug. 3, 1961, Pub. L. 87–123, § 5(2), 75 Stat. 264.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5204	34 U. S. C. 625e; 34 U. S. C. 625f.	July 1, 1947, ch. 189, § 3, 61 Stat. 235. July 1, 1947, ch. 189, § 4, 61 Stat. 236.

In subsection (a) the words "when a vacancy shall exist in the office" and "unless sooner relieved" are omitted as unnecessary.

The last sentence of subsection (b) is substituted for the words "and shall be in addition to the number of general officers otherwise provided by law. He shall be carried in the grade or rank from which appointed" to restate the provision in accordance with § 314 (c) of the Officer Personnel Act of 1947, which provides for the number of general officers assigned to supply duty only and counts the head of the Supply Department as a brigadier general in computing this number.

The reference to pay and allowances is omitted as surplusage, since the Career Compensation Act of 1949 prescribes the pay and allowances of officers serving in the rank of major general.

The former Paymaster's Department of the United States Marine Corps and the Quartermaster's Department of the United States Marine Corps were consolidated to form a new department to be known as the Supply Department of the United States Marine Corps by Reorganization Plan # 3, 1946, § 302, 60 Stat. 1099.

AMENDMENTS

1961—Pub. L. 87-123 provided for detail of the Quartermaster General, and deleted provisions specifying his status as head of the Supply Department, and his appointment, term, rank, pay, and allowances.

TERM, PAY, ALLOWANCES AND RETIREMENT OF INCUMBENT QUARTERMASTER GENERAL

Section 4 of Pub. L. 87-123 provided that: "This Act [amending sections 5001, 5204, 5409, 5443, 5448, 5589, 5703, 5706, 5707, 5709, 5751, 5765, 5769, 5775, 5776, 6374, 6377 and 6378 of this title, and repealing sections 5205, 5588, 5759, 6020 and 6375 of this title] does not terminate or reduce the four-year term of the officer who is serving as Quartermaster General of the Marine Corps on the date of enactment of this Act [Aug. 3, 1961] or deprive him of the rank, pay, allowances, or retirement privileges to which he became entitled under sections 5204 and 5205 of title 10, United States Code. However, he shall be counted as a major general for the purposes of sections 5443 and 5448 of that title, as amended by this Act. His date of rank as a major general is July 1, 1954. When he ceases to serve as Quartermaster General, he shall be reassigned as an officer not restricted in the performance of duty and he may be reappointed by the President alone to the permanent grade of major general to rank from July 1, 1954."

§ 5205. Repealed. Pub. L. 87-123, § 5(3), Aug. 3, 1961, 75 Stat. 264.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 293, related to the retirement of heads of Marine Corps staff departments, their retired grade and pay.

§ 5206. Director of Women Marines: detail; retirement.

(a) A woman officer on the active list of the Marine Corps serving in a grade not below major may be detailed to duty in the Office of the Commandant of the Marine Corps to assist the Commandant in the administration of women's affairs. While so serving, she has the rank of colonel unless otherwise entitled to a higher rank or grade. Her permanent status as a commissioned officer is not disturbed by her detail under this section.

(b), (c) Repealed. Pub. L. 90-130, § 1(15)(B), Nov. 8, 1967, 81 Stat. 376.

(d) An officer detailed as an assistant to the Commandant under subsection (a), who has served at least two and one-half years as such assistant, and who is retired for any reason, either while so serving or after completion of that service while serving in a lower grade or rank, may, in the discretion of the President, be retired with the grade of colonel and with retired pay based on that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 293; Sept. 7, 1962, Pub. L. 87-649, § 6(c)(4), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90-130, § 1(15), 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5206 (a)	34 U. S. C. 625h (d) (less last sentence).	June 12, 1948, ch. 449, § 213 (d) (less last sentence), 62 Stat. 370.
5206 (b)—(f).	34 U. S. C. 625h (d) (last sentence).	June 12, 1948, ch. 449, § 213 (d) (last sentence), 62 Stat. 370.

Subsections (b) through (f) execute the cross-reference to the provisions of law, codified in § 5143 of this title, relating to the retirement of a woman officer detailed as an assistant to the Chief of Naval Personnel.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130 § 1(15)(A), authorized the Director of Women Marines to hold a rank of higher than colonel if she is otherwise entitled to such higher rank or grade.

Subsec. (b). Pub. L. 90-130, § 1(15)(B), struck out subsec. (b) which provided for the retirement of the Director of Women Marines at the completion of her service as Director if she attained the age of 50 while so serving.

Subsec. (c). Pub. L. 90-130, § 1(15)(B), struck out subsec. (c) which called for the retirement of the Director whenever she attained the age of 55 or completed 30 years of active commissioned service in the Marine Corps.

Subsec. (e). Pub. L. 90-130, § 1(15)(B), struck out subsec. (e) which provided that the retirement under this section be in the permanent grade held by her at the time of retirement.

Subsec. (f). Pub. L. 90-130, § 1(15)(B), struck out subsec. (f) which provided the formula for computing the pay for officers retired under this section.

1962—Subsec. (a). Pub. L. 87-649 eliminated provisions which authorized pay and allowances of a colonel for the assistant to the Commandant in the administration of women's affairs.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

Chapter 516.—NAVAL DISTRICTS

Sec.
5221. Naval districts.
5222. Commandants of naval districts.

AMENDMENTS

1967—Pub. L. 90-110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310, added chapter heading and items 5221, 5222.

§ 5221. Naval districts.

There shall be included within the organization of the Department of the Navy, naval districts. These naval districts and their headquarters are as listed in the subjoined table:

District No. or name	States and counties	Headquarters
1	Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island (including Block Island).	Boston.
3	Connecticut, New York, northern part of New Jersey, including the counties of Monmouth, Middlesex, Somerset, Hunterdon, and all counties north thereof; also Nantucket Shoals Lightship.	New York.
4	Pennsylvania; southern part of New Jersey, including counties of Mercer, Burlington, Ocean, and all counties south thereof; Delaware, including Winter Quarter Shoal Light Vessel; Ohio.	Philadelphia.
5	Maryland less Anne Arundel, Prince Georges, Montgomery, St. Marys, Calvert, and Charles Counties; West Virginia; Virginia less Arlington, Fairfax, Stafford, King George, Prince William, and Westmoreland Counties and the city of Alexandria; also all waters of Chesapeake Bay including its arms and tributaries except waters within the Fourth Naval District and the counties comprising the Naval District, Washington, D.C., west of a line extending from Smith Point to Point Lookout thence following the general contour of the shoreline of St. Marys, Calvert, and Anne Arundel Counties, as faired by straight lines from headland to headland across rivers and estuaries; Kentucky; and the counties of Currituck, Camden, Pasquotank, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, and Onslow in North Carolina.	Norfolk.

District No. or name	States and counties	Headquarters
6	North Carolina less the counties of Currituck, Camden, Pasquotank, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico Craven, Jones, Carteret, and Onslow; South Carolina; Georgia; Florida; Alabama; Tennessee; and Mississippi.	Charleston.
8	Louisiana, Arkansas, Oklahoma, Texas, and New Mexico.	New Orleans.
9	Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Colorado, and Wyoming.	Great Lakes.
11	Arizona; Clark County, Nevada; southern part of California, including counties of Santa Barbara, Kern, and San Bernardino, and all counties south thereof.	San Diego.
12	Utah, Nevada (except Clark County), northern part of California, including counties of San Luis Obispo, Kings, Tulare, Inyo and all counties north thereof.	San Francisco.
13	Washington, Oregon, Idaho, and Montana.	Seattle.
Naval District, Washington, D.C.	The Potomac River up to the Frederick County line; the District of Columbia; the counties of Anne Arundel, Prince Georges, Montgomery, St. Marys, Calvert, and Charles in Maryland; the counties of Arlington, Fairfax, Stafford, King George, Prince William, and Westmoreland in Virginia; and the cities of Alexandria, Falls Church, and Fairfax, Virginia. The waters of the Naval District, Washington, D.C., include the waters within the counties comprising the command west of a line extending from Smith Point to Point Lookout, thence following the general contour of the shoreline of St. Marys, Calvert, and Anne Arundel Counties, as faired by straight lines from headland to headland across rivers and estuaries.	Washington, D.C.

(Added Pub. L. 90–110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5222 of this title.

§ 5222. Commandants of naval districts.

The Secretary of the Navy shall detail an officer of the Navy not below the grade of rear admiral as commandant of each of the naval districts listed in section 5221 of this title. (Added Pub. L. 90–110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310.)

Chapter 517.—FLEET COMMANDS AND OTHER HIGH POSITIONS

Sec.
5231. Navy positions: admirals and vice admirals.
5232. Marine Corps positions: general and lieutenant generals.
5233. Retirement.
5234. Suspension provision.

§ 5231. Navy positions: admirals and vice admirals.

(a) The President may designate officers on the active list of the Navy above the grade of captain and, in time of war or national emergency, above the grade of commander for—

(1) command of fleets or subdivisions of fleets;

(2) command of naval units afloat to perform special or unusual missions; or

(3) performance of duty of great importance and responsibility.

An officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of admiral or vice admiral. Such an appointment is effective on the date the officer reports for the designated duty and terminates on the date he is detached. The Secretary of the Navy shall determine the rank of officers in the grade in which they are serving under this section.

(b) The number of officers serving in the grades of admiral and vice admiral under subsection (a) may not, at any time, exceed 15 percent of the number of officers prescribed for the grade of rear admiral in—

(1) section 5442 of this title, if that section is operative; or

(2) section 5447 of this title, if section 5442 is inoperative.

Of the number of officers that may serve in the grades of admiral and vice admiral, as determined under this subsection, not more than eight may have the grade of admiral.

(c) Except in time of war or national emergency, the number of officers serving in the grades of admiral and vice admiral may not exceed 26, including the Chief of Naval Operations, and of the number so serving only the Chief of Naval Operations and three others may have the grade of admiral.

(d) An officer while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of admiral, is in addition to the numbers authorized under subsections (b) and (c) of this section.

(e) An officer of the Navy assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of admiral, unless he is otherwise entitled to the same or a higher grade. Such an appointment is effective while the officer is so serving, and while in that grade he is in addition to the numbers authorized under subsections (b) and (c) of this section.

(f) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Navy in officers on the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 294.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5231	34 U. S. C. 211d.	Aug. 7, 1947, ch. 512, § 413, 61 Stat. 875.
5231	5 U. S. C. 171f (d) (1st sentence as applicable to admirals).	July 26, 1947, ch. 343, § 211 (d) (1st sentence as applicable to admirals), 61 Stat. 505; Aug. 10, 1949, ch. 412, § 7 (b), 63 Stat. 582.

In subsection (a) the words "An officer so designated may be appointed" are used to make it clear that an officer designated under the section may be appointed to the office of admiral or vice admiral. The words "have the grade, rank, pay, and allowances while so serving" are omitted as unnecessary, as these attach to and are determined by the office to which appointed. The word "rank" is substituted for the words "precedence among themselves" for uniformity of statement.

In subsection (b) the words "number of officers prescribed for the grade of rear admiral" are substituted for the words "authorized number of officers of the line of the Regular Navy above the grade of captain". In §§ 5442 and 5447 of this title (codifying §§ 303 and 103 of the Officer Personnel Act of 1947, 34 U. S. C. 5a and 4), there is a prescribed number for only one grade above captain, i. e., rear admiral, and these sections provide that rear admirals serving temporarily in higher grades are to be counted as rear admirals. For the use of the term "number * * * prescribed", see the note on

§ 5441 of this title. The words "of the line" are unnecessary, since §§ 5442 and 5447 of this title deal only with line officers. The words "of the Regular Navy" are meaningless in connection with § 5442, since that section prescribes the distribution in grade of officers on active duty, both regular and reserve, and there is no provision for obtaining separate figures for the two components. The words "section 5442 * * * if that section is operative" and "section 5447 * * * if section 5442 is inoperative" are substituted for the words "sections 103 and 303 of this Act" ["sections 4 and 5a of this title" (34 U. S. C.)] to carry out the evident purpose of the Officer Personnel Act of 1947. When title III of that act is operative, computations are made under both sections, but it is obvious that the two figures for grades above captain cannot both be used, at the same time, for the purposes of this section.

The words "as Commander in Chief" appearing in 34 U. S. C. 211d (a) are omitted as surplusage. These words can only mean that an appointee under this section normally acts for the President only in the field of military matters, and this limitation is inherent in the title "Chief of Staff". The omitted words do not appear in the section that authorizes the appointment of an officer of the Army or of the Air Force to this position, section 504 (b) of the Officer Personnel Act of 1947, 61 Stat. 886. From this it must be concluded that they are of little value since it can hardly be maintained that there is intended to be a difference in the duties performed by an incumbent depending upon whether he is a member of the Navy or the Marine Corps or a member of the Army or the Air Force.

In subsection (e) the word "appointed" is inserted to make explicit that the Chief of Staff to the President is appointed to the office of admiral and that the pay, allowances, and grade attach to and are determined by that appointment.

In subsection (f) the words "An appointment" are substituted for the words "so designated" to conform to the terminology used throughout the section.

Section 413 (d) of the Officer Personnel Act of 1947 (34 U. S. C. 211d (d)) provides that nothing in that section shall be construed as amending or repealing R. S. 1434, 1463, or 1464 (34 U. S. C. 216, 424, 425). This provision is omitted as unnecessary since these sections of the Revised Statutes are codified in this title.

EX. ORD. NO. 10886. SUSPENSION OF CERTAIN PROVISIONS RELATING TO ADMIRALS AND VICE ADMIRALS

Ex. Ord. No. 10886, Sept. 6, 1960, 25 F.R. 8633, provided:

By virtue of the authority vested in me by section 5234 of title 10 of the United States Code, it is ordered as follows:

The provisions of section 5231(b) of title 10 of the United States Code [subsection (b) of this section] which relate to the number of officers serving in the grades of admiral and vice admiral are hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note preceding section 1 of Title 50, War and National Defense, Appendix], shall end.

DWIGHT D. EISENHOWER

CROSS REFERENCES

Officers eligible for designation—

Chief of Naval Material, see section 5111 (c) of this title.

Deputy Chiefs of Naval Operations, see section 5086 (a) of this title.

Naval Inspector General, see section 5088 (d) of this title.

Vice Chief of Naval Operations, see section 5085 (d) of this title.

Suspension during war or national emergency, see section 5234 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5085, 5086, 5088, 5233, 5234, 6325, 6385 of this title.

§ 5232. Marine Corps positions: general and lieutenant generals.

(a) The President may designate officers on the active list of the Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for—

(1) appropriate higher commands; or

(2) performance of duty of great importance and responsibility.

An officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of lieutenant general. Such an appointment is effective on the date the officer reports for the designated duty and terminates on the date he is detached. The Secretary of the Navy shall determine the rank of officers in the grade in which they are serving under this section.

(b) The number of officers serving in the grade of lieutenant general may not exceed two except in time of war or national emergency, and may not, at any time, exceed 10 percent of the number of officers not restricted in the performance of duty prescribed for grades above colonel in—

(1) section 5443 of this title, if that section is operative; or

(2) section 5448 of this title, if section 5443 is inoperative.

(c) An officer of the Marine Corps assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of general. Such an appointment is effective while the officer is so serving.

(d) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Marine Corps in officers on the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 295.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5232	34 U. S. C. 623b (a), (b), (c), (d).	Aug. 7, 1947, ch. 512, § 415 (a), (b), (c), (d), 61 Stat 876.

In subsection (a) the words "An officer so designated may be appointed" are used to make it clear that an officer designated under the section may be appointed to the office of lieutenant general. The words "have the grade, rank, pay, and allowances of lieutenant general while so serving" are omitted as unnecessary, as these attach to and are determined by the office to which appointed. The word "rank" is substituted for the words "precedence among themselves" for uniformity of statement. The words "above the grade of lieutenant colonel" are substituted for the words "not below the grade of colonel" for clarity.

In subsection (b) the words "section 5443 * * * if that section is operative" and "section 5448 * * * if section 5443 is inoperative" are substituted for the words "sections 103 and 303 of this Act, made applicable to the Marine Corps by sections 114 and 314 of this Act" ["sections 4 and 5a of this title, made applicable to the Marine Corps by sections 626 and 626–1 of this title" (34 U. S. C.)] to carry out the evident purpose of the Officer Personnel Act of 1947. When Title III of that Act is operative, computations are made under both § 103 and § 303, but it is obvious that the two figures so obtained for grades above colonel cannot both be used, at the same time, for the purposes of this section. The words "of the Regular Marine Corps" are omitted because there is no way of

separating Regulars from Reserves in computations under Title III of the Officer Personnel Act. For the use of the term "number * * * prescribed", see the note on § 5441 of this title.

The words "as Commander in Chief" appearing in 34 U. S. C. 211d (a) are omitted as surplusage. These words can only mean that an appointee under this section normally acts for the President only in the field of military matters, and this limitations is inherent in the title "Chief of Staff". The omitted words do not appear in the section that authorizes the appointment of an officer of the Army or of the Air Force to this position, section 504 (b) of the Officer Personnel Act of 1947, 61 Stat. 886. From this it must be concluded that they are of little value since it can hardly be maintained that there is intended to be a difference in the duties performed by an incumbent depending upon whether he is a member of the Navy or the Marine Corps or a member of the Army or the Air Force.

In subsection (c) the word "appointed" is inserted to make explicit that the Chief of Staff is appointed to the office of general and that the pay, allowances, and grade attach to and are determined by that office.

In subsection (d) the words "An appointment" are substituted for the words "so designated" to conform to the terminology used throughout the section.

EX. ORD. NO. 11270. SUSPENSION OF CERTAIN PROVISIONS RELATING TO LIEUTENANT GENERALS

Ex. Ord. No. 11270, Feb. 19, 1966, 31 F.R. 2989, provided:

By virtue of the authority vested in me by Section 5234 of Title 10 of the United States Code, it is ordered as follows:

The provisions of section 5232(b) of Title 10 of the United States Code relating to the number of officers serving in the grade of lieutenant general are hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note preceding section 1 of Title 50, War and National Defense, Appendix] shall end.

LYNDON B. JOHNSON.

CROSS REFERENCES

Suspension during war or national emergency, see section 5234 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5233, 5234, 6325, 6385 of this title.

§ 5233. Retirement.

An officer who is serving or has served in a grade to which appointed under section 5231 or 5232 of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list and with retired pay based on that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 295; May 20, 1958, Pub. L. 85–422, § 6 (4), 72 Stat. 129.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5233	34 U. S. C. 410o (less last proviso); 34 U. S. C. 623b (e).	Aug. 7, 1947, ch. 512, § 414 (less last proviso), 61 Stat. 876. Aug. 7, 1947, ch. 512, § 415 (e) 61 Stat. 876.

The words "who is serving or has served in a grade to which appointed under section 5231 or 5232 of this title" are substituted for the words "while serving in accordance with the provisions of section 211d of this title, or subsequent to such service" and "in accordance with the provisions of this section, or subsequent to such service." The words "of the Navy" and "of the Marine Corps" describing the officers are omitted as unnecessary.

AMENDMENTS

1958—Pub. L. 85–422 permitted payment of retired pay based on the highest grade held while on the active list.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

§ 5234. Suspension provision.

During a war or national emergency, the President may suspend any provision of section 5231 or 5232 of this title relating to distribution in grade. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 295.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5234	U. S. C. 3e.	Aug. 7, 1947, ch. 512, § 426 (c); added June 30, 1951, ch. 196, § 1 (h), 65 Stat. 109.

Chapter 519.—NAVAL RESERVE AND MARINE CORPS RESERVE

Sec.
5251. Naval Reserve: administration; Policy Board.
5252. Marine Corps Reserve: administration; Policy Board.

§ 5251. Naval Reserve: administration; Policy Board.

(a) The Naval Reserve is the reserve component of the Navy. It shall be organized, administered, trained, and supplied under the direction of the Chief of Naval Operations.

(b) The bureaus and offices of the executive part of the Department of the Navy have the same relation and responsibility to the Naval Reserve as they do to the Regular Navy.

(c) A Naval Reserve Policy Board shall be convened at least once annually at the seat of the government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Naval Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 295.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5251 (a)	50 U. S. C. 1041; 50 U. S. C. 1044 (1st sentence).	July 9, 1952, ch. 608, § 401, 66 Stat. 498.
5251 (b)	50 U. S. C. 1044 (less 1st sentence).	July 9, 1952, ch. 608, § 404 (1st sentence), 66 Stat. 498.
5251 (c)	50 U. S. C. 1047 (as applicable to Naval Reserve Policy Board).	July 9, 1952, ch. 608, § 404 (less 1st sentence), 66 Stat. 498. July 9, 1952, ch. 608, § 407, 66 Stat. 499 (as applicable to Naval Reserve Policy Board).

In subsection (b) the words "executive part of the Department of the Navy" are substituted for the word "Navy", and the words "Regular Navy" are substituted for the words "Regular Establishment" for uniformity.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Reserve Forces Policy Board, designation of Naval Reserve officers as members, see section 175 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 175, 280 of this title.

§ 5252. Marine Corps Reserve: administration; Policy Board.

(a) The Marine Corps Reserve is the reserve component of the Marine Corps. It shall be organized, administered, trained, and supplied under the direction of the Commandant of the Marine Corps.

(b) The departments and offices of Headquarters, Marine Corps have the same relation and responsibilities to the Marine Corps Reserve as they do to the Regular Marine Corps.

(c) A Marine Corps Reserve Policy Board shall be convened at least once annually at the seat of the government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Marine Corps Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 296.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5252 (a)	50 U. S. C. 1042; 50 U. S. C. 1045 (1st sentence).	July 9, 1952, ch. 608, § 402, 66 Stat. 498.
5252 (b)	50 U. S. C. 1045 (less 1st sentence).	July 9, 1952, ch. 608, § 405 (1st sentence), 66 Stat. 498.
5252 (c)	50 U. S. C. 1047 (less applicability to Naval Reserve Policy Board and Coast Guard Reserve Policy Board).	July 9, 1952, ch. 608, § 405 (less 1st sentence), 66 Stat. 498. July 9, 1952, ch. 608, § 407, 66 Stat. 499 (less applicability to Naval Reserve Policy Board and Coast Guard Reserve Policy Board).

In subsection (b) the word "Headquarters" is inserted, and the words "Regular Marine Corps" are substituted for the words "Regular Establishment" for uniformity.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Reserve Forces Policy Board, designation of two Marine Corps Reserve officers as members, see section 175 (a) (7) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 175, 280 of this title.

PART II.—PERSONNEL

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AMENDMENTS

1958—Pub. L. 85-861, § 1(134), Sept. 2, 1958, 72 Stat. 1507, added chapter 549.

Chapter 531.—STRENGTH

Sec.
5401. Regular Navy: enlisted members.
5402. Regular Marine Corps: total; enlisted members.
5403. Navy: line officers on the active list.
5404. Navy: staff corps officers on the active list.
5405. Marine Corps: officers on the active list.
5406. Navy: officers designated for engineering duty.
5407. Navy: officers designated for aeronautical engineering duty.
5408. Navy: officers designated for special duty.
5409. Navy and Marine Corps: officers designated for limited duty.
5412. Regular Navy: Hospital Corps.
5413. Naval Reserve and Marine Corps Reserve.
5414. Naval Reserve and Marine Corps Reserve: officers in an active status in permanent grades above chief warrant officer, W-4.
5415. Enlisted members serving as midshipmen or cadets excluded.
5416. Personnel detailed outside Department of Defense.
5417. Estimate of future regular commissioned officer strength.

HISTORICAL AND REVISION NOTES

The term "authorized strength" is defined in § 101 of this title to mean "the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces". As so defined, "authorized strength" has the same meaning as "authorized number" has in the provisions of law codified in this chapter relating to the numbers of officers in various categories (line, the several staff corps, women) that may be on the active list of the Navy. In this chapter, therefore, the words "authorized strength" are substituted for the words "authorized number". This provides a statement of the Navy law that, without changing its meaning, is consistent with the definition in subtitle A and parallels the statements, in subtitles B and D, of the laws relating to the strength of the Army and the Air Force.

In addition, the substitution of "authorized strength" for "authorized number" in this chapter, together with the substitution of "prescribed number" for "authorized number" in chapter 533, Distribution in Grade, removes an ambiguity. As previously stated, "authorized number", in the provisions codified in this chapter, means a maximum that may not be exceeded but need never be attained. In the provisions codified in chapter 533 the same term means a number that is both a maximum and a minimum. The use of one term in two different senses in two successive chapters of one law is obviously undesirable. The single ambiguous term is therefore abandoned and in each of the two chapters a different phrase, more descriptive of the meaning intended, is used. As to the use of "prescribed number" see also § 5441 of this title and the revision note on that section.

AMENDMENTS

1967—Pub. L. 90-130, § 1(16), Nov. 7, 1967, 81 Stat. 376, eliminated item 5410 which read: "Regular Navy and Regular Marine Corps: enlisted women" and item 5411 which read: "Regular Navy and Regular Marine Corps: women officers."

1958—Pub. L. 85-861, § 1(110) (B), Sept. 2, 1958, 72 Stat. 1491, added items 5414—5417.

§ 5401. Regular Navy: enlisted members.

The authorized strength of the Regular Navy in enlisted members, excluding retired members and members furloughed without pay, is 500,000. However, this strength may be temporarily exceeded at any time in a fiscal year if the daily average number in that year does not exceed it. (Aug. 10, 1956, ch. 1041, 70A Stat. 297.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5401	34 U. S. C. 151; 34 U. S. C. 191 (last 15 words); 34 U. S. C. 153 (less applicability to MarCorps).	Apr. 18, 1946, ch. 141, § 2 (a), 60 Stat. 92. Aug. 29, 1916, ch. 417, 39 Stat. 580 (last 15 words of 5th par.). Apr. 18, 1946, ch. 141, § 3 (less applicability to MarCorps), 60 Stat. 92.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5403, 5404, 5412 of this title.

§ 5402. Regular Marine Corps: total; enlisted members.

(a) Except in time of war or national emergency declared by Congress after June 28, 1952, the authorized strength of the Regular Marine Corps, excluding retired members, is 400,000. However, this strength may be temporarily exceeded at any time in a fiscal year if the daily average number in that year does not exceed it.

(b) Except in time of war or national emergency declared by Congress after June 28, 1952, the authorized strength of the Regular Marine Corps in enlisted members, excluding retired enlisted members, is 400,000 less the actual strength of the Marine Corps in permanent regular officers other than retired regular officers. However, this strength may be temporarily exceeded at any time in a fiscal year if the daily average number in that year does not exceed it. (Aug. 10, 1956, ch. 1041, 70A Stat. 297.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5402 (a)	5 U. S. C. 411a (c) (last 32 words of 1st sentence); 34 U. S. C. 153 (as applicable to MarCorps).	July 26, 1947, ch. 343, § 206 (c) (last 32 words of 1st sentence), 61 Stat. 502; June 28, 1952, ch. 479, § 1, 66 Stat. 282.
5402 (b)	No source.	Apr. 18, 1946, ch. 141, § 3 (as applicable to MarCorps), 60 Stat. 92. No source.

The words "declared by Congress after June 28, 1952" are substituted for the words "hereafter declared by Congress" to reflect the date of passage of the act.

This section is written in terms of authorized strength for uniformity of expression throughout the chapter and to show clearly the intention of the section.

In subsection (a), the words "excluding retired members" are inserted for clarity.

Subsection (b) is inserted to make express the authorized strength of the Regular Marine Corps in enlisted members. This authorized strength is the basis for computing authorized strength under section 5405 of this title.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5404, 5405, 5412 of this title.

§ 5403. Navy: line officers on the active list.

The authorized strength of the active list of the Navy in line officers is equal to 7 percent of the authorized strength of the Regular Navy in enlisted members authorized by section 5401 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 297.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5403	34 U. S. C. 2; 34 U. S. C. 307 (p) (1st sentence, less as excludes women officers from computations under 34 U. S. C. 4 and 5).	Apr. 18, 1946, ch. 141, § 4, 60 Stat. 92; Aug. 7, 1947, ch. 512, § 417, 61 Stat. 877. June 12, 1948; ch. 449 § 206 (p) (1st sentence, less as excludes women officers from computations under §§ 103 and 203 of the Officer Personnel Act of 1947), 62 Stat. 366.

The words "commissioned" and "exclusive of commissioned warrant officers" are omitted as unnecessary, since "active list of the Navy" as defined in this title includes only officers holding permanent appointments in grades above commissioned warrant officer. The words "and such authorized number of commissioned officers shall include officers now or hereafter carried under any provision of law as additional or extra numbers in grade" are omitted as surplusage, since these officers are "officers on the active list."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5404 of this title.

§ 5404. Navy: staff corps officers on the active list.

(a) The authorized strength of the active list of the Navy in officers in the Supply Corps and the Civil Engineer Corps is equal to 12 percent and 3 percent, respectively, of the authorized strength of the active list of the Navy in line officers authorized by section 5403 of this title.

(b) The Secretary of the Navy, as of January 1 of each year, shall compute the authorized strength of the active list of the Navy in officers in the Medical Corps, the Dental Corps, the Chaplain Corps, the Medical Service Corps, and the Nurse Corps. The authorized strength in each of these corps is equal to the applicable percentage of the sum of—

(1) the authorized strengths of the active lists of the Navy and the Marine Corps authorized by sections 5403, 5405, and this section;

(2) the authorized strengths of the Regular Navy and the Regular Marine Corps in enlisted members authorized by sections 5401 and 5402 of this title;

(3) the authorized strength of the Navy in midshipmen at the Naval Academy; and

(4) the actual number of officers holding permanent appointments in warrant officer grades in the Regular Navy and the Regular Marine Corps, excluding retired officers.

The percentages are:

(1) Medical Corps—65/100 of 1 percent.

(2) Dental Corps—2/10 of 1 percent.

(3) Chaplain Corps—125/1000 of 1 percent.

(4) Medical Service Corps—13/100 of 1 percent.

(5) Nurse Corps—6/10 of 1 percent.

The authorized strength of the active list of the Navy in officers in these corps may not be varied between computations.

(c) The Secretary of the Navy, as of January 1 of each year, shall establish the authorized strength of the active list of the Navy in officers in the Judge Advocate General's Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 297; Oct. 13, 1964, Pub. L. 88-647, title III, § 301(12), 78 Stat. 1072; Dec. 8, 1967, Pub. L. 90-179, § 3, 81 Stat. 547.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5404	34 U. S. C. 3; 34 U. S. C. 30a (less 1st and last sentences); 34 U. S. C. 307 (p) (1st sentence, less as excludes women officers from computations under 34 U. S. C. 4 and 5).	June 30, 1914, ch. 130, 38 Stat. 40 (1st 42 words of 1st par.); Aug. 29, 1916, ch. 417, 39 Stat. 576 (1st sentence of 2d par. under "Commissioned Personnel"), 581 (1st 19 words of 1st par.); July 22, 1935, ch. 402, § 4, 49 Stat. 488; June 25, 1940, ch. 420, § 1, 54 Stat. 527; May 16, 1947, ch. 68, 61 Stat. 96; Aug 7, 1947, ch. 512, § 420, 61 Stat. 877. Aug 4, 1947, ch. 459, § 201 (2d sentence), 61 Stat. 736. June 12, 1948, ch. 449, § 206 (p) (1st sentence, less as excludes women officers from computations under §§ 103 and 203 of the Officer Personnel Act of 1947), 62 Stat. 366.

In subsection (a) the word "commissioned" and the words "exclusive of commissioned warrant officers" are omitted as unnecessary, since "active list of the Navy" as defined in this title includes only officers holding permanent appointments in grades above chief warrant officer, W-4.

In clause (4) of subsection (b) the words "officers holding permanent appointments in warrant officer grades in the Regular Navy and the Regular Marine Corps, excluding retired officers" are substituted for the words "commissioned warrant officers and warrant officers on the active list of the Navy and Marine Corps" to conform to the definitions used in this title.

In clause (5) of subsection (b) the words "for flight training" are omitted. They served no purpose other than to identify the category of midshipmen that was meant, and this is adequately done by reference to the section under which they are appointed. Furthermore, the words are misleading, since it was intended that aviation midshipmen on active duty after completion of flight training should be included.

The provisions of 34 U. S. C. 30a relating to the strength of the Medical Service Corps are incorporated in the second tabulation in subsection (b) for uniformity and clarity.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90-179 added subsec. (c).

1964—Subsec. (b). Pub. L. 88-647 eliminated clause (5) which provided: "the actual number of midshipmen on active duty appointed under section 6906 of this title."

§ 5405. Marine Corps: officers on the active list.

Subject to section 5402 (a) of this title, the authorized strength of the active list of the Marine Corps is equal to 7 percent of the authorized strength of the Regular Marine Corps in enlisted members authorized by section 5402 (b) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 298.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5	34 U. S. C. 626 (a); 34 U. S. C. 2; 34 U. S. C. 307 (p) (1st sentence, less as excludes women officers from computations under 34 U. S. C. 4 and 5); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 114 (a) 61 Stat. 811. Apr. 18, 1946, ch. 141, § 4, 60 Stat. 92; Aug. 7, 1947, ch. 512, § 417, 61 Stat. 877. June 12, 1948, ch. 449, § 206 (p) (1st sentence, less as excludes women officers from computations under §§ 103 and 203 of the Officer Personnel Act of 1947), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

This section is worded to conform to the wording of § 5403 of this title.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5404 of this title.

§ 5406. Navy: officers designated for engineering duty.

Of the actual number of officers on the active list in the line of the Navy not more than 5 5/10 percent may be officers designated for engineering duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 298; Pub. L. 90-386, § 1(1), July 5, 1968, 82 Stat. 293.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5406	34 U. S. C. 72.	Aug. 7, 1947, ch. 512, § 402 (b), 61 Stat. 870.

The words "designated for engineering duty" are substituted for "assigned to engineering duty only" under authority of § 402 (c) of the Officer Personnel Act of 1947 (34 U. S. C. 71).

AMENDMENTS

1968—Pub. L. 90-386 increased from 4 5/10 to 5 5/10 the percent of officers on the active list in the line of the Navy that may be designated for engineering duty.

§ 5407. Navy: officers designated for aeronautical engineering duty.

Of the actual number of officers on the active list in the line of the Navy not more than 3 5/10 percent may be officers designated for aeronautical engineering duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 298; Pub. L. 90-386, § 1(2), July 5, 1968, 82 Stat. 293.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5407	34 U. S. C. 78 (b).	Aug. 7, 1947, ch. 512, § 403 (b), 61 Stat. 870.

The words "designated for aeronautical engineering duty" are substituted for the words "assigned to aeronautical engineering duty only" under authority of § 403 (d) of the Officer Personnel Act of 1947 (34 U. S. C. 78 (d)).

AMENDMENTS

1968—Pub. L. 90-386 increased from 2 5/10 to 3 5/10 the percent of officers on the active list in the line of the Navy that may be designated for aeronautical engineering duty.

§ 5408. Navy: officers designated for special duty.

Of the actual number of officers on the active list in the line of the Navy not more than 6 percent may be officers designated for special duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 298; Pub. L. 90-386, § 1(3), July 5, 1968, 82 Stat. 293.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5408	34 U. S. C. 211b (b).	Aug. 7, 1947, ch. 512, § 401 (b), 61 Stat. 870.

The words "designated for special duty" are substituted for the words "assigned to special duty only" under authority of § 401 (d) of the Officer Personnel Act of 1947 (34 U. S. C. 211b (d)).

AMENDMENTS

1968—Pub. L. 90-386 increased from 2 5/10 to 6 the percent of officers on the active list in the line of the Navy that may be designated for special duty.

§ 5409. Navy and Marine Corps: officers designated for limited duty.

(a) Of the actual number of officers on the active list in the line of the Navy, excluding officers designated for engineering duty, aeronautical engineering duty, and special duty, not more than $6\frac{22}{100}$ percent may be officers designated for limited duty.

(b) The number of officers on the active list of the Navy in the Supply Corps and the Civil Engineer Corps that may be designated for limited duty may not exceed 12 percent and 3 percent, respectively, of the number of officers authorized in subsection (a).

(c) Of the actual number of officers on the active list of the Marine Corps not more than $6\frac{22}{100}$ percent may be officers designated for limited duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 298; Aug. 3, 1961, Pub. L. 87–123, § 5(5), 75 Stat. 264.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5409 (a)	34 U. S. C. 211c (e).	Aug. 7, 1947, ch. 512, § 404 (e), 61 Stat. 871.
5409 (b)	34 U. S. C. 211c (f).	Aug. 7, 1947, ch. 512, § 404 (f), 61 Stat. 871.
5409 (c)	34 U. S. C. 211c (g).	Aug. 7, 1947, ch. 512, § 404 (g), 61 Stat. 871.

The words "designated for limited duty" are substituted for the words "appointed for limited duty only" under authority of § 404 (o) of the Officer Personnel Act of 1947 (34 U. S. C. 211c (o)).

AMENDMENTS

1961—Subsec. (c). Pub. L. 87–123 deleted ", excluding officers designated for supply duty," which preceded "not more than."

§§ 5410, 5411. Repealed. Pub. L. 90–130, § 1(16), Nov. 8, 1967, 81 Stat. 376.

Section 5410, act Aug. 10, 1956, ch. 1041, 70A Stat. 928, placed upper limits, stated in terms of percentages of the authorized strength of the Regular Navy and Regular Marine Corps in enlisted members, on the authorized strength of enlisted women in each.

Section 5411, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, placed upper limits, stated in terms of percentages of the authorized strength in enlisted women of the Regular Navy and Regular Marine Corps, on the authorized strength of the Regular Navy and Regular Marine Corps in women officers.

§ 5412. Regular Navy: Hospital Corps

The authorized strength of the Regular Navy in enlisted members in the Hospital Corps, excluding retired members and members furloughed without pay, is equal to $3\frac{5}{10}$ percent of the sum of the authorized strengths of the Regular Navy and the Regular Marine Corps in enlisted members authorized by sections 5401 and 5402 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 299.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	
5472	34 U.S. 34 (1st sentence); 34 U. S. C. 191 (last 15 word3).	Aug. 29 1916, ch. 417 (1st sentence 0f 1st par. under "Hospital Corps" a3 applicable to strength), 39 Stat, 572; Apr. 18, 1946, ch. 141, § 8 (f) (1), 60 Stat, 95: Aug. 4, 1947, ch. 459, § 301)a), 61 Stat, 73P. Aug. 29, 1916, ch, 417, 39 Stat 580 (last 15wores of 5th par.(.

The words "excluding retired members" are inserted for clarity.

§ 5413. Naval Reserve and Marine Corps Reserve.

Whenever the authorized strengths of the Naval Reserve and the Marine Corps Reserve are not prescribed by law, they shall be prescribed by the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 299.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5413	50 U. S. C. 923 (as applicable to 50 U. S. C. 922 (c), (d)).	July 9, 1952, ch. 608, § 203 (as applicable to § 202 (c), (d)), 66 Stat. 483.

This section is substituted for 50 U. S. C. 923 as applicable to the Naval Reserve and the Marine Corps Reserve.

§ 5414. Naval Reserve and Marine Corps Reserve: officers in an active status in permanent grades above chief warrant officer, W–4.[1]

(a) The authorized strength of the Naval Reserve in officers in an active status in grades above chief warrant officer, W–4, is 150,000.

(b) The authorized strength of the Marine Corps Reserve in officers in an active status in grades above chief warrant officer, W–4, is 24,500.

(c) The authorized strengths prescribed by this section may not be exceeded unless the Secretary of the Navy determines that a greater number is necessary for planned mobilization requirements, or unless the excess results directly from the operation of mandatory provisions of law. (Added Pub. L. 85–861, § 1(110)(A), Sept. 2, 1958, 72 Stat. 1490, and amended Pub. L. 86–559, § 1 (33), (34), June 30, 1960, 74 Stat. 273.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5414	50: 1181 (1), (3) 50: 1302 (a).	Sept. 3, 1954, ch. 1257, §§ 102 (1), (3), 402 (a), 68 Stat. 1149, 1166.

In subsection (c), the words "The authorized strengths prescribed by this section" are substituted for the words "The actual number of Reserve officers in an active status at any time", in 50: 1302 (a).

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559, § 1(33), eliminated word "permanent" preceding "grades."

Subsec. (b). Pub. L. 86–559, § 1 (33), (34), eliminated word "permanent" which preceded "grades", and substituted "24,500" for "29,500."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5415. Enlisted members serving as midshipmen or cadets excluded.

Enlisted members of the Navy or the Marine Corps serving as cadets at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy,

[1] Section amended by Pub. L. 86–559 which eliminated "permanent" preceding "grades" in text without amending catchline to reflect such change.

or as midshipmen at the United States Naval Academy or in the Naval Reserve, are not counted in computing strengths under any law. (Added Pub. L. 85–861, § 1 (110) (A), Sept. 2, 1958, 72 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5415	50:1413 (as applicable to 10:5415)	June 25, 1956, ch. 439, § 3 (as applicable to 10: 5415), 70 Stat. 333.

§ 5416. Personnel detailed outside Department of Defense.

Members of the Navy or the Marine Corps, or of the Coast Guard when it is operating as a service in the Navy, who are detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths or numbers in grade under any law. (Added Pub. L. 85–861, § 1 (110) (A), Sept. 2, 1958, 72 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5416	5: 171s.	July 13, 1955, ch. 358, § 604, 69 Stat. 314.

The words "of the United States" and "numbers in grade" are inserted for clarity.

§ 5417. Estimate of future regular commissioned officer strength.

The Secretary of Defense, with the approval of the President, shall estimate each year, for each of the five years following that year, the strengths of the Navy and the Marine Corps in officers on the active lists exclusive of officers specifically authorized by law as additional numbers. (Added Pub. L. 85–861, § 1 (110) (A), Sept. 2, 1958, 72 Stat. 1490.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5417	5: 171y-1.	July 20, 1956, ch. 646, § 301, 70 Stat. 587

The words "each of" are inserted for clarity. The word "estimate" is substituted for the word "project". The words "on the active list" are substituted for the words "active duty".

Chapter 533.—DISTRIBUTION IN GRADE

Sec.
5441. Prescribed number; vacancies.
5442. Navy: line officers on active duty.
5443. Marine Corps: officers on active duty.
5444. Navy: staff corps officers on active duty.
5445. Suspension: sections 5442, 5443, 5444.
5446. Application: sections 5442, 5443, 5444.
5447. Navy: line officers on the active list; permanent grade.
5448. Marine Corps: officers on the active list; permanent grade.
5449. Navy: staff corps officers on the active list; permanent grade.
5450. Regular Navy: retired flag officers on active duty.
5451. Suspension: preceding sections.
5452. Navy: women line officers on active duty; Marine Corps: women officers on active duty.
5454. Computations: rule when fraction occurs in final result.
5455. Computations and determinations: effect on status of officers.
5456. Naval Reserve and Marine Corps Reserve.
5457. Naval Reserve: officers in an active status in permanent grades above chief warrant officer, W–4.
5458. Marine Corps Reserve: officers in an active status in permanent grades above chief warrant officer, W–4.

AMENDMENTS

1967—Pub L. 90–130, § 1(17) (F), (H), Nov. 8, 1967, 81 Stat. 377, eliminated item 5453 which read: "Marine Corps: women officers on the active list; permanent grade", and substituted: "Navy: women line officers on active duty; Marine Corps: women officers on active duty" for "Navy: women line officers on the active list; permanent grade", in item 5452.

1958—Pub. L. 85–861, § 1(113)(B), Sept. 2, 1958, 72 Stat. 1492, added items 5457 and 5458.

§ 5441. Prescribed number; vacancies.

In this chapter "prescribed number" or "number * * * prescribed", as applied to a grade or combination of grades, means the number of officers of a described corps, designations or other category that shall be maintained in the grade or combination of grades concerned. Except as otherwise specifically provided, the actual number of officers in a grade or combination of grades may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number. (Aug. 10, 1956, ch. 1041, 70A Stat. 299.)

HISTORICAL AND REVISION NOTES

This section is derived from the distribution-in-grade provisions of the Officers Personnel Act of 1947. It is inserted here to show clearly what is meant by the "authorized number" of officers in a grade as used in the distribution-in-grade sections of the Officer Personnel Act. "Prescribed number" is substituted for "authorized number" because the latter, as used in other provisions of law, means simply the maximum number of persons authorized to be in a designated category. As used in the distribution-in-grade provisions of the Officer Personnel Act the term means not only the maximum number of officers that may be in a particular grade, but also the number of officers that should be maintained in that grade. It places not only a ceiling but a floor on the number of officers for the grade concerned. This is accomplished by establishing vacancies when the actual number of officers in the grade concerned falls below the "authorized" or, as used here, the "prescribed" number. Where there is a prescribed number for a grade, an officer should, in the absence of other controlling provisions of law, be promoted to that grade to fill an existing vacancy, as of the date on which the vacancy occurred. In this manner, at least constructively, the prescribed number is maintained.

There is no source for the section because the Officer Personnel Act did not attempt specifically to define "authorized number" in this context. The meaning of the term is derived only from understanding the effect given it throughout the Officer Personnel Act and from the imperative requirements of sections 103, 203, and 303 of the act.

§ 5442. Navy: line officers on active duty.

(a) Of the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above, excluding fleet admirals and officers carried as additional numbers in grade, the number of officers who may serve in each of the grades above lieutenant may not, except as provided in subsection (b), exceed a number appropriate to

the total number as set forth in the following table. If the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above, excluding fleet admirals and officers carried as additional numbers in grade, falls between two strengths shown in the first column of the table, the number for each grade is determined by proportionate interpolation between the respective numbers for the two strengths.

Total line officers serving on active duty in the grade of ensign and above, excluding fleet admirals and officers carried as additional numbers in grade	Rear Admiral	Captain	Commander	Lieutenant Commander
32,000	215	1,920	3,840	5,760
40,000	222	2,320	4,498	7,080
50,000	228	2,758	5,235	8,650
60,000	237	3,140	5,851	10,148
70,000	244	3,479	6,374	11,487
80,000	252	3,782	6,821	12,752
90,000	259	4,053	7,205	13,914
100,000	262	4,295	7,538	15,030
125,000	291	4,792	8,201	17,500
150,000	305	5,165	8,683	19,500
175,000	323	5,441	9,017	21,175
200,000	342	5,640	9,244	22,560
250,000	379	5,854	9,504	24,600

(b) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for each grade above lieutenant. The number so computed is the number of line officers on active duty, excluding officers carried as additional numbers in grade, prescribed for the grade concerned. However, if the Secretary determines at the time of making these computations that the number of officers required to meet the needs of the service in any grade above lieutenant is less than the prescribed number for that grade as computed, the lesser number becomes the prescribed number for the grade and the reduction may be applied as an increase in the prescribed number for any lower grade.

(c) Of the numbers of officers prescribed for the grades of commander and lieutenant commander, as computed or determined under subsection (b), not more than the following percentages may be officers designated for limited duty:

(1) Commander—$3\frac{64}{100}$ percent.

(2) Lieutenant commander—$8\frac{62}{100}$ percent.

(d) The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers designated for limited duty authorized under subsection (c) for the grades of commander and lieutenant commander. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each of these grades. The number so determined for each grade is the number of officers designated for limited duty prescribed for the grade concerned.

(e) At the time of making the computations required by subsection (b), the Secretary shall also determine the numbers of line officers on active duty, excluding officers carried as additional numbers in grade, that will be required to meet the needs of the service during the ensuing year in the grades of lieutenant, lieutenant (junior grade), and ensign. The numbers so determined are the prescribed numbers for these grades.

(f) The number of officers designated for engineering duty, aeronautical engineering duty, and special duty serving on active duty in the grade of rear admiral may not exceed 13 percent of the number of officers prescribed for the grade of rear admiral as computed or determined under subsection (b). The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers in the grade of rear admiral authorized under this subsection. The number so computed is the prescribed number of officers restricted in the performance of duty serving on active duty in the grade of rear admiral. However, if the Secretary determines at the time of making this computation that the number of officers designated for engineering duty, aeronautical engineering duty, and special duty required to meet the needs of the service in the grade of rear admiral is less than the prescribed number as computed, the lesser number becomes the prescribed number.

(g) The number of officers designated for engineering duty, aeronautical engineering duty, and special duty, respectively, serving on active duty in the combined grades of captain, commander, and lieutenant commander may not exceed the following percentages of the sum of the numbers of officers prescribed for those grades as computed or determined under subsection (b):

(1) Engineering duty—11 percent.

(2) Aeronautical engineering duty—7 percent.

(3) Special duty—12 percent.

The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers designated for engineering duty, aeronautical engineering duty, and special duty, respectively, authorized under this section for these combined grades. The number so computed for each designation is the number of officers of that designation serving on active duty prescribed for these combined grades. However, if the Secretary determines at the time of making these computations that the number of officers of any designation required to meet the needs of the service in the combined grades is less than the prescribed number as computed, the lesser number becomes the prescribed number of officers of that designation.

(h) The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one computation and the next succeeding computation by—

(1) the number of officers originally appointed in that grade during that period;

(2) the number of officers of the Naval Reserve ordered to active duty in that grade during that period; and

(3) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

(i) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appoint-

ment. However, each officer serving under an appointment in the grade of admiral or vice admiral and each officer in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is counted in the grade he would hold had he not been so appointed or promoted. (Aug. 10, 1956, ch. 1041, 70A Stat. 300; Pub. L. 90-386, § 1(4), July 5, 1968, 82 Stat. 293.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5442 (a)	34 U. S. C. 5a (a) (less last sentence; 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 303 (a) (less last sentence), 61 Stat. 831; May 5, 1954, ch. 180, § 201, 68 Stat. 66.
5442 (b)	34 U. S. C. 5a (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations); 34 U. S. C. 5a (k) (less 2d sentence, and less applicability to staff corps officers).	Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829. Aug. 7. 1947, ch. 512, § 303 (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67. Aug. 7, 1947, ch. 512, § 303 (k) (less 2d sentence, and less applicability to staff corps officers), 61 Stat. 833; May 5, 1954, ch. 180, § 204, 68 Stat. 67.
5442 (c)	34 U. S. C. 5a (a) (last sentence).	Aug. 7, 1947, ch. 512, § 303 (a) (last sentence), 61 Stat. 831; May 5, 1954, ch. 180, § 201, 68 Stat. 66.
5442 (d)	34 U. S. C. 5a (g) (1st proviso, less applicability to variations between determinations).	Aug. 7, 1947, ch. 512, § 303 (g) (1st proviso, less applicability to variations between determinations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67.
5442 (e)	34 U. S. C. 5a (k) (2d sentence).	Aug. 7, 1947, ch. 512, § 303 (k) (2d sentence), 61 Stat. 833; May 5, 1954, ch. 180, § 204, 68 Stat. 67.
5442 (f)	34 U. S. C. 5a (b), (g) (less 1st, 2d, and 3d provisos and less applicability to variations between computations).	Aug. 7, 1947, ch. 512, § 303 (b), (g) (less 1st, 2d, and 3d provisos and less applicability to variations between computations), 61 Stat. 831; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67.
5442 (g)	34 U. S. C. 5a (c), (d), (e), (g) (less 1st, 2d, and 3d provisos and less applicability to variations between computations).	Aug. 7, 1947, ch. 512, § 303 (c), (d), (e), (g) (less 1st, 2d, and 3d provisos and less applicability to variations between computations), 61 Stat. 831; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67.
5442 (h)	34 U. S. C. 5a (g) (as applicable to variations between computations and determinations, plus 2d and 3d provisos); 34 U. S. C. 285a.	Aug. 7, 1947, ch. 512, § 303 (g) (as applicable to variations between computations and determinations, plus 2d proviso), 61 Stat. 832; and 3d proviso; added June 30, 1951, ch. 196, § 1 (c), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67. July 3, 1926, ch. 774 (as applicable to Navy) 44 Stat. 888.
5442 (i)	34 U. S. C. 3c (b) (less 1st sentence); 34 U. S. C. 5a (i) (less applicability to computations under 34 U. S. C. 4 and 5); 34 U. S. C. 350h.	Aug. 7, 1947, ch. 512, § 302 (b) (less 1st sentence), 61 Stat. 830. Aug. 7, 1947, ch. 512, § 303 (i) (less applicability to computations under titles I and II), 61 Stat. 833. 55 July 24, 1941, ch. 320, § 9, Stat. 605.

In subsection (a) the words "officers serving on active duty in the line of the Navy" are substituted for the words "line officers" for clarity and accuracy. The words "in the grade of ensign and above" are inserted to reflect the definition of the word "officer" contained in § 302 of the Officer Personnel Act, as amended (34 U. S. C. 3c (a)). The words "at any one time" are omitted since the limitations imposed by the table apply only to the Secretary of the Navy's computation of the prescribed number of officers in each grade under subsection (b) of this section. The words "except as provided in subsection (b)" are substituted for the words "except as otherwise provided by subsection 303 (k) of this Act" since § 303 (k) as it affects line officers of the Navy is codified in subsection (b). The words "officers serving on active duty * * * and officers carried as additional numbers in grade" are substituted for the words "such line officers" for clarity and the words "in the first column of the table" are substituted for the words "in the above table" for clarity and accuracy.

In subsection (b) the words "as of the date of approval of this Act" are omitted as executed. The words "whenever the needs of the service require but at least once annually" are substituted for the words "thereafter at such times that the needs of the service require but not less than once annually" for clarity. The words "subject to the provisions of subsection (k) of this section" are omitted since the rule stated in subsection (k) is codified in subsection (b) as an exception to the basic rule enunciated in subsection (b). The words "The number so computed is the number * * * prescribed for the grade concerned" are substituted for the words "The resulting number * * * shall * * * be held and considered for all purposes as the authorized number of officers in each of the various grades" for brevity and for the reasons set forth in the note to § 5441 of this title.

In subsection (d) the words "as of the date of approval of this Act" are omitted as executed. The words "whenever the needs of the service require but at least once annually" are substituted for the words "thereafter at such times that the needs of the service require but not less than once annually" for clarity.

In subsection (e) the last sentence is added for clarity.

In subsection (h), clauses (1) and (2) are derived from the second and third provisos of 34 U. S. C. 5a (g), and clause (3) is derived from 34 U. S. C. 285a. The words "the prescribed number * * * is temporarily increased" are substituted for the words "the authorized numbers * * * may be temporarily exceeded". This change is necessitated by the statement in § 5441 of this title to the effect that vacancies occur whenever the actual number of officers in a grade falls below the prescribed number for that grade. Since officers in the categories described in clauses (1) through (3) must be counted in determining the actual number, an increase in the actual number so occasioned must be accompanied by an equal increase in the prescribed number in order to achieve the result intended by the source statutes, that is, that the same number of vacancies will occur as would have occurred had there been no increase in the actual number.

Subsection (i) is phrased so as to give effect to all three of the cited provisions. Section 9 of the act of July 24, 1941, provides that, in computations to determine the authorized number of officers in any grade, officers temporarily appointed or promoted under the 1941 act shall be counted in their permanent grade. The 1941 act was war-time legislation designed to permit the necessary fleeting up during the war-time expansion of forces without disturbing the permanent distribution-in-grade structure to which return would be made upon demobilization. From 1941 until the enactment of the Officer Personnel Act of 1947, the 1941 act provided the only authority for temporary promotions and there were no permanent provisions of law prescribing distribution in grade other than distribution in permanent grade.

The Officer Personnel Act of 1947 contained, in titles I and II, new provisions as to distribution of permanent regular officers in permanent grade, effective on the date of enactment of the act, and systems of promotion, separation, and retirement of those officers, which were not to become operative until the expiration of title III. Title III, which as originally enacted was to expire not later than January 1, 1957, contained provisions as to the distribution in grade of all officers of the grade of ensign or above on active duty and provisions for the temporary promotion of these officers. Section 302 (1) of the act provides that, for computations under titles I and II, permanent regular officers shall be counted in their permanent grades and for computations under title III shall be counted in their *temporary* grades. However,

title III provides that permanent regular officers selected for temporary promotion or temporarily promoted under that title may be permanently promoted to fill vacancies in the permanent grade structure as determined by computations under titles I and II. There are also provisions for the permanent promotion of reserve officers under title III. It is obvious, therefore, that for the purpose of computations under title III, all officers, permanent or temporary, regular or reserve, must be counted in the grade in which they are serving pursuant to title III, regardless of whether they hold permanent or temporary appointments therein. This is borne out by § 302 (b) which provides that in title III military titles shall be held to describe officers serving in the grade concerned, and officers holding permanent appointments in one grade and temporary appointments in a higher grade shall be considered as serving in the higher grade. An exception is made in § 302 (b) as to officers serving the grades of admiral, vice admiral, general, and lieutenant general under §§ 413 and 415 of the act and as to officers serving under similar appointments for periods of limited duration. These officers are to be counted in the grades they would hold if they had not received such appointments, i. e., the grades they hold under title III.

Section 304 of the Officer Personnel Act of 1947 provided for the establishment of lineal lists of officers on active duty and for their appointment in permanent and temporary grades in numbers prescribed by the distribution-in-grade provisions of titles I, II, and III. In most cases this resulted in confirming in terms of title III the temporary appointments held under the act of July 24, 1941. The latter appointments would have expired six months after the end of the war if not so confirmed.

Section 304 (n) of the Officer Personnel Act of 1947 provided that no further appointments should be made under the 1941 act except in a future war or emergency. Since the Officer Personnel Act in effect converted all existing temporary appointments into title III appointments and banned further use of the 1941 act, there was no necessity at that time to make any provision for determining in what grade to count an officer who holds, for example, a permanent appointment in one grade, a temporary title III appointment in the next higher grade, and a temporary appointment under the 1941 act in a still higher grade.

The act of June 30, 1951, ch. 196, 65 Stat. 108, amended title III of the Officer Personnel Act of 1947, making that title permanent law, effective whenever there are any temporary or reserve officers on active duty in the line of the Navy, but authorizing the President to suspend any of its provisions relating to lieutenants and lieutenants (junior grade). The 1951 act also amended § 304 (n) by authorizing the President to suspend the prohibition of use of the 1941 act. The authorized suspensions were made and temporary promotions in grades up to lieutenant commander were effected, during the next two or three years, under the 1941 act. This raised the question of whether promotions under the 1941 act are to be disregarded for the purpose of computations under title III and for the purpose of determining eligibility for consideration for promotion under that title.

Since the 1941 act is a war-time measure designed for strictly temporary use, it may be presumed that it was not intended to disturb the underlying permanent law. It specifically provided that it should not disturb the permanent grade structure, which was the only grade structure prescribed by law at the time of its enactment. It has been administratively interpreted as not affecting the grade distribution prescribed by title III. That this interpretation has been accepted by Congress is shown by the act of July 18, 1954, ch. 311, 68 Stat 256, which amends § 304 of the Officer Personnel Act of 1947 so as to provide that the President may affirm the recent temporary appointments made under the 1941 act and that appointments so affirmed shall thereafter be regarded as having been made under title III of the Officer Personnel Act. This amendment would not have been necessary if Congress had not considered that, without it, promotions under the 1941 act would be disregarded for the purposes of title III.

AMENDMENTS

1968—Subsec. (g). Pub. L. 90–386 increased from 9 to 11, 5 to 7, and 5 to 12 the maximum percent of officers serving on active duty in the combined grades of captain, commander, and lieutenant commander that may be designated for engineering duty, aeronautical engineering duty, and special duty, respectively.

OPERATION OF PROVISIONS OF OFFICER PERSONNEL ACT OF 1947

Section 437 of act Aug. 7, 1947, ch. 512, title IV, as added Aug. 10, 1956, ch. 1041, § 48 (e), 70A Stat. 639, provided that:

"(a) Except when suspended under section 426 (c), this Act [Officer Personnel Act of 1947] is operative only when the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy.

"(b) For the purposes of subsection (a), the following officers may not be considered officers serving on active duty:

"(1) Retired officers.

"(2) Officers of the Naval Reserve assigned to active duty for training.

"(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, or drilling the Naval Reserve or the Marine Corps Reserve.

"(4) Officers of the Naval Reserve ordered to temporary active duty for the purpose of prosecuting special work.

"(c) This Act does not apply to women officers appointed in the Regular Navy or the Regular Marine Corps under section 5590 of title 10, United States Code."

See section 49 (a) of act Aug. 10, 1956, set out preceding section 101 of this title.

CROSS REFERENCES

Admirals and vice admirals, see section 5231 (b) of this title.

Application of this section, see section 5446 of this title.

Suspension of provisions of this section by President, see section 5445 and 5451 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5231, 5445, 5446, 5451, 5778 of this title.

§ 5443. Marine Corps: officers on active duty.

(a) Of the total number of officers serving on active duty in the Marine Corps in the grade of second lieutenant and above the number of officers who may serve in each of the grades above captain may not, except as provided in subsections (b) and (c), exceed a number appropriate to the total number as set forth in the following table. If the total number of officers serving on active duty in the grade of second lieutenant and above falls between two strengths shown in the first column of the table, the number for each grade is determined by proportionate interpolation between the respective numbers for the two strengths.

Total officers serving on active duty in the grade of second lieutenant and above	Brigadier general and major general	Colonel	Lieutenant colonel	Major
10,000	58	600	1,200	1,800
12,500	62	615	1,250	2,175
15,000	69	630	1,295	2,535
17,500	72	645	1,335	2,880
20,000	75	660	1,370	3,210
22,500	79	670	1,400	3,525
25,000	82	680	1,425	3,825
27,500	84	690	1,445	4,110
30,000	85	700	1,460	4,380
32,500	87	705	1,470	4,635
35,000	89	710	1,475	4,875

(b) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for the grades of major general and brigadier general. At the time of making this computation, the Secretary shall also determine the number of officers required to meet the needs of the service in each of those grades. The number so determined for each grade is the number of officers on active duty prescribed for that grade. However, the prescribed number for the grade of major general may not exceed 50 percent of the sum of the prescribed numbers for that grade and the grade of brigadier general, and the sum of the prescribed numbers may not exceed the number authorized for brigadier general and major general under subsection (a). If the sum of the prescribed numbers is less than that authorized for brigadier general and major general under subsection (a) the difference may be applied as an increase in the prescribed number computed or determined under subsection (c) for any grade.

(c) The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for each of the grades of colonel, lieutenant colonel, and major. The number so computed is the number of officers on active duty prescribed for the grade concerned. However, if the Secretary determines at the time of making these computations that the number of officers required to meet the needs of the service in any such grade is less than the prescribed number for that grade as computed, the lesser number becomes the prescribed number for the grade and the reduction may be applied as an increase in the prescribed number for any lower grade.

(d) Of the numbers of officers prescribed for the grades of lieutenant colonel and major, as computed or determined under subsection (c), not more than the following percentages may be officers designated for limited duty:

(1) Lieutenant colonel—$3\frac{64}{100}$ percent.

(2) Major—$8\frac{62}{100}$ percent.

(e) The Secretary, whenever the needs of the service require but at least once annually, shall compute the number of officers designated for limited duty authorized under subsection (d) for the grades of lieutenant colonel and major. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each of these grades. The number so determined for each grade is the number of officers designated for limited duty prescribed for the grade concerned.

(f) At the time of making the computations required by subsections (b) and (c), the Secretary shall also determine the number of officers on active duty that will be required to meet the needs of the service during the ensuing year in the grades of captain, first lieutenant, and second lieutenant. The numbers so determined are the prescribed numbers for these grades.

(g) The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one computation and the next succeeding computation by—

(1) the number of officers originally appointed in that grade during that period;

(2) the number of officers of the Marine Corps Reserve ordered to active duty in that grade during that period; and

(3) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

(h) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of general or lieutenant general and each officer in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is counted in the grade he would hold had he not been so appointed or promoted. (Aug. 10, 1956, ch. 1041, 70A Stat. 302; Aug. 3, 1961, Pub. L. 87–123, § 5(6), 75 Stat. 265; Nov. 2, 1966, Pub. L. 89–731, § 1, 80 Stat. 1160.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5443 (a)	34 U. S. C. 626–1(a) (less 4th sentence); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 314 (a) (less 4th sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5443 (b)	34 U. S. C. 626–1 (a) (1st sentence), (b); 34 U. S. C. 5a (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations); 34 U. S. C. 5a (k) (less 2d sentence).	Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), (b), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5443 (c)	34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 5a (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations); 34 U. S. C. 5a (k) (less 2d sentence).	Aug. 7, 1947, ch. 512, § 303 (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67.
5443 (d)	34 U. S. C. 626–1 (a) (4th sentence), (o).	
5443 (e)	34 U. S. C. 626–1 (o); 34 U. S. C. 5a (g) (1st proviso, less applicability to variations between determinations).	Aug. 7, 1947, ch. 512, § 303 (k) (less 2d sentence), 61 Stat. 833; May 5, 1954, ch. 180, § 204, 68 Stat. 68.
5443 (f)	34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 5a (k) (2d sentence).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5443 (g)	34 U. S. C. 626–1 (a) (1st sentence), (c); 34 U. S. C. 5a (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations).	Aug. 7, 1947, ch. 512, § 303 (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67.
5443 (h)	34 U. S. C. 626–1 (a) (1st sentence), (d); 34 U. S. C. 5a (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations).	Aug. 7, 1947, ch. 512, § 303 (k) (less 2d sentence), 61 Stat. 833; May 5, 1954, ch. 180, § 204, 68 Stat. 68.
5443 (i)	34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 5a (g) (2d and 3d provisos, and as applicable to variations between computations and determinations); 34 U. S. C. 671a.	Aug. 7, 1947, ch. 512, § 314 (a) (4th sentence), (o), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 314 (o), 61 Stat. 865.
5443 (j)	34 U. S. C. 3c (b) (less 1st sentence); 34 U. S. C. 5a (i) (less applicability to computations under 34 U. S. C. 4 and 5); 34 U. S. C. 350h.	Aug. 7, 1947, ch. 512, § 303 (g) (1st proviso, less applicability to variations between determinations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 863; May 5, 1954, ch. 180, § 203, 68 Stat. 67. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 303 (k) (2d sentence), 61 Stat. 833; added May 5, 1954, ch. 180, § 204, 68 Stat. 68.

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5443 (j)----	34 U.S.C. 3c (b)—Con.	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), (c), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 303 (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), (d), 61 Stat. 853; May 5,1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 303 (g) (less 1st, 2d, and 3d provisos, and less applicability to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 303 (g) (as applicable to variations between computations and determinations, and 2d proviso), 61 Stat. 832; and 3d proviso added June 30, 1951, ch. 196, § 1 (c), 65 Stat. 108; May 5, 1954, ch. 180, § 203, 68 Stat. 67. July 3, 1926, ch. 774 (as applicable to MarCorps), 44 Stat. 888. Aug. 7, 1947, ch. 512, § 302 (b) (less 1st sentence), 61 Stat. 830. Aug. 7, 1947, ch. 512, § 303 (i) (less applicability to computations under Titles I and II), 61 Stat. 833. July 24, 1941, ch. 320, § 9, 55 Stat. 605.

This section is worded to conform to the language used in § 5442 of this title. The first sentence of § 314 (a) of the Officer Personnel Act of 1947, as amended (34 U. S. C. 626–1 (a)) is not specifically reproduced within subtitle C, but its effect on Marine Corps law is drafted in the numerous sections of this subtitle to which it is cited.

In subsection (a) the words "not restricted in the performance of duty" are omitted since the use of these words would exclude from the basic computation the number of limited duty officers on active duty. This result is clearly not intended as shown by the wording of the fourth sentence of § 314 (a) (34 U.S.C. 626–1 (a)). The only officers excluded in making the basic computation are officers designated for supply duty and these officers are excluded specifically by the words "excluding officers carried as additional numbers in grade". The words "in the Marine Corps" are added for clarity. The words "in the grade of second lieutenant and above" are added to reflect the definition of "officer" in 34 U. S. C. 3c (a) as it pertains to the Marine Corps. The words "at any one time" are omitted since the limitations imposed by the table apply only to the Secretary of the Navy's computation of the prescribed number of officers in each grade under subsections (b) and (c) of this section. The words "expect as provided in subsections (b) and (c)" are substituted for the words "except as otherwise provided by subsection (k) of this Act" since § 303 (k) as it affects officers of the Marine Corps is codified in subsections (b) and (c). The words "number of officers serving on active duty in the grade of second lieutenant and above, excluding officers carried as additional numbers in grade" are substituted for the words "such line officers" for clarity, and the words "in the first column of the table" are substituted for the words "in the above table" for clarity and accuracy.

Subsection (b) is added for clarity. For each strength listed in the table in § 314 (a) of the Officer Personnel Act of 1947, as amended (34 U. S. C. 626–1 (a)), a single figure is given for the combined grades of brigadier general and above. Section 314 (b) (34 U. S. C. 626-1 (b)) provides that, of the number authorized for the combined grades, not more than 50 percent may be major generals and above and the remainder brigadier generals. Subject to this limitation a determination must be made as to how many are required in each grade, but the Act is silent as to how this is to be done. Subsection (b) describes the method used to determine the prescribed numbers for the grades of brigadier general and major general. As to officers in higher grades, see subsection (j) of this section and section 5232 of this title.

In subsection (f) the last sentence is added for clarity.

In subsection (g) the words "Quartermaster General of the Marine Corps" are substituted for the words "the head of the Supply Department". The substituted phrase constitutes the statutory title of the head of the Supply Department.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–731 changed the permissible number of brigadier and major generals allowed on active duty in the Marine Corps.

1961—Subsecs. (a), (b), (c), and (f). Pub. L. 87–123, § 5(6)(A), eliminated ", excluding officers carried as additional numbers in grade," wherever appearing.

Subsecs. (g) and (h). Pub. L. 87–123, § 5(6)(B), redesignated former subsecs. (i) and (j) as (g) and (h), and eliminated former subsecs. (g) and (h) relating to the percentage of officers designated for supply duty in relation to the number of officers on active duty prescribed for their respective grades.

Subsecs. (i) and (j). Pub. L. 87–123, § 5(6)(B), redesignated former subsecs. (i) and (j) as (g) and (h), respectively.

REASSIGNMENT OF SUPPLY DUTY OFFICERS

Section 1 of Pub. L. 87–123 provided: "That officers on the active list of the Marine Corps designated for supply duty, except the officer serving as Quartermaster General on the date of enactment of this Act [Aug. 3, 1961], are hereby reassigned as officers not restricted in the performance of duty. All provisions of law relating to officers on the active list of the Marine Corps not restricted in the performance of duty apply to officers reassigned by this Act [amending sections 5001, 5204, 5409, 5443, 5448, 5589, 5703, 5706, 5707, 5709, 5751, 5765, 5769, 5775, 5776, 6374, 6376, 6377, and 6378 of this title, and repealing sections 5205, 5588, 5759, 6020 and 6375 of this title], except as otherwise specifically provided herein."

READJUSTMENT OF NUMBERS OF OFFICERS AUTHORIZED TO SERVE IN GRADES ABOVE CAPTAIN

Section 2 of Pub. L. 87–123 provided that: "The numbers of officers authorized to serve in grades above captain in the Marine Corps as set forth in the table in subsection (a) of section 5443 of title 10, United States Code [subsec. (a) of this section], are readjusted to the extent necessary to include the numbers of officers authorized for those grades by subsections (g) and (h) of that section [subsecs. (g) and (h) of this section] as those subsections read before the enactment of this Act [Aug. 3, 1961]."

Section 2 of Pub. L. 87–123 is repealed by section 2 of Pub. L. 89–731 insofar as it applied to the readjustment of the authorized number of brigadier and major generals in the Marine Corps.

CROSS REFERENCES

Application of this section, see section 5446 of this title.

General and lieutenant generals, see section 5232 (b) of this title.

Suspension of provisions of this section by President, see sections 5445 and 5451 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5232, 5445, 5446, 5451, 5778 of this title.

§ 5444. Navy: staff corps officers on active duty.

(a) The number of officers serving on active duty in the grade of rear admiral in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, and the Dental Corps, respectively, excluding any rear admiral serving as a chief

of bureau, may not exceed, in each corps, a number appropriate to the total number of officers in that corps serving on active duty, as set forth in the following tables. If the total number of officers on active duty in any corps falls between two strengths shown in the first column of the appropriate table, the number of rear admirals is determined by proportionate interpolation between the numbers for the two strengths. If the number of officers on active duty in a corps is less than the smallest tabulated number for the corps concerned, the number for the grade of rear admiral in that corps is $\frac{2}{10}$ of 1 percent of the total number of officers serving on active duty in the corps.

MEDICAL CORPS

Total number of officers in the corps on active duty	Number of rear admirals
3,000	15
4,000	18
5,000	19
7,000	20
9,000	21
11,000	22
13,000	23
15,000	24

SUPPLY CORPS

Total number of officers in the corps on active duty	Number of rear admirals
2,600	13
3,000	15
4,000	18
5,000	19
7,000	20
9,000	21
11,000	22
13,000	23
15,000	24
17,000	25

CHAPLAIN CORPS

Total number of officers in the corps on active duty	Number of rear admirals
500	2
1,600	3
2,800	3

CIVIL ENGINEER CORPS

Total number of officers in the corps on active duty	Number of rear admirals
1,000	5
1,500	6
2,000	7
3,000	8
4,000	9
5,000	10
7,000	11

DENTAL CORPS

Total number of officers in the corps on active duty	Number of rear admirals
1,000	5
2,000	6
4,000	7
7,000	8

(b) Repealed. Pub. L. 90–130, § 1(17)(A), Nov. 8, 1967, 81 Stat. 376.

(c) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of rear admirals authorized under this section for each corps. The number so computed are the numbers of officers serving on active duty prescribed for the grade of rear admiral in the corps concerned. However, if the Secretary determines at the time of making any computation under this section that the number of officers required to meet the needs of the service in the grade of rear admiral in any of these corps is less than the prescribed number as computed, the lesser number becomes the prescribed number for the grade of rear admirals in the corps concerned.

(d) Each officer in a staff corps who serves as a chief of bureau and who, before or during that service, is appointed to the grade of rear admiral under section 5772 or section 5781 of this title shall, upon termination of his appointment as chief of bureau, be carried in excess of the prescribed number until the next vacancy occurs in the grade of rear admiral in his corps.

(e) The prescribed numbers of officers computed or determined under this section may not be varied between computations.

(f) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of admiral or vice admiral and each officer in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is counted in the grade he would hold had he not been so appointed or promoted. (Aug. 10, 1956, ch. 1041, 70A Stat. 304; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (1)—(3), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, § 1(17)(A), (B), 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5444 (a)	34 U. S. C. 5a (f) (less 2d and 3d provisos); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 303 (f) (less 2d and 3d provisos), 61 Stat. 831; May 5, 1954, ch. 180, § 202, 68 Stat. 67.
5444 (b)	34 U. S. C. 5a (f) (3d proviso); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.
5444 (c)	34 U. S. C. 5a (h) (less applicability to variations between computations); 34 U. S. C. 5a (k) (as applicable to staff corps officers).	Aug. 7, 1947, ch. 512, § 303 (f) (3d proviso), 61 Stat. 831; May 5, 1954, ch. 180, § 202, 68 Stat. 67.
		Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.
5444 (d)	34 U. S. C. 5a (f) (2d proviso).	Aug. 7, 1947, ch. 512, § 303 (f) (2d proviso), 61 Stat. 831; May 5, 1954, ch. 180, § 202, 68 Stat. 67.
5444 (e)	34 U. S. C. 5a (h) (as applicable to variations between computations); 34 U. S. C. 285a.	Aug. 7, 1947, ch. 512, § 303 (h) (less applicability to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108.
5444 (f)	34 U. S. C. 3c (b) (less 1st sentence); 34 U. S. C. 5a (i) (less applicability to computations under 34 U. S. C. 4 and 5); 34 U. S. C. 350h.	Aug. 7, 1947, ch. 512, § 303 (k) (as applicable to staff corps officers), 61 Stat. 832; May 5, 1954, ch. 180, § 204, 68 Stat. 68.
		Aug. 7, 1947, ch. 512, § 303 (f) (2d proviso), 61 Stat. 831; May 5, 1954, ch. 180, § 202, 68 Stat. 67.
		Aug. 7, 1947, ch. 512, § 303 (h) (as applicable to variations between computations), 61 Stat. 832; June 30, 1951, ch. 196, § 1 (d), 65 Stat. 108.
		July 3, 1926, ch. 774 (as applicable to Navy), 44 Stat. 888.
		Aug. 7, 1947, ch. 512, § 302 (b) (less 1st sentence), 61 Stat. 830.
		Aug. 7, 1947, ch. 512, § 303 (i) (less applicability to computations under Titles I and II), 61 Stat. 833.
		July 24, 1941, ch. 320, § 9, 55 Stat. 605.

This section is phrased so as to conform as nearly as possible to the language used in §§ 5442 and 5443.

In subsection (a) the part of § 303 (f) of the Officer Personnel Act of 1947, as amended (34 U. S. C. 5a (f)), that precedes the provisos is omitted as surplusage. All specific provisions as to authorized numbers of staff corps officers in various grades are set forth in this section. Distribution of staff corps officers in grade is otherwise automatically controlled by the operation of the running-mate system. The words "in the first column of the appropriate table" are substituted for the words "in the appropriate table above" for clarity.

In subsection (d) the words "Each officer in a staff corps who serves as a chief of bureau and who, before or during such service is appointed to the grade of rear admiral under section 5772 or section 5781 of this title" are substituted for the words "such a rear admiral serving as a chief of bureau" to make it clear that this subsection does not apply to any officer who has the rank of rear admiral by virtue of his appointment as bureau chief, but who has not been appointed to the grade of rear admiral. Such an officer loses the rank when he ceases to serve as bureau chief. The word "appointment" is substituted for the word "tenure" to conform to the terminology used in chapter 513 of this title.

In subsection (e) the second sentence, which is derived from 34 U. S. C. 285a, is phrased so as to conform to the language used in § 5442 (g) (3) of this title, but is stated as applying only to the grade of lieutenant commander in the Nurse Corps. In each staff corps other than the Nurse Corps, there is a prescribed number for only one grade, so that 34 U. S. C. 285a can have no application. In the Nurse Corps there are prescribed numbers for the two highest grades to which nurses may be promoted under the Officer Personnel Act of 1947. Therefore, 34 U. S. C. 285a is applicable to the lower of the two grades, i. e. lieutenant commander.

Subsection (f) is phrased so as to give effect to all three of the cited provisions. See the revision note on § 5442 (i) of this title.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90-130, § 1(17)(A), struck out subsec. (b) which limited the number of officers serving on active duty in the grades of captain and commander in the Nurse Corps to 2/10 of 1 percent and 5 percent respectively of the number of officers serving on active duty in that corps.

Subsec. (c). Pub. L. 90-130, § 1(17)(B), struck out reference to the Secretary's special computations with respect to the numbers of captains and commanders authorized under this section for the Nurse Corps.

1957—Subsec. (b). Pub. L. 85-155, § 201(1), substituted "grades of captain and commander in the Nurse Corps may not exceed, respectively, 2/10 of 1 percent and 5 percent of the number of officers serving on active duty in that corps" for "grade of captain in the Medical Service Corps may not exceed 2 percent of the number of officers serving on active duty in that corps, and the number of officers serving on active duty in the grades of commander and lieutenant commander in the Nurse Corps may not exceed, respectively, 1 75/100 percent and 7 75/100 percent of the number of officers serving on active duty in that corps".

Subsec. (c). Pub. L. 85-155, § 201(2), substituted "captains and commanders authorized under this section for the Nurse Corps" for "captains authorized under this section for the Medical Service Corps" in clause (2), eliminated clause (3) which related to computation of the number of commanders and lieutenant commanders authorized under this section for the Nurse Corps, and substituted "or in the grade of captain or commander in the Nurse Corps" for "in the grade of captain in the Medical Service Corps, or in the grade of commander or lieutenant commander in the Nurse Corps" in the third sentence, and "captain" for "commander" and "commander" for "lieutenant commander" in the last sentence.

Subsec. (e). Pub. L. 85-155, § 201(3), eliminated provisions which related to temporary increase in the prescribed number of officers for the grade of lieutenant commander in the Nurse Corps.

CROSS REFERENCES

Application of this section, see section 5446 of this title.

Suspension of provisions of this section by President, see sections 5445 and 5451 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5445, 5446, 5451, 5778 of this title.

§ 5445. Suspension: sections 5442, 5443, 5444.

During any period when he determines that the needs of the service so require, the President may suspend any provision of section 5442, 5443, or 5444 of this title relating to—

(1) officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy; or

(2) officers serving in the grades of captain and first lieutenant in the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 306.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5445	34 U. S. C. 3d (proviso); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 301 (proviso), 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

§ 5446. Application: sections 5442, 5443, 5444.

(a) Sections 5442, 5443, and 5444 of this title are applicable only when the number of officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of officers on the active list in the line of the Navy.

(b) Sections 5442, 5443, and 5444 of this title do not apply to—

(1) women officers appointed under section 5590 of this title;

(2) women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title;

(3) retired officers;

(4) officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training;

(5) officers of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve; or

(6) officers of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty for the purpose of prosecuting special work.

(c) Officers listed in subsection (b) are not counted as officers serving on active duty for the purpose of subsection (a) or for the purpose of sections 5442, 5443, and 5444 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 306.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5446 (a)---- 5446 (b) and (c).	34 U. S. C. 3d (less proviso). 34 U. S. C. 105j, 105k; 34 U. S. C. 21e (less appointing authority and less provisos); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 301 (less proviso), 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108. June 12, 1948, ch. 449, §§ 215, 217, 62 Stat. 370. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

The Women's Armed Services Integration Act of 1948 made Title III of the Officer Personnel Act of 1947 inapplicable to women line and staff corps officers of the Regular Navy and the Naval Reserve other than officers in the Nurse Corps. The act of June 25, 1952, ch. 457 (34 U. S. C. 21e), provides an additional alternative authority for the appointment of women officers in the Regular Navy and the Naval Reserve in the Medical Corps, the Dental Corps, and the Medical Service Corps. The 1952 act states that, with two specific exceptions, all laws applicable to male officers in these corps shall apply to women officers appointed under that act. Title III of the Officer Personnel Act of 1947 is therefore applicable to women so appointed. Clauses (1) and (2) of the subsection (b) are worded accordingly.

§ 5447. Navy: line officers on the active list; permanent grade.

(a) The distribution in permanent grades of officers on the active list in the line of the Navy, excluding fleet admirals and officers carried as additional numbers in grade, shall be based on the following percentages of the number of such officers:

(1) Rear admiral—$^{75}/_{100}$ of 1 percent.

(2) Captain—6 percent.

(3) Commander—12 percent.

(4) Lieutenant commander—18 percent.

(5) Lieutenant—$24^{75}/_{100}$ percent.

(6) Lieutenant (junior grade) and ensign combined—$38^{50}/_{100}$ percent.

(b) The Secretary of the Navy, as of January 1 of each year, shall compute the number of officers authorized under subsection (a) for each grade above lieutenant (junior grade) and for the combined grades of lieutenant (junior grade) and ensign. The number so computed is the number of line officers on the active list, excluding officers carried as additional numbers in grade, prescribed for the grade or grades concerned. However, if the number of officers prescribed for the grade of captain as computed cannot be attained because of the minimum total commissioned service required for promotion to that grade by section 5780 of this title, the Secretary shall determine an appropriate lesser number. The lesser number then becomes the prescribed number for the grade of captain and the Secretary shall make a corresponding increase in the prescribed number for one or more of the lower grades.

(c) Notwithstanding the provisions of subsection (a), the number of officers not restricted in the performance of duty who may hold permanent appointments on the active list in the line of the Navy in the grade of rear admiral may not exceed 150, except in time of war or national emergency.

(d) Of the numbers of officers prescribed for grades below captain, as computed or determined under subsection (b), not more than the following percentages may be officers designated for limited duty:

(1) Commander—$3^{64}/_{100}$ percent.

(2) Lieutenant commander—$8^{62}/_{100}$ percent.

(3) Lieutenant—$7^{72}/_{100}$ percent.

(4) Lieutenant (junior grade) and ensign combined—$6^{4}/_{100}$ percent.

(e) The Secretary, as of January 1 of each year, shall compute the number of officers designated for limited duty authorized under subsection (d) for each grade above lieutenant (junior grade) and for the combined grades of lieutenant (junior grade) and ensign. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each grade above lieutenant (junior grade) and in the combined grades of lieutenant (junior grade) and ensign. The number so determined is the prescribed number for the grade or grades concerned.

(f) The number of officers on the active list designated for engineering duty, aeronautical engineering duty, and special duty holding permanent appointments in the grade of rear admiral may not exceed 13 percent of the number of officers prescribed for the grade of rear admiral as computed under subsection (b). The Secretary, as of January 1 of each year, shall compute the number of officers authorized by this subsection to hold permanent appointments in the grade of rear admiral. The number so computed is the number of officers on the active list, restricted in the performance of duty, prescribed for the permanent grade of rear admiral. However, except in time of war or national emergency, the total number of officers on the active list, restricted in the performance of duty, holding permanent appointments in the grade of rear admiral may not exceed 19.

(g) The numbers of officers on the active list designated for engineering duty, aeronautical engineering duty, and special duty, respectively, holding permanent appointments in the combined grades of captain, commander, and lieutenant commander may not exceed the following percentages of the sum of the numbers of officers prescribed for those grades as computed or determined under subsection (b):

(1) Engineering duty—11 percent.

(2) Aeronautical engineering duty—7 percent.

(3) Special duty—12 percent.

The Secretary, as of January 1 of each year, shall compute the number of officers designated for engineering duty, aeronautical engineering duty, and special duty, respectively, authorized under this section to hold permanent appointments in these combined grades. The number so computed for each designation is the number of officers of that designation on the active list prescribed for these combined permanent grades.

(h) The prescribed numbers of officers computed or determined under this section may not be varied

between computations. However, the prescribed number for a grade is temporarily increased during the period between one annual computation and the next succeeding computation by—

(1) the number of officers originally appointed in that grade during that period; and

(2) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

(i) For the purpose of this section—

(1) each officer is counted in his permanent grade; and

(2) women officers are not counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 307; Pub. L. 90-386, § 1(4), July 5, 1968, 82 Stat. 293.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5447 (a)	34 U. S. C. 4 (a) (less 1st and 2d provisos); 34 U. S. C. 3a (a), (b).	Aug. 7, 1947, ch. 512, § 103 (a) (less 1st and 2d provisos), 61 Stat. 798.
5447 (b)	34 U. S. C. 4 (f) (less applicability to variations between computations, and less 2d, 3d, and 4th provisos).	Aug. 7, 1947, ch. 512, § 102 (a), (b), 61 Stat. 798.
		Aug. 7, 1947, ch. 512, § 103 (f) (less applicability to variations between computations, and less 2d, 3d, and 4th provisos), 61 Stat. 799.
5447 (c)	34 U. S. C. 4 (a) (2d proviso).	Aug. 7, 1947, ch. 512, § 103 (a) (2d proviso), 61 Stat. 799.
5447 (d)	34 U. S. C. 4 (a) (1st proviso).	Aug. 7, 1947, ch. 512, § 103 (a) (1st proviso), 61 Stat. 799.
5447 (e)	34 U. S. C. 4 (f) (2d proviso, less applicability to variations between determinations).	Aug. 7, 1947, ch. 512, § 103 (f) (2d proviso, less applicability to variations between determinations), 61 Stat. 799.
5447 (f)	34 U. S. C. 4 (b); 34 U. S. C. 4 (f) (less applicability to variations between computations, and less provisos).	Aug. 7, 1947, ch. 512, § 103 (b), 61 Stat. 799.
		Aug. 7, 1947, ch. 512, § 103 (f) (less applicability to variations between computations and less provisos), 61 Stat. 799.
5447 (g)	34 U. S. C. 4 (c), (d), (e); 34 U. S. C. 4 (f) (less applicability to variations between computations, and less provisos).	Aug. 7, 1947, ch. 512, § 103 (c), (d), (e), 61 Stat. 799.
		Aug. 7, 1947, ch. 512, § 103 (f) (less applicability to variations between computations, and less provisos), 61 Stat. 799.
5447 (h)	34 U. S. C. 4 (f) (4th proviso, plus applicability to variations between computations and determinations); 34 U. S. C. 285a.	Aug. 7, 1947, ch. 512, § 103 (f) (4th proviso, plus applicability to variations between computations and determinations), 61 Stat. 799, 800.
5447 (i)	34 U. S. C. 5a (i) (as applicable to computations under 34 U. S. C. 4); 34 U. S. C. 350h; 34 U. S. C. 307 (p) (1st sentence, as excludes women officers from computations under 34 U. S. C. 4).	July 3, 1926, ch. 774, 44 Stat. 888.
		Aug. 7, 1947, ch. 512, § 303 (i) (as applicable to computations under Title I of Act of Aug. 7, 1947), 61 Stat. 833.
		July 24, 1941, ch. 320, § 9, 55 Stat. 605.
		June 12, 1948, ch. 449, § 206 (p) (1st sentence, as excludes women officers from computations under § 103 of the Act of Aug. 7, 1947), 62 Stat. 366.

In subsection (a) the distribution of officers in grade is stated in terms of percentages, rather than in terms of proportions, for uniformity and clarity. The words "The distribution * * * shall be based on" are substituted for the words "The total number * * * shall be distributed in" because the distribution prescribed in this section is not inflexible but is subject to variations under the conditions set forth in subsection (b).

In subsection (e) the word "authorized" is substituted for the word "maximum" for clarity and uniformity of expression. No change in meaning is effected. Although this subsection makes it mandatory that the Secretary determine the number required to meet the needs of the service after making his computations, the number so determined may be equal to the "maximum" number as computed, and, if this is true, the maximum number is the authorized number. The number determined by the Secretary does not become the authorized number unless it is lower than the maximum.

For an explanation of the changes in language in subsection (h), see the revision note on § 5442 (g) of this title.

AMENDMENTS

1968—Subsec. (g). Pub. L. 90-386 increased from 9 to 11, 5 to 7, and 5 to 12 the maximum percent of officers on the active list holding permanent appointments in the combined grades of captain, commander, and lieutenant commander that may be designated for engineering duty, aeronautical engineering duty, and special duty, respectively.

CROSS REFERENCES

Admirals and vice admirals, number, see section 5231 of this title.

Effect of computations and determinations under this section on status of officers, see section 5455 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5231, 5780 of this title.

§ 5448. Marine Corps: officers on the active list; permanent grade.

(a) The distribution in permanent grades of officers on the active list of the Marine Corps shall be based on the following percentages of the number of such officers:

(1) Major general and brigadier general combined—$^{75}/_{100}$ of 1 percent.

(2) Colonel—6 percent.

(3) Lieutenant colonel—12 percent.

(4) Major—18 percent.

(5) Captain—24 $^{75}/_{100}$ percent.

(6) First lieutenant and second lieutenant combined—38 $^{50}/_{100}$ percent.

However, the number of officers who may have permanent appointments on the active list of the Marine Corps in the grades of major general and brigadier general may not exceed 36, except in time of war or national emergency.

(b) The Secretary of the Navy, as of January 1 of each year, shall compute the number of officers authorized under subsection (a) for the grades of major general and brigadier general. At the time of making this computation, the Secretary shall also determine the number of officers required to meet the needs of the service in each of those grades. The number so determined for each grade is the number of officers on the active list prescribed for that grade. However, the prescribed number for the grade of major general may not exceed 50 percent of the sum of the prescribed numbers for that grade and the grade of brigadier general, and the sum of the prescribed numbers must equal the number authorized for general officer grades under subsection (a).

(c) The Secretary, as of January 1 of each year, shall compute the number of officers authorized under subsection (a) for each of the grades of colonel, lieutenant colonel, major, and captain and for the combined grades of first lieutenant and second lieutenant. The number so computed is the number of officers on the active list prescribed for the grade or grades concerned. However, if the number of officers prescribed for the grade of

colonel as computed cannot be attained because of the minimum total commissioned service required for promotion to that grade by section 5780 of this title, the Secretary shall determine an appropriate lesser number. The lesser number then becomes the prescribed number for the grade of colonel and the Secretary shall make a corresponding increase in the prescribed number for one or more of the lower grades.

(d) Of the numbers of officers prescribed for grades below colonel, as computed or determined under subsection (c), not more than the following percentages may be officers designated for limited duty:

(1) Lieutenant colonel—$3\frac{64}{100}$ percent.

(2) Major—$8\frac{62}{100}$ percent.

(3) Captain—$7\frac{72}{100}$ percent.

(4) First lieutenant and second lieutenant combined—$6\frac{4}{100}$ percent.

(e) The Secretary, as of January 1 of each year, shall compute the number of officers designated for limited duty authorized under subsection (d) for each grade above first lieutenant and for the combined grades of first lieutenant and second lieutenant. The Secretary shall also determine the number of such officers, not to exceed the computed number, that will be required to meet the needs of the service during the ensuing year in each grade above first lieutenant and in the combined grades of first lieutenant and second lieutenant. The number so determined is the prescribed number for the grade or grades concerned.

(f) The prescribed numbers of officers computed or determined under this section may not be varied between computations. However, the prescribed number for a grade is temporarily increased during the period between one annual computation and the next succeeding computation by—

(1) the number of officers originally appointed in that grade during that period; and

(2) the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

(g) For the purpose of this section—

(1) each officer is counted in his permanent grade; and

(2) women officers are not counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 309; Aug. 3, 1961, Pub. L. 87-123, § 5(7), 75 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5448 (a)	34 U. S. C. 626 (a); 34 U. S. C 4 (a) (less 1st and 2d provisos); 34 U. S. C. 3a (a), (b).	Aug. 7, 1947, ch. 512, § 114 (a), 61 Stat. 811. Aug. 7, 1947, ch. 512, § 10 (3a) (less 1st and 2d provisos), 61 Stat. 798.
5448 (b)	34 U. S. C. 626 (a); 34 U. S. C. 4 (f) (less applicability to variations between computations and less 2d, 3d, and 4th provisos).	Aug. 7, 1947, ch. 512, § 102 (a), (b), 61 Stat. 798. Aug. 7, 1947, ch. 512, § 114 (a), 61 Stat. 811.
5448 (c)	34 U. S. C. 626 (b).	Aug. 7, 1947, ch. 512, § 103 (f) (less applicability to variations between computations and less 2d, 3d, and 4th provisos), 61 Stat. 799.
5448 (d)	34 U. S. C. 626 (o); 34 U. S. C. 626 (a); 34 U. S. C. 4 (a) (1st proviso).	Aug. 7, 1947, ch. 512, § 114 (b), 61 Stat. 811; June 23, 1950, ch. 344, § 1 (a), 64 Stat. 250.
5448 (e)	34 U. S. C. 626 (o); 34 U. S. C. 4 (f) (2d proviso, less applicability to variations between determinations).	

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5448 (f)	34 U. S. C. 626 (c); 34 U. S. C. 4 (f) (less applicability to variations between computations, and less provisos); 34 U. S. C. 626 (p).	Aug. 7, 1947, ch. 512, § 114 (o), 61 Stat. 813. Aug. 7, 1947, ch. 512, § 114 (a), 61 Stat. 811.
5448 (g)	34 U. S. C. 626 (d); 34 U. S. C. 4 (f) (less applicability to variations between computations, and less provisos); 34 U. S. C. 626 (p).	Aug. 7, 1947, ch. 512, § 103 (a) (1st proviso), 61 Stat. 799. Aug. 7, 1947, ch. 512, § 114 (o), 61 Stat. 813.
5448 (h)	34 U. S. C. 626 (a); 34 U. S. C. 4 (f) (4th proviso plus applicability to variations between computations and determinations); 34 U. S. C. 671a.	Aug. 7, 1947, ch. 512, § 103 (f) (2d proviso, less applicability to variations between determinations), 61 Stat. 799. Aug. 7, 1947, ch. 512, § 114 (c), 61 Stat. 811.
5448 (i)	34 U. S. C. 5a (i) (as applicable to computations under 34 U. S. C. 4); 34 U. S. C. 350h; 34 U. S. C. 625h (a); 34 U. S. C. 307 (p) (1st sentence, as excludes women officers of Navy from computations under 34 U. S. C. 4).	Aug. 7, 1947, ch. 512, § 103 (f) (less applicability to variations between computations, and less provisos), 61 Stat. 814. Aug. 7, 1947, ch. 512, § 114 (p), 61 Stat. 814. Aug. 7, 1947, ch. 512, § 114 (d), 61 Stat. 811. Aug. 7, 1947, ch. 512, § 103 (f) (less applicability to variations between computations, and less provisos), 61 Stat. 814. Aug. 7, 1947, ch. 512, § 114 (p), 61 Stat. 814. Aug. 7, 1947, ch. 512, § 114 (a), 61 Stat. 811. Aug. 7, 1947, ch. 512, § 103 (f) (4th proviso plus applicability to variations between computations and determinations), 61 Stat. 799, 800. July 3, 1926, ch. 774 (as applicable to Marine Corps), 44 Stat. 888. Aug. 7, 1947, ch. 512, § 303 (i) (as applicable to computations under Title I of the Act of Aug. 7, 1947), 61 Stat. 833. July 24, 1941, ch. 320, § 9, 55 Stat. 605. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 12, 1948, ch. 449, § 206 (p) (1st sentence, as excludes women officers of Navy from computations under § 103 of the Act of Aug. 7, 1947), 62 Stat. 366.

This section is worded to conform to the language used in § 5447 of this title. Subsection (b) is inserted, however, to clarify the manner in which the determination is made as to the numbers of major generals and brigadier generals that are required. This insertion is made for the reasons stated in the revision note on § 5443 of this title.

In subsection (f) the words "Quartermaster General of the Marine Corps" are substituted for the words "the head of the Supply Department." The substituted phrase constitutes the statutory title of the head of the Supply Department.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87-123, § 5(7) (A), (B), substituted "may not exceed 36" for "may not exceed 32" and eliminated provisions which authorized exclusion of officers carried as additional numbers in grade.

Subsecs. (b) and (c). Pub. L. 87-123, § 5(7)(A), deleted ", excluding officers carried as additional numbers in grade," wherever appearing.

Subsecs. (f) and (g). Pub. 87-123, § 5(7)(C), redesignated former subsecs. (h) and (i) as (f) and (g), and eliminated former subsecs. (f) and (g) relating to the percentage of officers designated for supply duty in relation to the number of officers on active duty prescribed for their respective grades.

Subsecs. (h) and (i). Pub. L. 87-123, § 5(7)(C), redesignated former subsecs. (h) and (i) as (f) and (g), respectively.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

CROSS REFERENCES

Effect of computations and determinations under this section on status of officers, see section 5455 of this title.

General and lieutenant generals, number, see section 5232 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5232, 5780 of this title.

§ 5449. Navy: staff corps officers on the active list; permanent grade.

(a) The number of officers on the active list of the Navy holding permanent appointments in the grade of rear admiral in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, and the Dental Corps, respectively, excluding any rear admiral serving as a chief of bureau, may not exceed, in any of those corps, 5/10 of 1 percent of the number of officers on the active list of the Navy in the corps concerned. The Secretary of the Navy, as of January 1 of each year, shall compute the number of officers authorized under this section to hold permanent appointments in the grade of rear admiral in each corps. The number so computed for each corps is the number of officers on the active list in that corps prescribed for the permanent grade of rear admiral. However, except in time of war or national emergency, the numbers of officers who may hold permanent appointments on the active list of the Navy in the grade of rear admiral in these corps may not exceed—

(1) 15 in the Medical Corps;

(2) 13 in the Supply Corps;

(3) 2 in the Chaplain Corps;

(4) 4 in the Civil Engineer Corps; and

(5) 4 in the Dental Corps.

(b) Each officer who holds a permanent appointment on the active list of the Navy in the grade of rear admiral in a staff corps, and who serves as a chief of bureau, shall, upon the termination of his appointment as chief of bureau, be carried in excess of the prescribed number until the next vacancy occurs in the permanent grade of rear admiral in his corps.

(c) Repealed. Pub. L. 90–130, § 1(17)(C), Nov. 8, 1967, 81 Stat. 376.

(d) The prescribed numbers of officers computed under this section may not be varied between computations.

(e) For the purpose of this section—

(1) each officer is counted in his permanent grade; and

(2) women officers appointed under section 5590 of this title are not counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 311; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (4), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, § 1(17)(C), (D), 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5449 (a)	34 U. S. C. 5 (a) (less 2d and 4th provisos); 34 U. S. C. 3b (a), (b); 34 U. S. C. 5 (b) (as applicable to rear admirals, less applicability to variations between computations and less proviso).	Aug. 7, 1947, ch. 512, § 203 (a) (less 2d and 4th provisos), 61 Stat. 816. Aug. 7, 1947, ch. 512, § 202 (a), (b), 61 Stat. 816. Aug. 7, 1947, ch. 512, § 203 (b) (as applicable to rear admirals, less applicability to variations between computations and less proviso), 61 Stat. 817.
5449 (b)	34 U. S. C. 5 (a) (2d proviso).	Aug. 7, 1947, ch. 512, § 203 (a) (2d proviso), 61 Stat. 817.
5449 (c)	34 U. S. C. 5 (a) (4th proviso, less applicability to Nurse Corps); 34 U. S. C. 3b (a), (b); 34 U. S. C. 5 (b) (less applicability to rear admirals, to Nurse Corps, and to variations between computations, and less proviso).	Aug. 7, 1947, ch. 512, § 203 (a) (4th proviso, less applicability to Nurse Corps), 61 Stat. 817. Aug. 7, 1947, ch. 512, § 202 (a), (b), 61 Stat. 816. Aug. 7, 1947, ch. 512, § 203 (b) (less applicability to rear admirals, to Nurse Corps, and to variations between computations, and less proviso), 61 Stat. 817.
5449 (d)	34 U. S. C. 5 (a) (4th proviso, as applicable to Nurse Corps); 34 U. S. C. 3b (a), (b); 34 U. S. C. 5 (b) (as applicable to Nurse Corps, less applicability to variations between computations and less proviso).	Aug. 7, 1947, ch. 512, § 203 (a) (4th proviso, as applicable to Nurse Corps), 61 Stat. 817.
5449 (e)	34 U. S. C. 5 (b) (as applicable to variations between computations); 34 U. S. C. 285a.	Aug. 7, 1947, ch. 512, § 202 (a) (b), 61 Stat. 816. Aug. 7, 1947, ch. 512, § 203 (b) (as applicable to Nurse Corps, less applicability to variations between computations and less proviso), 61 Stat. 817.
5449 (f)	34 U. S. C. 5a (i) (as applicable to computations under 34 U. S. C. 5); 34 U. S. C. 350h; 34 U. S. C. 307 (p) (1st sentence, as excludes women officers from computations under 34 U. S. C. 5).	Aug. 7, 1947, ch. 512, § 203 (b) (as applicable to variations between computations), 61 Stat. 817. July 3, 1926, ch. 774 (as applicable to Navy), 44 Stat. 888. Aug. 7, 1947, ch. 512, § 303 (i) (as applicable to computations under Title II of the Act of Aug. 7, 1947), 61 Stat. 833. July 24, 1941, ch. 320, § 9, 55 Stat. 605. June 12, 1948, ch. 449, § 206 (p) (1st sentence, as excludes women officers from computations under § 203 of the Act of Aug. 7, 1947), 62 Stat. 366.

This section is phrased so as to conform as nearly as possible to the language used in §§ 5447 and 5448 of this title.

In subsection (a) the part of 34 U. S. C. 5 (a) that precedes the provisos is omitted as surplusage. All specific provisions as to authorized numbers of staff corps officers in permanent grades are set forth in this section. Distribution of staff corps officers in permanent grade is otherwise automatically controlled by the running-mate system.

In subsection (b) the word "appointment" is substituted for the word "tenure" to conform to the terminology used in chapter 513 of this title.

For an explanation of the changes in language in subsection (e) (second sentence), see the revision note on § 5444 (e) of this title.

In subsection (f) (2) the words "appointed under section 5590 of this title" are inserted to limit application of the clause to women officers appointed under the Women's Armed Services Integration Act of 1948 and under other laws made applicable to women by that act. Section 206 (p) of the 1948 act (34 U. S. C. 307 (p)) provided that women staff corps officers of the Regular Navy should be excluded from computations under § 203 of the Officer Personnel Act of 1947 (34 U. S. C. 5). The act of June 24, 1952 (34 U. S. C. 21e), provided an additional alternative authority for the appointment of women in the Medical Corps, the Dental Corps, and the Medical Service Corps and stated that all laws applicable to male officers in those corps, with two specific exceptions, are applicable to women officers appointed under the 1952 act. Women so ap-

pointed are therefore included in computations under this section.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90–130, § 1(17)(C), struck out subsec. (c) which placed an upper limit, stated in terms of percentages of the number of officers on the active list of the Navy in the Nurse Corps, on the number of officers on the active list of the Navy in the Nurse Corps holding permanent appointments in the grades of captain and commander.

Subsec. (d). Pub. L. 90–130, § 1(17)(D), struck out provision for a temporary increase in the number for the grade of commander in the Nurse Corps between one annual computation and the next succeeding computation by the number of officers of that grade for whom vacancies exist in the grade of captain but whose promotion to the grade of captain has been delayed for any reason.

1957—Subsec. (c). Pub. L. 85–155, § 201(4)(A), redesignated former subsec. (d) as (c), and Pub. L. 85–155, § 201(4)(B), substituted "grades of captain and commander may not exceed, respectively, 2/10 of 1 percent and 5 percent of the number" for "grades of commander and lieutenant commander may not exceed 7/10 of 1 percent and 1 6/10 percent, respectively, of the number". Former subsec. (c), which related to the number of officers holding permanent appointments in the grade of captain in the Medical Service Corps, was repealed by Pub. L. 85–155, § 201(4)(A).

Subsec. (d). Pub. L. 85–155, § 201(4)(A), redesignated former subsec. (e) as (d), and Pub. L. 85–155, § 201(4)(C), substituted "commander" for "lieutenant commander", and "captain" "for commander" in two instances. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 85–155, § 201(4(A), redesignated former subsec. (f) as (e). Former subsec. (e) redesignated (d).

CROSS REFERENCES

Effect of computations and determinations under this section on status of officers, see section 5455 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5781, 5782 of this title.

§ 5450. Regular Navy: retired flag officers on active duty.

(a) Except in time of war or national emergency, not more than ten retired officers of the Regular Navy in the grade of rear admiral and above may be on active duty.

(b) This section does not apply to fleet admirals or to retired officers ordered to temporary active duty to serve on boards convened under chapter 543 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 312.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5450	34 U. S. C. 211e.	Aug. 7, 1947, ch. 512, § 430, 61 Stat. 881; Sept. 3, 1954, ch. 1257, § 702 (a), 68 Stat. 1188.

In subsection (a) the words "In addition * * * to the number of rear admirals and above authorized by titles I, II, and III and by section 413 of this Act, a total of" are omitted as surplusage. Titles I, II, and III, and section 413 of the Officer Personnel Act of 1947 prescribe the number of officers on the lineal list who may have the grade of rear admiral. Retired officers are excluded from the lineal lists and are not counted for any purpose in the computations under the cited titles and section. The source text does not affect the authorized numbers so computed; it sets up an authorized number for a category of officers not previously covered.

The limitation on reserve flag officers on active duty contained in section 430 of the Officer Personnel Act of 1947 was repealed by section 702 (a) of the Reserve Officer Personnel Act of 1954.

§ 5451. Suspension: preceding sections.

(a) Except as provided in subsection (b), the President, during a war or national emergency, may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends.

(b) The President may suspend provisions of sections 5442, 5443, and 5444 of this title relating to officers serving in grades above lieutenant in the Navy or captain in the Marine Corps only during a war or national emergency declared by Congress or the President after May 5, 1954. (Aug. 10, 1956, ch. 1041, 70A Stat. 312.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5451 (a)	34 U. S. C. 3e.	Aug. 7, 1947, ch. 512, § 426 (c); added June 30, 1951, ch. 196, § 1 (h), 65 Stat. 109.
5451 (b)	34 U. S. C. 5a-1.	May 5, 1954, ch. 180, § 403 68 Stat. 70.

§ 5452. Navy: women line officers on active duty; Marine Corps: women officers on active duty.

The Secretary of the Navy shall prescribe the number of women officers serving on active duty in the line of the Navy who may hold appointments in each grade above lieutenant (junior grade) and the number of women officers serving on active duty in the Marine Corps who may hold appointments in each grade above first lieutenant. (Aug. 10, 1956, ch. 1041, 70A Stat. 312; Sept. 2, 1958, Pub. L. 85–861, § 1(111), 72 Stat. 1491; Nov. 8, 1967, Pub. L. 90–130, § 1(17)(E), 81 Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5452	34 U. S. C. 105b (2d, 3d, and 5th sentences); 34 U. S. C. 285a.	June 12, 1948, ch. 449, § 203 (2d, 3d, and 5th sentences), 62 Stat. 363. July 3, 1926, ch. 774, 44 Stat. 888.

AMENDMENTS

1967—Pub. L. 90–130 authorized the Secretary of the Navy to prescribe the number of women officers serving on active duty in the line of the Navy who may hold appointments in each grade above lieutenant (junior grade) and the number of women officers serving on active duty in the Marine Corps who may hold appointments in each grade above first lieutenant and struck out provisions placing a fixed limit on the number of women officers on the active list in the line of the Navy holding permanent appointments in the grades of commander and lieutenant commander and requiring the Secretary to make computations, at least once annually, of the number of women officers authorized to hold permanent appointments in such grades, with authority to make prescribed temporary increases.

1958—Pub. L. 85–861 substituted "whenever the needs of the service require but at least once annually" for "as of January 1 of each year", and added provisions permitting the Secretary, if he determines a lesser number for the grade of commander, to determine a number for grade of lieutenant commander that exceeds the computed number of that grade by the amount of the difference between the computed and determined numbers for the grade of commander.

CROSS REFERENCES

Effect of computations and determinations under this section on status of officers, see section 5455 of this title.

§ 5453. Repealed. Pub. L. 90–130, § 1(17)(F), Nov. 8, 1967, 81 Stat. 377.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 313; Sept. 2, 1958, Pub. L. 85–861, § 1(112), 72 Stat. 1491, placed upper limits on the number of women officers on the active list of the Marine Corps holding permanent appointments in the grades of lieutenant colonel and major and required the Secretary to make computations at least once annually of the numbers of women officers authorized under this section to hold permanent appointments in such grades, with authority to make prescribed temporary increases. See section 5452 of this title.

§ 5454. Computations: rule when fraction occurs in final result.

When there is a fraction in the final result of any computation under this chapter, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 313.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5454	34 U. S. C. 5a (j); 34 U. S. C. 4 (g); 34 U. S. C. 5 (c); 34 U. S. C. 105b (4th sentence); 34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 626 (a); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 303 (j), 61 Stat. 833. Aug. 7, 1947, ch. 512, § 103 (g), 61 Stat. 800. Aug. 7, 1947, ch. 512, § 203 (c), 61 Stat. 817. June 12, 1948, ch. 449, § 203 (4th sentence), 62 Stat. 363. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 114 (a), 61 Stat. 811. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

§ 5455. Computations and determinations: effect on status of officers.

No computation or determination under section 5447, 5448, 5449, or 5452 of this title may reduce the grade or pay of any officer or remove any officer from the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 313; Nov. 8, 1967, Pub. L. 90–130, § 1(17)(G), 81 Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5455	34 U. S. C. 4 (f) (3d proviso); 34 U. S. C. 5 (b) (proviso); 34 U. S. C. 105b (less 1st 5 sentences); 34 U. S. C. 626 (a); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 103 (f) (3d proviso), 61 Stat. 800. Aug. 7, 1947, ch. 512, § 203 (b) (proviso), 61 Stat. 817. June 12, 1948, ch. 449, § 203 (less 1st 5 sentences), 62 Stat. 363. Aug. 7, 1947, ch. 512, § 114 (a), 61 Stat. 811. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

CODIFICATION

Amendment of section by Pub. L. 90–130, calling for deletion of "or 5453" and insertion of "or 5452" in place thereof was, for purposes of codification, executed as if the direction had called for the deletion of "5452, or 5453", since Congress probably did not intend two successive references to section 5452.

AMENDMENTS

1967—Pub. L. 90–130 struck out reference to section 5453 of this title.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

§ 5456. Naval Reserve and Marine Corps Reserve.

Subject to the authorized strengths of the Naval Reserve and the Marine Corps Reserve, the number of members of the Naval Reserve and the Marine Corps Reserve that may be in each grade is that which the Secretary of the Navy determines to be necessary to provide for mobilization requirements. The Secretary shall review these determinations at least once each year and revise them if he considers it necessary. However, no member of the Naval Reserve or the Marine Corps Reserve may be reduced in permanent grade, without his consent, as a result of such a determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 313.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5456	50 U. S. C. 935 (b) (as applicable to 50 U. S. C. 922 (c), (d)).	July 9, 1952, ch. 608, § 215 (b) (as applicable to § 202 (c) (d)), 66 Stat. 486.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 5457. Naval Reserve: officers in an active status in permanent grades above chief warrant officer, W–4.[1]

(a) The authorized strength of the Naval Reserve in officers in an active status in the grade of rear admiral is 48, distributed among the line and the staff corps as follows:

(1) Line—28.
(2) Medical Corps—7.
(3) Supply Corps—8.
(4) Chaplain Corps—1.
(5) Civil Engineer Corps—2.
(6) Dental Corps—2.

(b) The authorized strengths of the Naval Reserve in line officers in an active status in the grades of captain, commander (lieutenant commander), and lieutenant, and in the grades of lieutenant (junior grade) and ensign combined are the following percentages of the total authorized number of such officers:

(1) Captain—1.5 percent.
(2) Commander—7 percent.
(3) Lieutenant commander—22 percent.
(4) Lieutenant—37 percent.
(5) Lieutenant (junior grade) and ensign combined—32.5 percent.

(c) When the actual number of line officers in an active status in any grade is less than the number authorized by subsection (b) for that grade, the difference may be applied to increase the number authorized by subsection (b) for any lower grade or grades.

(d) An officer may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade. (Added Pub. L.

[1] Section amended by Pub. L. 86–559 which eliminated "permanent" preceding "grade" and "grades" in text of subsecs. (a) and (b) without amending catchline to reflect such change.

85-861, § 1(113)(A), Sept. 2, 1958, 72 Stat. 1491, and amended Pub. L. 86-559, § 1(35), (36), June 30, 1960, 74 Stat. 273.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5457	50: 1181 (3). 50: 1302 (b).	Sept. 3, 1954, ch. 1257, §§ 102 (3), 402 (b), 68 Stat. 1149, 1166.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-559, § 1(35), eliminated word "permanent" which preceded "grade."

Subsec. (b). Pub. L. 86-559, § 1 (35), (36), eliminated word "permanent" which preceded "grades" in two instances, and inserted "authorized" preceding "number of such officers."

NUMBER OF LINE COMMANDERS IN ACTIVE STATUS IN NAVAL RESERVE

Section 9 of Pub. L. 86-559 authorized, until July 1, 1964, the number of line officers in an active status in the Naval Reserve in the grade of commander to exceed the number authorized for that grade by subsec. (b) of this section.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 5892 of this title.

§ 5458. Marine Corps Reserve: officers in an active status in permanent grades above chief warrant officer, W-4.[1]

(a) The authorized strength of the Marine Corps Reserve in officers in an active status in the grades of brigadier general and major general combined is 10.

(b) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first and second lieutenant combined are the following percentages of the total authorized number of such officers:

(1) Colonel—2 percent.

(2) Lieutenant colonel—6 percent.

(3) Major—12 percent.

(4) Captain—35 percent.

(5) First and second lieutenant combined—45 percent.

(c) When the actual number of officers in an active status in any grade is less than the number authorized by subsection (b) for that grade, the difference may be applied to increase the number authorized by subsection (b) for any lower grade or grades.

(d) An officer may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade. (Added Pub. L. 85-861, § 1 (113) (A), Sept. 2, 1958, 72 Stat. 1492, and amended Pub. L. 86-559, § 1 (37-39), June 30, 1960, 74 Stat. 273.)

[1] Section amended by Pub. L. 86-559 which eliminated "permanent" preceding "grades" in text of subsecs. (a) and (b) without amending catchline to reflect such change.

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5458	50: 1181 (3). 50: 1302 (c).	Sept. 3, 1954, ch. 1257, §§ 102 (3), 402 (c), 68 Stat. 1149, 1156.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-559, § 1 (37), (38), eliminated word "permanent" which preceded "grades," and substituted "10" for "5."

Subsec. (b). Pub. L. 86-559, § 1 (37), (39), eliminated word "permanent" which preceded "grades" in two instances, and inserted "authorized" preceding "number of such officers."

TEMPORARY INCREASE IN AUTHORIZED STRENGTH OF MARINE CORPS RESERVE IN MAJORS AND CAPTAINS

Section 24 of Pub. L. 85-861 provided that: "If the Secretary of the Navy believes that, in order to permit promotions under chapter 549 of title 10, United States Code, it is necessary to increase the strengths of the Marine Corps Reserve in officers in an active status in the permanent grades of major and captain authorized by section 5458 of title 10 [this section], he may, until July 1, 1960, increase these strengths to the following percentages of the number of officers in an active status in the Marine Corps Reserve holding permanent appointments in the grades of second lieutenant through colonel:

"(1) Major—22 percent.

"(2) Captain—45 percent.

To permit these increases the Secretary may reduce to 25 percent the percentage of reserve officers in an active status in the permanent grades of first and second lieutenant combined."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 5892 of this title.

Chapter 535.—GRADE AND RANK OF OFFICERS

Sec.
5501. Navy: grades above chief warrant officer, W-4.
5502. Marine Corps: grades above chief warrant officer, W-4.
5503. Navy and Marine Corps: warrant officer grades.
5504. Lineal lists: maintenance.
5505. Reserve officers: change of lineal position.
5506. Naval Reserve and Marine Corps Reserve; officers: precedence.
5507.[1] Rear admirals: determination of upper half.
5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

AMENDMENTS

1958—Pub. L. 85-861, § 1(114)(B), Sept. 2, 1958, 72 Stat. 1493, added item 5506.

CROSS REFERENCES

General military law provisions relating to rank, see section 741 et seq. of this title.

§ 5501. Navy: grades above chief warrant officer, W-4.

(a) The commissioned grades in the Navy above the grade of chief warrant officer, W-4, are:

(1) Admiral.

(2) Vice admiral.

(3) Rear admiral.

(4) Captain.

(5) Commander.

[1] Section 5507 repealed and analysis was not amended to reflect such repeal.

(6) Lieutenant commander.
(7) Lieutenant.
(8) Lieutenant (junior grade).
(9) Ensign.

(b) In addition to the grades listed in subsection (a), there is also the grade of commodore. Appointments in this grade may be made under section 5597 or section 5787 of this title. Officers in the grade of commodore rank next above officers in the grade of captain.

(c) Officers having the grade or rank of rear admiral who are entitled to the basic pay and allowances of a rear admiral of the upper half rank above officers in the grade of rear admiral who are entitled to the pay and allowances of a rear admiral of the lower half. (Aug. 10, 1956, ch. 1041, 70A Stat. 314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5501 (a)	34 U. S. C. 1; 34 U. S. C. 211d (a) (as applicable to grades of admiral and vice admiral); 34 U. S. C. 10a (1st sentence).	R. S. 1362; Mar. 3, 1883, ch. 97, § 1 (2d par. on p. 472, as applicable to masters and junior grade lieutenants), 22 Stat. 472; Mar. 3, 1899, ch. 413, § 7 (1st sentence, less proviso), 30 Stat. 1005. Aug. 7, 1947, ch. 512, § 413 (a) (as applicable to grades of admiral and vice admiral), 61 Stat. 875. Aug. 7, 1947, ch. 512, § 405 (1st sentence), 61 Stat. 872.
5501 (b)	34 U. S. C. 350e (1st sentence).	July 24, 1941, ch. 320, § 6 (1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531 (b) (28), 63 Stat. 839.

The act of July 24, 1941, ch. 320, as amended (34 U. S. C. 350 et seq.), and § 413 of the Officer Personnel Act of 1947 (34 U. S. C. 211d) provide for the temporary appointment of officers to grades up to and including admiral. Staff corps officers, women officers, and reserve officers are not excluded from the operation of the provisions of the 1941 act. Since authority exists for the appointment of officers of any category in any grade in the Navy, the existence of every grade in the several staff corps and in the Naval Reserve is recognized, and the restriction of these grades to the active list of the line is removed.

The grade of Fleet Admiral is omitted inasmuch as the law authorizing appointments in this grade was limited.

In subsection (a) the words "above the grade of chief warrant officer, W-4" are inserted for clarity.

Subsection (c) is added to make clear the fact that an officer serving in a position, such as chief of bureau, which entitles him to the rank, pay, and allowances of a rear admiral of the upper half ranks rear admirals receiving the pay and allowances of the lower half even though he has not been appointed to the grade of rear admiral or, if so appointed, is in the lower half. A statement of this fact is necessary to give full effect to 5 U. S. C. 441 which provides that chiefs of bureaus of the Navy Department and the Judge Advocate General of the Navy, while so serving, shall have "corresponding rank and shall receive the same pay and allowances * * * as * * * chiefs of bureaus of the War Department and the Judge Advocate General of the Army". The rank so conferred, corresponding to the Army rank of major general, is rear admiral of the upper half. In §§ 5133 and 5148 of this title, based on 5 U. S. C. 441, the reference to the Army rank is eliminated and the corresponding Navy rank is substituted. The substitution is made because, as stated in the revision notes on those sections, the creation of the Department of the Air Force and the reorganization of the Department of the Army make it impracticable to continue to relate Navy Department positions to former War Department positions. This treatment of 5 U. S. C. 441 does not, however, completely cover the question of the rank, in relation to other officers in the Navy and other services, of a captain or rear admiral of the lower half who by virtue of his position becomes entitled to the rank, pay, and allowances of a rear admiral of the upper half. Under 34 U. S. C. 241a officers holding *commissions* in the grade of rear admiral rank with major generals if entitled to the pay of the upper half and with brigadier generals if entitled to the pay of the lower half. Under 5 U. S. C. 441 bureau chiefs and the Judge Advocate General rank with major generals regardless of the grade in which they hold commissions and, therefore, also rank all officers of the Navy who are ranked by major generals. This fact, obscured by the substitution of Navy rank in the codification of 5 U. S. C. 441, is set out in subsection (c).

§ 5502. Marine Corps: grades above chief warrant officer, W-4.

The commissioned grades in the Marine Corps above the grade of chief warrant officer, W-4, are:

(1) General.
(2) Lieutenant general.
(3) Major general.
(4) Brigadier general.
(5) Colonel.
(6) Lieutenant colonel.
(7) Major.
(8) Captain.
(9) First lieutenant.
(10) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5502	34 U. S. C. 651; 34 U. S. C. 629; 34 U. S. C. 623b (a) (as applicable to grade of lieutenant general); 34 U. S. C. 622 (as applicable to grade of general).	R. S. 1603. July 1, 1918, ch. 114, 40 Stat. 715 (1st par.). Aug. 7, 1947, ch. 512, § 415 (a) (as applicable to grade of lieutenant general), 61 Stat. 876. Jan. 20, 1942, ch. 10, § 1, 56 Stat. 10; Aug. 7, 1947, ch. 512, § 429 (as applicable to grade of general), 61 Stat. 880.

R. S. 1603 provides that officers of the Marine Corps shall be on the same footing as officers of similar grades in the Army. Recognition is made of the grades existing in the Army for the purpose of listing the grades authorized for the Marine Corps.

The provisions of the act of July 1, 1918, ch. 114, 40 Stat. 715 (1st par.), pertaining to the appointment of a major general in addition to the Major General Commandant and a temporary major general were superseded by the act of May 29, 1934, ch. 367, § 2, 48 Stat. 812, which in turn was repealed by § 436 (e) of the Officer Personnel Act of 1947, 61 Stat. 882.

§ 5503. Navy and Marine Corps: warrant officer grades.

The warrant officer grades in the Navy and the Marine Corps are:

(1) Chief warrant officer, W-4.
(2) Chief warrant officer, W-3.
(3) Chief warrant officer, W-2.
(4) Warrant officer, W-1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5503	34 U. S. C. 135a (a) (less last sentence).	May 29, 1954, ch. 249, § 3 (a) (less 3d and last sentence) 68 Stat. 157.

This section is included in subtitle C for completeness and clarity. In duplicates, in part, §§ 555 and 597 of this title, which cover, respectively, the "permanent regular warrant officer grades" and the "permanent reserve warrant officer grades" in the armed forces. The concept that regular grades differ from reserve grades and that a grade held under a permanent appointment differs from the grade of the same name held under a temporary appointment is foreign to the naval service. In the Navy and the Marine Corps, all officers serving, for example, in the grade of chief warrant officer, W-4, are considered to be serving in the same grade regardless of whether they are Regulars or Reserves and regardless of whether they are temporary or permanent officers holding temporary or permanent appointments in that grade. This section, therefore, lists the four warrant officer grades as applicable to all warrant officers of the naval service.

Reference to the pay grades corresponding to the military grades is omitted as unnecessary for the purpose of this section.

CROSS REFERENCES

Appointment of Coast Guard warrant officers, see sections 213, 214 of Title 14, Coast Guard.

Permanent regular warrant officer grades, see section 555 of this title.

Permanent reserve warrant officer grades, see section 597 of this title.

§ 5504. Lineal lists: maintenance.

(a) The Secretary of the Navy shall maintain a single lineal list of officers in the line of the Navy on active duty in the grade of ensign and above. Line officers shall be carried on this list in the order of seniority of the grades in which they are serving. Officers serving in the same grade shall be carried in the order of their dates of rank in that grade. Officers serving in the same grade and having the same date of rank in that grade shall be carried in the order of their seniority.

(b) The Secretary shall maintain a single lineal list of officers of the Marine Corps on active duty in the grade of second lieutenant and above. Officers of the Marine Corps shall be carried on this list in the order of seniority of the grades in which they are serving. Officers serving in the same grade shall be carried in the order of their dates of rank in that grade. Officers serving in the same grade and having the same date of rank in that grade shall be carried in the order of their seniority.

(c) The Secretary shall maintain for each staff corps a single lineal list of officers in that corps on active duty. Staff corps officers serving in the grade of lieutenant (junior grade) or above shall be carried on the lineal lists for their respective corps in the order in which their running mates are carried on the lineal list for officers in the line. Staff corps officers serving in the grade of ensign shall be carried on the lineal lists for their respective corps in the order of their dates of rank in that grade. Staff corps officers serving in the grade of ensign and having the same date of rank in that grade shall be carried on the lineal lists for their respective corps in the order of their seniority.

(d) For the purpose of this section, each officer serving in a grade to which he was appointed under section 5597 or promoted under section 5787 of this title is considered as serving in the grade he would hold if he had not been so appointed or promoted.

(e) Each officer serving in the grade of admiral, vice admiral, general, or lieutenant general has, upon the termination of his appointment in that grade, the grade and position on the lineal list that he would hold if he had not received such an appointment.

(f) Except as provided in subsection (g), an officer's rank among officers on the same lineal list is determined by his position on that list.

(g) An officer who is appointed to an office the incumbent of which, regardless of his grade and date of rank in grade, is entitled to the rank of rear admiral with pay of the upper half or to the rank of major general shall be carried on the appropriate lineal list in the position he would have if he had not been so appointed. However, his rank among other officers holding the grade or serving with the rank of rear admiral or major general is determined by the date of his appointment to the office to which the rank of rear admiral with pay of the upper half or major general is attached, rather than by his position on the lineal list, unless his position on the list entitles him to higher rank.

(h) Persons appointed in the grade of ensign in the Navy or second lieutenant in the Marine Corps under section 2106, 2107, 5573, or 6909 of this title shall be placed on the appropriate lineal lists. The initial position on a lineal list of officers having the same date of rank shall be determined by the Secretary in accordance with their demonstrated performance regardless of the source from which procured, giving consideration to whatever differences exist in the methods of assigning grades among the various educational institutions at which the officers have been educated.

(i) Each officer appointed under section 5584, or 5586 of this title shall be placed on the appropriate lineal list after the junior officer of the same grade.

(j) Officers of the Naval Reserve and the Marine Corps Reserve when ordered to active duty, shall be placed on the appropriate lineal list among officers in the same grade in accordance with their dates of rank. The position of each such reserve officer among officers having the same date of rank as himself is as determined by the Secretary.

(k) There shall be excluded from the lineal lists under this section the following:

(1) Retired officers.

(2) Retired enlisted members and members of the Fleet Reserve and the Fleet Marine Corps Reserve on active duty serving under temporary appointments under section 5597 of this title.

(3) Each temporary officer whose only appointment to a grade above chief warrant officer, W-4, is an appointment under section 5597 of this title for a period of limited duration.

(4) Officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training, ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve, or ordered to temporary active duty to prosecute special work.

(5) Women officers appointed under section 5590 of this title.

(6) Women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Oct. 13, 1964, Pub. L. 88-647, title III, § 301(13), 78 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5504 (a)	34 U. S. C. 211a (a) (1st sentence, less proviso); 34 U. S. C. 211a (o) (2d sentence as applicable to line officers and 3d sentence as applicable to reserve line officers).	Aug. 7, 1947, ch. 512, ch. 304 (a) (1st sentence, less proviso), 61 Stat. 833. Aug. 7, 1947, ch. 512, § 304 (o) (2d sentence as applicable to line officers and 3d sentence as applicable to reserve line officers), 61 Stat. 840; Aug. 5, 1949, ch. 402, § 1 (a), 63 Stat. 567.
5504 (b)	34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 211a (a) (1st sentence, less proviso); 34 U. S. C. 211a (o) (2d sentence as applicable to line officers and 3d sentence as applicable to reserve line officers).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 304 (a) (1st sentence, less proviso), 61 Stat. 833. Aug. 7, 1947, ch. 512, § 304 (o) (2d sentence as applicable to line officers and 3d sentence as applicable to reserve line officers), 61 Stat. 840; Aug. 5, 1949, ch. 402, § 1 (a), 63 Stat. 567.
5504 (c)	34 U. S. C. 211a (i) (less 1st and 2d provisos); 34 U. S. C. 211a (o) (2d sentence as applicable to staff officers and 3d sentence as applicable to reserve staff officers).	Aug. 7, 1947, ch. 512, § 304 (l) (less 1st and 2d provisos), 61 Stat. 837. Aug. 7, 1947, ch. 512, § 304 (o) (2d sentence as applicable to staff officers and 3d sentence as applicable to reserve staff officers), 61 Stat. 840; Aug. 5, 1949, ch. 402, § 1 (a), 63 Stat. 567.
5504 (e)	34 U. S. C. 211a (i) (2d proviso); 34 U. S. C. 211a (a) (2d proviso of 2d sentence).	Aug. 7, 1947, ch. 512, § 304 (l) (2d proviso), 61 Stat. 837. Aug. 7, 1947, ch. 512, § 304 (a) (2d proviso of 2d sentence), 61 Stat. 833.
5504 (f) (g)	34 U. S. C. 211a (a) (2d sentence, less provisos); 34 U. S. C. 626–1 (a).	Aug. 7, 1947, ch. 512, § 304 (a) (2d sentence, less provisos), 61 Stat. 833.
5504 (h)	34 U. S. C. 258; 34 U. S. C. 1057 (3d sentence, less proviso); 34 U. S. C. 1020e (d) (1st sentence, less 1st 38 words).	R. S. 1483. R. S. 1521. Aug. 13, 1946, ch. 962, § 6 (d) (1st sentence, less 1st 38 words), 60 Stat. 1059; May 16, 1947, ch. 77, § 1 (f-i), 61 Stat. 100.
5504 (i)	34 U. S. C. 338c (less proviso); 34 U. S. C. 338g; 34 U. S. C. 639 (as applicable to rank).	June 27, 1942, ch. 451, § 4, 56 Stat. 423. June 27, 1942, ch. 451, § 8, 56 Stat. 423; Aug. 4, 1949, ch. 393, § 16, 63 Stat. 560. Aug. 29, 1916, ch. 417, 39 Stat. 610 (last par., 1st proviso as applicable to rank).
5504 (j)	34 U. S. C. 211a (o) (3d sentence, less proviso); 34 U. S. C. 626–1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 304 (o) (3d sentence, less proviso), 61 Stat. 840; Aug. 5, 1949, ch. 402, § 1 (a), 63 Stat. 567. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5504 (k)	34 U. S. C. 211a (a) (proviso of 1st sentence); 34 U. S. C. 626–1 (a); 34 U. S. C. 105j, 105k.	Aug. 7, 1947, ch. 512, § 304 (a) (proviso of 1st sentence), 61 Stat. 833. Aug. 7, 1947, ch. 512, § 314 (a), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68, June 12, 1948, ch. 449, §§ 215, 217, 62 Stat. 370.

In subsection (a) the word "maintain" is substituted for the word "establish". Since the Secretary is required to add officers to the lineal list after its original establishment, it is apparent that Congress intended the list to be continually maintained.

Subsection (d) is added to make it clear that promotions or appointments under the act of July 24, 1941, ch. 320, 55 Stat. 603 (34 U. S. C. 350–350k), do not affect an officer's position on the lineal list established under title III of the Officer Personnel Act of 1947. (See discussion in the revision note on § 5442 (1) of this title.)

Subsections (f) and (g) are expanded in the interest of clarity and completeness. Section 304 of the Officer Personnel Act of 1947, as amended (34 U. S. C. 211a), provides that each lineal list shall constitute the order of seniority of officers on the list as of the date of establishment of the list. By military usage the order in which officers' names appear on such a list determines the order in which they take precedence, i. e., their relative rank. Subsection (f) so states. The principal purpose of the establishment of the lineal lists, however, was not to determine relative rank but to provide a starting point for the operation of the promotion and elimination systems established by the Officer Personnel Act of 1947. For the purpose of these systems officers who rank with rear admirals of the upper half or major generals by virtue of their appointment to such offices as chief of bureau or Judge Advocate General, and who have not been regularly promoted to the grade of rear admiral or major general, are necessarily placed on the lineal lists in accordance with their actual grades, dates of rank in grade, and seniority in grade, without regard to the higher rank accorded them. The rank of such officers, unlike that of other officers, is independent of their position on the list, because it is otherwise provided for by law. Similarly any officer who holds the grade of rear admiral or major general, but who was promoted to that grade after his appointment to such an office as chief of bureau, ranks among other rear admirals or major generals according to the date of his appointment as bureau chief or similar official instead of in accordance with his date of rank in grade. (See Melling, Laws Relating to the Navy, Annotated (1921), p. 370.) Subsection (g) states this exception to the general rule stated in subsection (f).

In subsection (h) the provisions of R. S. 1483 and R. S. 1521 relating to the determination of precedence of Naval Academy graduates upon commissioning are not separately stated, inasmuch as they are included within the broader provisions of section 6 (d) of the act of Aug. 13, 1946, ch. 962 (34 U. S. C. 1020e (d)). Under the 1946 Act the precedence of both Naval Academy graduates and officers appointed from other educational institutions is determined in the same manner as that prescribed by the Revised Statutes for Naval Academy graduates only.

In subsection (k) (4) the words "assigned to active duty for training" are inserted because § 302 (a) of the Officer Personnel Act of 1947 (34 U. S. C. 3c (a)) makes title III of that act inapplicable to reserve officers on training duty. In clause (5) the words "appointed under section 5590 of this title" and in clause (6) the words "and other than reserve officers appointed under section 5581 of this title" are added to avoid excluding from the lineal lists women officers appointed under authority of the Act of June 24, 1952, ch. 457 (34 U. S. C. 21e). The Women's Armed Services Integration Act of 1948 provided that title III of the Officer Personnel Act of 1947 should not be applicable to women officers of the Regular Navy or the Naval Reserve other than officers in the Nurse Corps. However, the 1952 act, which provides an additional alternative authority for the appointment of women officers in the Regular Navy and the Naval Reserve in the Medical Corps, the Dental Corps, and the Medical Service Corps, makes applicable to women so appointed all laws (with two specific exceptions) applicable to male officers in those corps.

AMENDMENTS

1964—Subsec. (h). Pub. L. 88–647 substituted "2106, 2107, 5573" for "5573, 6904, 6906."

CROSS REFERENCES

Running mates, see section 5651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5891 of this title.

§ 5505. Reserve officers: change of lineal position.

(a) Notwithstanding any other provision of law, the Secretary of the Navy may change the position on the lineal list of any officer of the Naval Reserve or the Marine Corps Reserve to equalize his opportunities for promotion with officers of the Regular Navy or the Regular Marine Corps.

(b) Any officer whose lineal position is changed under this section may be appointed in the same or the next higher grade but not above that of captain in the Navy or colonel in the Marine Corps, and his date of rank may be changed to conform with his new lineal position. The authorized number of officers in any grade may be temporarily exceeded, until the next succeeding computation, by

the number of officers advanced to that grade under this section.

(c) Repealed. Pub. L. 87-649, § 14c(25), Sept. 7, 1962, 76 Stat. 501.

(d) Any officer of the Naval Reserve or Marine Corps Reserve who is selected for participation in a personnel procurement program under which he will be ordered to active duty for at least one academic year at a civilian school or college may, upon his request, be ordered to that duty in a temporary grade that is lower than his permanent or temporary grade, without affecting his permanent or temporary grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 316; June 30, 1960, Pub. L. 86-559, § 1(40), 74 Stat. 273; Sept. 7, 1962, Pub. L. 87-649, § 14c(25), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5505	34 U. S. C. 221a (o) (less 1st and 2d sentences, and less 3d sentence to proviso); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 304 (o) (less 1st and 2d sentences, and less 3d sentence to proviso), 61 Stat. 840; Aug. 5, 1949, ch. 402, § 1 (a), 63 Stat. 567. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (b) the word "annual" is omitted before the word "computation" to reflect the change made to § 303 of the Officer Personnel Act of 1947, as amended (34 U. S. C. 5a) by the Act of June 30, 1951, ch. 196, § 1, 65 Stat. 108. Originally § 303 permitted only an annual computation by the Secretary of the Navy to determine the authorized number of officers in each grade. As amended, the section authorizes computations by the Secretary "at such times that the needs of the service require but not less than once annually".

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-649 repealed subsec. (c), which provided that an officer appointed in a higher grade is entitled to the pay and allowances of the higher grade from the date of his appointment in that grade. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

1960—Subsec. (d). Pub. L. 86-559 added subsec. (d).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SUSPENSION OF SECTION; EXCEPTION

Subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, provided that:

"(a) Except as they may apply to women officers of the Regular Navy or the Regular Marine Corps appointed under section 5590 of title 10, United States Code, enacted by section 1, of this Act, the following sections of title 10 cease to operate whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy: Sections 5505, 5508, 5596, 5651—5663, 5701—5703, 5705—5711, 5751, 5753—5759, 5761, 5762, 5764—5770, 5785, 5786, 5791, 6371—6384, 6386, 6407.

"(b) For the purposes of subsection (a) [of this section], the following officers may not be considered officers serving on active duty:

"(1) Retired officers.

"(2) Officers of the Naval Reserve assigned to active duty for training.

"(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, or drilling the Naval Reserve or the Marine Corps Reserve.

"(4) Officers of the Naval Reserve ordered to temporary active duty for the purpose of prosecuting special work."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 905.

§ 5506. Naval Reserve and Marine Corps Reserve; officers: precedence.

Officers in an active status in the Naval Reserve in each grade and officers in an active status in the Marine Corps Reserve in each grade rank among themselves and among officers of the same grade in the Regular Navy and the Regular Marine Corps, respectively, in accordance with the dates of rank stated in their commissions. When regular and reserve officers are in the same grade and have the same date of rank, they rank among themselves as the Secretary of the Navy determines. (Added Pub. L. 85-861, § 1 (114) (A), Sept. 2, 1958, 72 Stat. 1492.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5506	50: 1301 (b). 50: 1307 (a) (1st sentence). 50: 1310.	Sept. 3, 1954, ch. 1257, §§ 401 (b), 407 (a) (1st sentence), 410, 68 Stat. 1166, 1169.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5507. Repealed. Pub. L. 87-649, § 14c(26), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 316, related to pay and allowances of rear admirals, and is now covered by section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

(a) Except for an officer entitled to a rank higher than his grade, line and staff corps officers of the Navy serving in the same grade and officers of the Marine Corps serving in the corresponding grade rank among themselves according to their respective dates of rank in grade, whether or not they are on a lineal list. A staff corps officer with the same date of rank as his running mate ranks above all line and staff corps officers junior to his running mate.

(b) Except as provided in subsection (a), officers of the Navy on active duty serving in the same grade and having the same date of rank in that grade rank in the following order:

(1) Officers in the line.

(2) Officers in the Medical Corps.

(3) Officers in the Supply Corps.

(4) Officers in the Chaplain Corps.

(5) Officers in the Civil Engineer Corps.

(6) Officers in the Judge Advocate General's Corps.

(7) Officers in the Dental Corps.

(8) Officers in the Medical Service Corps.

(9) Officers in the Nurse Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 317; Dec. 8, 1967, Pub. L. 90-179, § 4, 81 Stat. 547.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5508	34 U. S. C. 306f (d) (2).	Aug. 7, 1947, ch. 512, § 311 (d) (2), 61 Stat. 852; Aug. 5, 1949, ch. 402, § 1 (c), 63 Stat. 568.

The word "rank" is substituted for the words "take precedence" throughout the section for uniformity of expression.

In subsection (a) the first sentence is broadened to include officers of the Marine Corps and officers not on a lineal list. Inclusion of the Marine Corps is possible because the sentence reflects the rule referred to by the Attorney General (25 Op. Atty. Gen. 517) as "an unwritten law of the Army and Navy" as to relative rank between officers in different services. Officers not on a lineal list may properly be included since the statement is consistent with the provisions for assigning lineal position to such officers when they become entitled to be placed on a list.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90-179 added par. (6) and renumbered former pars. (6), (7) and (8) as pars. (7), (8) and (9), respectively.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Running mates, see section 5651 et seq. of this title.

Chapter 537.—ENLISTMENTS

Sec.
5540. Expiration: rights of member.

AMENDMENTS

1968—Pub. L. 90-235, § 2 (a)(3), (b), Jan. 2, 1968, 81 Stat. 756, struck out item 5531, which read: "Recruiting campaigns: use of advertising agencies", item 5532, which read: "Prohibited classes", item 5533, which read: "Minors", item 5534, which read: "Term: grade", item 5535, which read: "Evidence of age required for certain enlistments of minors", item 5537, which read: "Extension: during disability incident to service", item 5538, which read: "Extension: during war or national emergency", and item 5539, which read: "Extension: voluntary, period and benefits".

1958—Pub. L. 85-861, § 1(115), Sept. 2, 1958, 72 Stat. 1493, struck out item 5536.

§§ 5531 to 5535. Repealed. Pub. L. 90-235, § 2 (a)(3), (b), Jan. 2, 1968, 81 Stat. 756.

Section 5531, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, provided for recruiting campaigns to obtain enlistments in the Regular Navy and the Regular Marine Corps.

Section 5532, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, set forth the classes of persons prohibited from enlisting in the naval service.

Section 5533, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, provided for the enlistment of minors in the naval service.

Section 5534, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, set forth the term of enlistments in the Regular Navy or the Regular Marine Corps and provided that the Secretary of Navy could prescribe the grades or ratings in which such enlistments could be made.

Section 5535, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, required evidence of age for enlistment of minors in the Regular Navy as seamen, seamen apprentices or seamen recruits.

§ 5536. Repealed. Pub. L. 85-861, § 36B (13), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, related to extension of service by reason of time lost through misconduct or unauthorized absence, and is now covered by section 972 of this title.

§§ 5537 to 5539. Repealed. Pub. L. 90-235, § 2(a)(3), Jan. 2, 1968, 81 Stat. 756.

Section 5537, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, provided for the extension of naval service during disability incident to service.

Section 5538, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, provided for the extension of enlistments in the Regular Navy or Regular Marine Corps during war or national emergency.

Section 5539, act Aug. 10, 1956, ch. 1041, 70A Stat. 320; Sept. 2, 1958, Pub. L. 85-861, § (116), 72 Stat. 1493; Sept. 7, 1962, Pub. L. 87-649, § 14c(27), 76 Stat. 501, provided for the voluntary extension or re-extension of enlistments in the Regular Navy or the Regular Marine Corps.

§ 5540. Expiration: rights of member.

(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States.

(b) Each member retained under this section—

(1) shall be discharged not later than 30 days after his arrival in the United States; and

(2) except in time of war is entitled to an increase in basic pay of 25 percent.

(c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 320.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5540	34 U. S. C. 201; 34 U. S. C. 201a; 34 U. S. C. 201b.	R. S. 1422; Mar. 3, 1875, ch. 155, 18 Stat. 484. Aug. 18, 1941, ch. 364, § 4, 55 Stat. 630. Dec. 13, 1941, ch. 570, § 2, 55 Stat. 799.

In subsection (a) the words "the senior officer present afloat" are substituted for the words "the commanding officer of any fleet, squadron, or vessel acting singly" to modernize the terminology. At the time of the enactment of the Revised Statutes the word "squadron" meant an organization of any number of vessels more than one, so that all cases were covered by R. S. 1422. The concept of "senior officer present afloat", today, covers as nearly as possible the current equivalent of the concept in the original section. The words "in foreign waters" are inserted to conform to the interpretation of the Supreme Court in *Wilkes* v. *Dinsman*, 7 How. 89 (1849). The words "on service" are omitted, as they have no current ascertainable meaning. The words "by Government or other transportation" are substituted for the words "in some public or other vessel", since this provision is interpreted as directing transportation by either ship or aircraft. The words "to the United States" are substituted for the words "to an Atlantic or to a Pacific port of the United

States, as their enlistment may have occurred on either the Atlantic or Pacific coast of the United States" because aircraft now land at inland airports as well as coastal airports and the duty to return an enlisted member to the United States under this provision is considered complete upon the member's arrival in the United States. The extensive transportation system in the United States presently obviates the necessity of returning a member to a particular area. Furthermore, under 37 U. S. C. 253, the Government bears the cost of transporting the discharged member to his home or to the place from which he was called to active duty. The words "enlisted member of the naval service" are substituted for the words "all petty officers and persons of inferior ratings" in accordance with present terminology. Members of the Marine Corps are included because of interpretations of the Comptroller General, in construing the language of the statute. (14 Comp. Gen. 807, 808, May 1, 1935.) The reference to persons enlisted without the limits of the United States is omitted as unnecessary, since return to the United States is optional with the member and the basic rule applies irrespective of place of enlistment. The language requiring that persons who are detained or sent home be subject to the laws and regulations for the Government of the Navy is omitted as unnecessary in view of the Uniform Code of Military Justice. The provision referring to reentry to serve until the vessel returns to the United States is omitted because no law authorizes entry or reentry into the service for this restricted purpose.

In subsection (b) the words "an increase in basic pay of 25 percent" are substituted for the words "an addition of one-fourth of their former pay" in conformity with the Career Compensation Act of 1949. 34 U. S. C. 201b permanently suspended the detention pay increase in time of war and this effect is expressed in subsection (b)(2) by the words "except in time of war". 34 U. S. C. 201a, declaring that the pay addition authorized by this section does not apply to enlistments extended under other provisions of law, is omitted as unnecessary, since the increased pay provision is specifically limited to detentions under this section.

In subsection (c) the term "enlistment contract" is substituted for the term "shipping-articles" to conform to present terminology.

CROSS REFERENCES

Basic pay, see section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Chapter 539.—ORIGINAL APPOINTMENTS

Sec.
5571. Regular Navy and Regular Marine Corps: citizenship of officers.
5572. Regular Navy and Regular Marine Corps: appointing power.
5573. Regular Navy and Regular Marine Corps: from graduates of the Naval Academy.
5573a. Regular Navy and Regular Marine Corps: from reserve and temporary officers.
5574. Regular Navy: Medical Corps.
5575. Regular Navy: Supply Corps.
5576. Regular Navy: Chaplain Corps.
5577. Regular Navy: Civil Engineer Corps.
5578. Regular Navy: Dental Corps.
5578a. Regular Navy: Judge Advocate General's Corps.
5579. Regular Navy: Medical Service Corps.
5580. Regular Navy: Nurse Corps.
5581. Naval Reserve: Medical Corps, Dental Corps, Medical Service Corps: women.
5582. Regular Navy: transfers, line and staff corps.
5583. Regular Marine Corps: from noncommissioned officers.
5584. Regular Marine Corps: from former officers.
5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant.
5586. Regular Navy and Regular Marine Corps: from warrant officers and enlisted members.
5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.
5587a. Regular Marine Corps: judge advocates.
5589. Regular Navy and Regular Marine Corps: officers designated for limited duty.
5590. Regular Navy and Regular Marine Corps: women.
5591. Regular Navy: Supply Corps: maximum number of ensigns appointed annually.
5592. Regular Navy: Civil Engineer Corps: maximum number of ensigns appointed annually.
5593. Regular Navy: Medical Service Corps: maximum number of ensigns appointed annually.
5594. Regular Navy: Nurse Corps: maximum number of ensigns appointed annually.
5595. Regular Marine Corps: restriction on appointments of former midshipmen and cadets.
5596. Navy and Marine Corps: temporary appointments.
5597. Navy and Marine Corps: temporary appointments in time of war or national emergency.
5598. Naval Reserve and Marine Corps Reserve: temporary appointments in time of war or national emergency.
5599. Medical Corps: acting appointments for temporary service.
5600. Naval Reserve and Marine Corps Reserve: service credit upon original appointment.
5601. Naval Reserve: Nurse Corps: men.[1]

AMENDMENTS

1967—Pub. L. 90–179, § 5(5), Dec. 8, 1967, 81 Stat. 548, added items 5578a and 5587a.

1961—Pub. L. 87–123, § 5(9), Aug. 3, 1961, 75 Stat. 265, eliminated item 5588.

1958—Pub. L. 85–861, § 1(118)(B), (121)(B), Sept. 2, 1958, 72 Stat. 1493, 1495, added items 5573a, 5600 and 5601.

CROSS REFERENCES

General military law provisions relating to appointments—

Regular components, see section 541 et seq. of this title.

Reserve officers, see section 591 et seq. of this title.

§ 5571. Regular Navy and Regular Marine Corps: citizenship of officers.

To be eligible to hold an appointment as an officer in the Regular Navy or the Regular Marine Corps a person must be a citizen of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 321.)

HISTORICAL AND REVISION NOTES

This section is based on R. S. 1428 (34 U. S. C. 211), which provides that the officers of vessels of the United States shall in all cases be citizens of the United States. The Department of the Navy has consistently regarded R. S. 1428 as requiring that all officers of the Navy be citizens of the United States and has held that citizenship is not only a condition precedent to appointment in the Navy but also a qualification necessary in order to continue holding office therein. (See Melling, Laws Relating to the Navy, Annotated, 1921 ed., pp. 571–572.) Early laws relating to appointments in the line, Medical Corps, Supply Corps, Chaplain Corps, and Civil Engineer Corps do not specify that citizenship is a prerequisite, whereas in more recent legislation relating to appointments in the Dental Corps, Medical Service Corps, and Nurse Corps, and to the appointment of women in the line and staff corps, the citizenship requirement is spelled out. The simultaneous enactment of restatements of these provisions of law, some sections including the citizenship requirement and others omitting it, could give rise to the erroneous implication that noncitizens were eligible for appointment under the sections that did not specifically exclude them. R. S. 1428 is reproduced in § 6019 of this title, and its effect will be retained, but in order to avoid possible confusion, its accepted meaning with relation to all appointments of officers in the Regular Navy is set out here and the citizenship requirement is not spelled out in any of the other sections of this chapter.

R. S. 1428 was formerly interpreted as requiring that reserve as well as regular officers be citizens. However, § 217 of the Armed Forces Reserve Act of 1952 (50 U. S. C. 941), codified in § 591 of this title, authorizes the appointment in the reserve components not only of citizens

[1] Section 5601 repealed and analysis was not amended to reflect such repeal.

but also of non-citizens who have had prior service or who have declared their intent to become citizens. Thus R. S. 1428 no longer precludes the appointment of non-citizens as reserve officers, although it does prohibit their serving on vessels of the United States. It also prohibits the employment of aliens as officers on any public or private vessel of the United States. There is an identical citizenship requirement for officers of vessels of United States registry in R. S. 4131 (46 U. S. C. 221). R. S. 1428, however, covers all United States vessels, including those also covered by R. S. 4131.

CROSS REFERENCES

Citizenship of officers of vessels, see section 6019 of this title.

§ 5572. Regular Navy and Regular Marine Corps: appointing power.

Except as provided in section 5573a of this title, each appointment to the active list of the Navy or to the active list of the Marine Corps shall be made by the President, by and with the advice and consent of the Senate. (Aug. 10, 1956, ch. 1041, 70A Stat. 321; Sept. 2, 1958, Pub. L. 85-861, § 1 (117), 72 Stat. 1493.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5572	34 U. S. C. 12 (statement of appointing authority); 34 U. S. C. 21c (statement of appointing authority); 34 U. S. C. 93a (statement of appointing authority); 34 U. S. C. 51b (statement of appointing authority); 34 U. S. C. 13 (statement of appointing authority); 34 U. S. C. 30f; 34 U. S. C. 14 (statement of appointing authority); 34 U. S. C. 639 (statement of appointing authority); 34 U. S. C. 338 (statement of appointing authority); 34 U. S. C. 77 (statement of appointing authority); 34 U. S. C. 211c (a) (statement of appointing authority); 34 U. S. C. 105 (statement of appointing authority); 34 U. S. C. 625h (a); 34 U. S. C. 11; 34 U. S. C. 43 (2d sentence as applicable to appointing authority).	May 6, 1932, ch. 170, § 1, 47 Stat. 149; May 29, 1934; ch. 368, § 5, 48 Stat. 814, Aug. 29, 1935, ch. 803, 49 Stat. 959 (statement of appointing authority). Aug. 5, 1947, ch. 494, § 201 (as applicable to Medical Corps of the Navy, statement of appointing authority), 61 Stat. 777. Aug. 7, 1947, ch. 512, § 407 (statement of appointing authority), 61 Stat. 872. Aug. 5, 1947, ch. 494, § 201 (as applicable to Dental Corps of the Navy, statement of appointing authority), 61 Stat. 777. July 22, 1935, ch. 402, § 6 (statement of appointing authority), 49 Stat. 490. Aug. 4, 1947, ch. 459, § 205 61 Stat. 737; renumbered § 204, Aug. 7, 1947, ch. 512, § 433 (b), 61 Stat. 881. July 22, 1935, ch. 402, § 7 (statement of appointing authority), 49 Stat. 490. Aug. 29, 1916, ch. 417, 39 Stat. 610 (statement of appointing authority in 4th proviso). June 27, 1942, ch. 451, § 1 (statement of appointing authority), 56 Stat. 422; Aug. 7, 1947, ch. 512, § 419, 61 Stat. 877. Aug. 7, 1947, ch. 512, § 408 (statement of appointing authority), 61 Stat. 873. Aug. 7, 1947, ch. 512, § 404 (a) (statement of appointing authority), 61 Stat. 870. June 12, 1948, ch. 449, § 201 (statement of appointing authority), 62 Stat. 363. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. R. S. 1369; R. S. 1378; R. S. 1395, R. S. 1413 (as applicable to civil engineer officers); Aug. 29, 1916, ch. 417, (1st 53 words of 1st par. under "Naval Dental Corps"); added July 1, 1918, ch. 114, 40 Stat. 708 (4th par.). Apr. 16, 1947, ch. 38, § 201 (2d sentence as applicable to appointing authority), 61 Stat. 47; Aug. 7, 1947, ch. 512, § 434 (a), 61 Stat. 882.

AMENDMENTS

1958—Pub. L. 85-861 substituted "Except as provided in section 5573a of this title, each" for "Each".

§ 5573. Regular Navy and Regular Marine Corps: from graduates of the Naval Academy.

(a) Upon graduation from the Naval Academy, a midshipman may be appointed—

(1) an ensign on the active list of the Navy in the line or in an appropriate staff corps; or

(2) a second lieutenant on the active list of the Marine Corps.

An appointment under this section is effective from the date of graduation of the appointee.

(b) Appointments may be made in the line of the Navy under this section irrespective of vacancies, and the authorized strength of the active list of the Navy in line officers may be temporarily exceeded by the number of these appointees in excess. The number of officers in excess shall be excluded from any computation made for the purpose of determining the number of line officers prescribed for any grade. Appointments in the Marine Corps or in a staff corps under this section may be made only to fill vacancies. (Aug. 10, 1956, ch. 1041, 70A Stat. 321.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5573	34 U. S. C. 1057 (less 3d sentence); 34 U. S. C. 12 (less statement of appointing authority).	July 9, 1913, ch. 5, 38 Stat. 103 (proviso); July 1, 1918, ch. 114, 40 Stat. 716 (5th proviso). May 6, 1932, ch. 170, § 1, 47 Stat. 149; May 29, 1934, ch. 368, § 5, 48 Stat. 814; Aug. 29, 1935, ch. 803, 49 Stat. 959 (less statement of appointing authority).

Subsection (a) is written as authority to appoint graduates of the Naval Academy in the line or in a staff corps of the Navy or in the Marine Corps, in accordance with the combined effect of 34 U. S. C. 1057 and 34 U. S. C. 12. The words "ensign in * * * an appropriate staff corps" are substituted, in 34 U. S. C. 1057, for the words "lowest commissioned grades of the * * * staff corps" because of the effect of § 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a) which established grades in the various staff corps corresponding to those of the line and abolished the old staff corps grades; because appointments in certain corps in the grade of ensign are not authorized; and because the appointment of recent Naval Academy graduates in the grade of lieutenant (junior grade) in any staff corps in which initial appointments cannot be made in the grade of ensign has never been contemplated. Similarly, the grade of "second lieutenant" in the Marine Corps is spelled out as the proper statement of the words "lowest commissioned grade of the Marine Corps". There were no commissioned warrant officers in the Marine Corps when the statutes upon which 34 U. S. C. 1057 is based were enacted.

Subsection (b) states the authority, contained in 34 U. S. C. 12, to make appointments in the line irrespective of vacancies. Authority to make appointments in the staff corps and the Marine Corps exists only where there are vacancies, in accordance with 34 U. S. C. 1057. The first proviso of 34 U. S. C. 12 is omitted as executed. The statement in the second proviso that appointees in excess of total vacancies in the line shall also be considered in excess of the authorized number in the grade of ensign and shall be excluded from computations to determine authorized numbers in grades above lieutenant (junior grade) is rendered as excluding these officers from computations for all grades in view of the Officer Personnel Act of 1947 under which there is a single figure for the combined grades of lieutenant (junior grade) and ensign.

CROSS REFERENCES

Degree on graduation, see section 6967 of this title.

Lineal lists, placement and position on, see section 5504 (h) of this title.

Service preference of midshipmen of United States Naval Academy with respect to commission after graduation, see section 541 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5562b of this title.

§ 5573a. Regular Navy and Regular Marine Corps: from reserve and temporary officers.

(a) Appointments to the active list of the Navy in permanent grades not above lieutenant and to the active list of the Marine Corps in permanent grades not above captain may be made from officers of the Naval Reserve or the Marine Corps Reserve and from officers of the Regular Navy or the Regular Marine Corps who do not hold permanent commissioned appointments therein.

(b) Appointments under subsection (a) shall be made by the President alone under regulations to be prescribed by him for the administration of this section. The regulations shall include provisions—

(1) establishing standards and qualifications for appointments in each grade in which appointments are authorized by subsection (a);

(2) for determining the lineal position of appointees; and

(3) for assigning running mates to officers appointed in a staff corps.

(c) To be eligible for an appointment under this section, an officer must have such qualifications as the Secretary of the Navy may prescribe.

(d) An officer may not be appointed to the active list of the Navy or the Marine Corps under this section in a permanent grade higher than the grade in which he is serving at the time of that appointment. However, an officer appointed in a permanent grade under this section may also be temporarily appointed to a higher grade appropriate to the lineal position assigned to him. Such a temporary appointment shall be considered to have been made under the provisions of law under which officers having a comparable lineal position on the active list of the Navy or the Marine Corps, as the case may be, were temporarily promoted to that higher grade.

(e) An officer who, at the time of his appointment under this section, has to his credit leave accrued but not taken does not lose that accrued leave because of that appointment. (Added Pub. L. 85-861, § 1(118)(A), Sept. 2, 1958, 72 Stat. 1493.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5573a (a)	34 App.: 17 (a) (less applicability to appointment by President).	Aug. 9, 1955, ch. 668, § 2, 69 Stat. 606.
5573a (b)	34 App.: 17 (a) (as applicable to appointment by President).	
	34 App.: 17 (b).	
5573a (c)	34 App.: 17 (c).	
5573a (d)	34 App.: 17 (d), (e).	
5573a (e)	34 App.: 17 (f).	

In subsection (a), the words "active list of the Navy" and "active list of the Marine Corps" are substituted for the words "Regular Navy" and "Regular Marine Corps", in the first place in which they occur in 34 App.: 17 (a), to conform to the definitions in section 5001 (a) (9) and (10) of this title. The word "commissioned" is omitted as unnecessary in view of these definitions. The words "subject to the conditions and limitations in the following subsections of this section" are omitted as surplusage.

In subsection (b), the words "among other provisions", in 34 App.: 17 (b), are omitted as unnecessary in view of the definition in section 101 (30) of this title. The words "in each grade in which appointments are authorized under subsection (a)" are substituted for the words "to the grades specified herein" for clarity. The words "and precedence" are omitted as surplusage, since lineal position determines precedence. The words "of the Regular Navy" are omitted as unnecessary because all appointments of staff corps officers under this section are in the Regular Navy. The words "notwithstanding the provisions of other laws" are omitted from this section, and a new section 5652c is inserted in chapter 541, Running Mates, of this title to provide that officers appointed under this section shall have running mates assigned to them under regulations to be prescribed by the President.

In subsection (c), the words "To be eligible for an appointment under this section, an officer must" are substituted for the words "Persons appointed under this section shall". The words "be citizens of the United States" are omitted because they are covered by section 5571 of this title.

In subsections (c), (d), and (e), the word "officer" is substituted for the word "persons" or "person" because only officers are eligible for appointment under this section.

In subsection (e), the words "permanently appointed to the Regular Navy or the Regular Marine Corps pursuant to sections 17—17c of this title" are omitted as unnecessary. The words "under this section" are substituted for the word "such".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5572, 5652c of this title.

§ 5574. Regular Navy: Medical Corps.

(a) Original appointments to the active list of the Navy in the Medical Corps may be made from persons who—

(1) are at least 21 and under 32 years of age; and

(2) are examined and found qualified by a board of officers in the Medical Corps convened by the Secretary of the Navy.

Appointments under this subsection shall be in the grade of lieutenant (junior grade).

(b) Under such regulations as the Secretary may prescribe, original appointments to the active list of the Navy in the Medical Corps may also be made, as the needs of the service require, from—

(1) doctors of medicine who have such qualifications as the Secretary may prescribe; and

(2) doctors of osteopathy who are qualified under subsection (c) and who have such other qualifications as the Secretary may prescribe.

Appointments under this subsection may be in the grades of lieutenant (junior grade) through captain.

(c) To be eligible for appointment in the Medical Corps under subsection (b), a doctor of osteopathy must—

(1) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(2) be licensed to practice medicine, surgery, or osteopathy in a State or Territory or in the District of Columbia;

(3) under regulations to be prescribed by the Secretary of Defense, have completed a number of years of osteophathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for appointment under this section in the grade for which that person is applying; and

(4) have such other qualifications as the Secretary of the Navy prescribes after considering the recommendation, if any, of the Chief of the Bureau of Medicine and Surgery.

(d) For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, an officer appointed under subsection (b) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. However, an officer who has completed an internship of one year, or the equivalent, may not be credited with less than five years. (Aug. 10, 1956, ch. 1041, 70A Stat. 321; Sept. 2, 1958, Pub. L. 85-861, § 1 (119), 72 Stat. 1493.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5574 (a)	34 U. S. C. 22; 34 U. S. C. 23; 34 U. S. C. 21e (as authorizes appointments in Medical Corps, Regular Navy, less provisos).	Aug. 29, 1916, ch. 417, 39 Stat. 577 (proviso under "Medical Corps"). R. S. 1370; May 4, 1898, ch. 234, 30 Stat. 380 (7th par.).
5574 (b)	34 U. S. C. 21c (less statement of appointing authority); 34 U. S. C. 21d; 34 U. S. C. 21e (as applicable to Medical Corps, Regular Navy, less provisos).	June 24, 1952, ch. 457 (as authorizes appointments in Medical Corps, Regular Navy, less provisos), 66 Stat. 155.
5574 (c)	34 U. S. C. 21b.	Aug. 5, 1947, ch. 494, § 201 (as applicable to Medical Corps of Navy, less statement of appointing authority), 61 Stat. 777. Aug. 5, 1947, ch. 494, § 202, 61 Stat. 777. June 24, 1952, ch. 457 (as applicable to Medical Corps, Regular Navy, less provisos), 66 Stat. 155. Aug. 2, 1946, ch. 756, § 41, 60 Stat. 858.

The effect of 34 U. S. C. 22 and 23 is not only to prescribe the qualifications for appointment to the grade of assistant surgeon in the Medical Corps but also to authorize appointments in that corps and to restrict original appointments to the grade specified. Subsection (a) is worded accordingly. The words "lieutenant (junior grade)" are substituted for the words "assistant surgeon" as required by § 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a), which abolished the former staff corps grades and established, in each staff corps, grades corresponding to those in the line. The words "officers in the Medical Corps" are substituted for the words "naval surgeons" to modernize the terminology. Although "surgeon" was formerly a grade in the Medical Corps, the word was also used to denote all officers in the corps and it is so interpreted in this section. The words "at least 21 and under 32 years of age" are substituted for the words "between the ages of 21 and 32" for clarity and uniformity of expression. The subsection is limited in application to appointments in the Regular Navy, as the source text has been so construed (*Taylor* v. *U. S.* (1903), 38 Ct. Cl. 155, 161). The words "or by his authority as provided by section 233" are omitted since that section is being repealed with the enactment of this title. This phrase appears only in the U. S. Code section; it is not in the statute.

Subsection (b) is also restricted to appointments in the Regular Navy, since it was intended as a supplement to subsection (a). Independent authority to make appointments in any grade in the Naval Reserve is contained in the Armed Forces Reserve Act of 1952. The provision that officers appointed under this subsection shall be carried as additional numbers in rank is omitted because, under the Officer Personnel Act of 1947, there is no "authorized number" of Medical Corps officers in any grade below rear admiral. The words "Subject to any limitation of the commissioned strength of the Navy prescribed by law" and the provision that officers appointed under this subsection "shall not increase the authorized numbers of commissioned officers of the Medical Corps of the Regular Navy" are omitted as surplusage, since prescribed strengths and authorized numbers may not be exceeded in the absence of positive authority to make appointments in excess. The citizenship requirement is omitted because it is covered in § 5571 of this title.

Subsection (c) is restricted to appointments in the Regular Navy, as the source is so interpreted. Independent authority to make appointments in the Naval Reserve in any staff corps is contained in the Armed Forces Reserve Act of 1952.

The act of June 24, 1952, ch. 457 (34 U. S. C. 21e), is cited as source for subsections (a), (b), and (c) because it makes the laws codified in these subsections applicable, in their entirety, to women. Sections 201 and 204 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105, 105c) also authorize the appointment of women in the Medical Corps but limit original appointments from civilian life to the grade of lieutenant (junior grade) and require qualifications different from those stated in this section. (See § 5590 of this title.)

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861, § 1(119)(A), permitted original appointments from doctors of osteopathy.

Subsec. (c). Pub. L. 85-861, § 1(119)(B), substituted provisions prescribing qualifications of doctors of osteopathy for provisions which permitted original appointments in the Medical Corps to be made from graduates of reputable schools of osteopathy.

Subsec. (d). Pub. L. 85-861, § 1(119)(C), added subsec. (d).

ADJUSTMENT OF SERVICE CREDIT FOR MEDICAL AND DENTAL OFFICERS APPOINTED BEFORE MAY 1, 1956

Authorization to convene boards of officers to review the records and compute the service of medical and dental officers appointed before May 1, 1956, see section 19 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1559, set out as a note under section 3294 of this title.

CROSS REFERENCES

Women, appointment of, see section 5590 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5763 of this title.

§ 5575. Regular Navy: Supply Corps.

Original appointments to the active list of the Navy in the Supply Corps may be made from male persons who—

(1) are at least 21 years of age on July 1 of the calendar year in which appointed; and

(2) have physical, mental, and moral qualifications satisfactory to the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5575	34 U. S. C. 61.	Aug. 13, 1946, ch. 962, § 19, 60 Stat. 1061; May 16, 1947, ch. 77, § 1 (p) 61 Stat. 100; Mar. 12, 1949, ch. 18, 63 Stat. 12.

This section is phrased so as to be uniform with other sections, derived from the Revised Statutes, relating to

original appointments in the staff corps. The predecessor of the source statute was R. S. 1379 which originally constituted the only authority to appoint officers in the Supply Corps. R. S. 1379 was repealed by the Act of August 13, 1946, ch. 962, § 20 (f), 60 Stat. 1062, but it was substantially reenacted in § 19 of the act of Aug. 13, 1946, ch. 962, as amended (34 U. S. C. 61).

The source statute could be considered as merely imposing additional conditions on appointments under 34 U. S. C. 1057 and 34 U. S. C. 1020e (restated in §§ 5573 and 6909 of this title), and not as providing independent substantive authority to make such appointments. In view of its history, however, and in the interests of uniformity, completeness, and clarity, the latter view is adopted. Authority to make appointments in the Supply Corps existed before it was granted in the cited sections.

The word "male" is inserted because authority to appoint women in the Supply Corps is covered in § 5590 of this title.

CROSS REFERENCES

Bond of Supply Corps officers, see section 6026 of this title.

Women, appointment of, see section 5590 of this title.

§ 5576. Regular Navy: Chaplain Corps.

Original appointments to the active list of the Navy in the Chaplain Corps may be made from male persons who—

(1) are at least 21 and under 35 years of age; and

(2) have physical, mental, moral, and professional qualifications satisfactory to the Secretary of the Navy.

Appointments under this section shall be in the grade of lieutenant (junior grade). (Aug. 10, 1956, ch. 1041, 70A Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5576	34 U. S. C. 91; 34 U. S. C. 93a (less statement of appointing authority).	R. S. 1396; Feb. 5, 1929, ch. 151, 45 Stat. 1150. Aug. 7, 1947, ch. 512, § 407 (less statement of appointing authority), 61 Stat. 872

The words "at least 21 and under 35" are substituted for the words "not less than twenty-one nor more than thirty-five" for uniformity in stating age limitations and to avoid varying interpretations. The Judge Advocate General of the Navy has held that a person becomes ineligible on his 35th birthday (JAG file 15 721-7). Application of the first sentence of 34 U. S. C. 93a to 34 U. S. C. 91 results in the substitution of "lieutenant (junior grade)" for "acting chaplain". The first proviso of 34 U. S. C. 93a is omitted as executed. The second proviso, which states that the section is not to be construed as prohibiting appointments in grades above lieutenant (junior grade) under § 5 of the act of April 18, 1946, ch. 141, 60 Stat. 92, is omitted because the appointing authority in § 5 of that act expired on July 1, 1955.

The word "male" is inserted because authority to appoint women in the Chaplain Corps is covered in § 5590 of this title.

CROSS REFERENCES

Women, appointment of, see section 5590 of this title.

§ 5577. Regular Navy: Civil Engineer Corps.

Original appointments to the active list of the Navy in the Civil Engineer Corps may be made from male persons. Appointments under this section may be either in the grade of ensign or in the grade of lieutenant (junior grade) in accordance with such regulations as the Secretary of the Navy prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5577	34 U. S. C. 256.	June 8, 1946, ch. 284, § 1, 60 Stat. 235.

Reference to the grade of assistant civil engineer is omitted because § 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a) abolished that grade and established in lieu thereof the corresponding line grades of lieutenant (junior grade) and ensign. The words "from male persons" are inserted because authority to appoint women in the Civil Engineer Corps is covered in § 5590 of this title.

CROSS REFERENCES

Women, appointment of, see section 5590 of this title.

§ 5578. Regular Navy: Dental Corps.

(a) Original appointments to the active list of the Navy in the Dental Corps may be made from persons who—

(1) are at least 21 and under 32 years of age;

(2) are graduates of accredited medical or dental schools and are trained in the several branches of dentistry; and

(3) have passed physical, mental, moral, and professional examinations before boards convened by the Secretary of the Navy and have been recommended for appointment by those boards.

Appointments under this subsection shall be in the grade of lieutenant (junior grade).

(b) Under such regulations as the Secretary may prescribe, original appointments to the active list of the Navy in the Dental Corps may also be made, as the needs of the service require, from doctors of dentistry who have such qualifications as the Secretary may prescribe. Appointments under this subsection may be in the grades of lieutenant (junior grade) through captain.

(c) For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, an officer appointed in the Dental Corps under subsection (b) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. (Aug. 10, 1956, ch. 1041, 70A Stat. 322; Sept. 2, 1958, Pub. L. 85-861, § 1 (120), 72 Stat. 1494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5578 (a)	34 U. S. C. 51 (less 26th through 37th words); 34 U. S. C. 52; 34 U. S. C. 21e (as applicable to Dental Corps, Regular Navy, less provisos).	Aug. 29, 1916, ch. 417 (54th through 74th word of 1st sentence; and 1st 24 words of second sentence of 1st par. under "Naval Dental Corps"); as added July 1, 1918, ch. 114, 40 Stat. 708 (4th par.).
5578 (b)	34 U. S. C. 51b (less statement of appointing authority); 34 U. S. C. 51c; 34 U. S. C. 21e (as applicable to Dental Corps, Regular Navy).	Aug. 29, 1916, ch. 417, 39 Stat. 573 (2d par. under "Naval Dental Corps"); added July 1, 1918, ch. 114, 40 Stat. 709. June 24, 1952, ch. 457 (as applicable to Dental Corps, Regular Navy, less provisos), 66 Stat. 155. Aug. 5, 1947, ch. 494, § 201 (less statement of appointing authority), 61 Stat. 777. Aug. 5, 1947, ch. 494, § 202, 61 Stat. 777. June 24, 1952, ch. 457 (as applicable to Dental Corps, Regular Navy), 66 Stat. 155.

In subsection (a) the part of 34 U. S. C. 51 that lists the grades in the Dental Corps is omitted as obsolete. Section 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a) abolished these grades and established in lieu thereof grades corresponding to those in the line. It is unnecessary to list these grades since specific provisions exist for the promotion of dental officers to grades above lieutenant (junior grade). The words "lieutenant (junior grade)" are substituted for the words "assistant dental surgeon", as required by 34 U. S. C. 10a. The words "citizens of the United States" are omitted, since the citizenship requirement is covered in § 5571 of this title. The words "at least 21 and under 32" are substituted for the words "between twenty-one and thirty-two" for uniformity of expression and to avoid conflicting interpretations. The word "accredited" is substituted for the word "standard", since accreditation is the criterion applied in determining which schools are acceptable. The word "successfully" is omitted as surplusage. Although 34 U. S. C. 51 does not appear to contain substantive authority to make appointments in the Dental Corps, the authority exists in the source statute and subsection (a) is worded accordingly. The words "or by his authority as provided by section 233" are omitted since that section is being repealed with the enactment of this title. This phrase appears only in the U. S. Code section; it is not in the statute.

Subsection (b) is based on the same statute as subsection (b) of § 5574 of this title. The same changes are made in this subsection and for the same reasons.

The act of June 24, 1952, ch. 457 (34 U. S. C. 21e), is cited to both subsections for the reasons stated in the revision note on § 5574 of this title.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861, § 1(120)(A), substituted "Under such regulations as the Secretary may prescribe" for "Under regulations prescribed by the Secretary" and "from doctors of dentistry" for "from civilian dentists".

Subsec. (c). Pub. L. 85–861, § 1(120)(B), added subsec. (c).

ADJUSTMENT OF SERVICE CREDIT FOR MEDICAL AND DENTAL OFFICERS APPOINTED BEFORE MAY 1, 1956

Authorization to convene boards of officers to review the records and compute the service of medical and dental officers appointed before May 1, 1956, see section 19 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1559, set out as a note under section 3294 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5763 of this title.

§ 5578a. Regular Navy; Judge Advocate General's Corps.

(a) Original appointments to the active list of the Navy in the Judge Advocate General's Corps may be made from persons who—

(1) are at least twenty-one and under thirty-five years of age;

(2) are graduates of an accredited law school or are members of the bar of a Federal court or the highest court of a State; and

(3) have physical, mental, and moral qualifications satisfactory to the Secretary of the Navy.

For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, an officer appointed in the Judge Advocate General's Corps shall be credited with the amount of service prescribed by the Secretary of the Navy, but not less than three years.

(b) Under such regulations as the Secretary of the Navy may prescribe, appointments to the active list of the Navy in the Judge Advocate General's Corps may be made from officers of the Navy, including the Naval Reserve, in the line or in another staff corps. Notwithstanding any other law, an officer appointed under this subsection shall have a running mate assigned to him under regulations to be prescribed by the Secretary of the Navy. (Added Pub. L. 90–179, § 5(1), Dec. 8, 1967, 81 Stat. 547.)

§ 5579. Regular Navy: Medical Service Corps.

(a) Under such regulations as the Secretary of the Navy prescribes, original appointments to the active list of the Navy in the Medical Service Corps may be made from persons who—

(1) are at least 21 and under 32 years of age; and

(2) have physical, mental, moral, and professional qualifications satisfactory to the Secretary.

(b) Appointments under this section from persons other than members of the Regular Navy shall be made from graduates of accredited schools of pharmacy, optometry, or other schools or colleges with degrees in sciences allied to medicine or degrees approved by the Surgeon General of the Navy.

(c) Appointments under this section shall be in the grade of ensign, except that persons holding doctoral degrees at the time of appointment in sciences allied to medicine approved by the Surgeon General may be appointed in the grade of lieutenant (junior grade).

(d) An officer appointed under this section from the Regular Navy may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former permanent status. (Aug. 10, 1956, ch. 1041, 70A Stat. 323.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5579	34 U. S. C. 30e; 34 U. S. C. 30j; 34 U. S. C. 30h (less 1st 23 words); 34 U. S. C. 21e (as authorizes appointments in Medical Service Corps, Regular Navy, less provisos).	Aug. 4, 1947, ch. 459, § 204, 61 Stat. 737; renumbered § 203, Aug. 7, 1947, ch. 512, § 433 (b), (c), 61 Stat. 881. Aug. 4, 1947, ch. 459, § 209, 61 Stat. 738; renumbered § 207, Aug. 7, 1947, ch. 512, § 433 (b), 61 Stat. 881. Aug. 4, 1947, ch 459, § 207 (less 1st 23 words), 61 Stat. 738; renumbered § 206, Aug. 7, 1947, ch. 512, § 433 (b) 61 Stat. 881. June 24, 1952, ch. 457 (as authorizes appointments in Medical Service Corps, Regular Navy, less provisos), 66 Stat. 155.

In subsection (a) the words "commissioned warrant officers and warrant officers of the Hospital Corps" are omitted to avoid the erroneous implication that members of the Regular Navy holding other grades and designations may not be appointed under this section without meeting the educational requirements prescribed in subsection (b). The citizenship requirement is omitted, as it is covered in § 5571 of this title. The words "at least 21 and under 32 years of age" are substituted for the words "between the ages of twenty-one and thirty-two years" for uniformity of expression and to avoid varying interpretations.

The act of June 24, 1952, ch. 457 (34 U. S. C. 21e), is cited as source for this section because that act makes 34 U. S. C. 30e, h, and j applicable, in their entirety, to women. Women may also be appointed in the Medical Service Corps under the Women's Armed Services Integration Act of 1948, but the upper age limit and the consequences of appointment under that act are different. The appointing authority in the 1948 act is covered in § 5590 of this title.

REAPPOINTMENT OF CERTAIN WOMEN OFFICERS IN THE MEDICAL SERVICE CORPS

Section 203 of Pub. L. 85–155, title II, Aug. 21, 1957, 71 Stat. 385, provided that:

"(a) A woman officer appointed in the Medical Service Corps of the Navy before the effective date of this Act [August 21, 1957] may, upon her application, made not later than January 30, 1958, be reappointed in that corps under section 5579 of title 10, United States Code [this section], notwithstanding the limitations specified therein with regard to age or grade. The provisions of law applicable to male officers appointed under that section are applicable to a woman officer so reappointed.

"(b) A woman officer reappointed in the Medical Service Corps of the Navy under subsection (a) shall be reappointed in her permanent grade with date of rank held by her at the time of reappointment. The running mate of a woman officer so reappointed shall be an eligible male line officer of the Navy of appropriate precedence assigned by the Secretary of the Navy. Officers so reappointed who at time of reappointment had to their credit leave accrued, but not taken, shall not, by reason of reappointment lose such accrued leave.

"(c) A woman officer appointed in the Medical Service Corps of the Naval Reserve before the effective date of this Act [August 21, 1957] is considered for all purposes to have been appointed under section 5581 of title 10, United States Code. Such an officer shall be assigned a running mate in the same manner as is provided for a male officer appointed in the Medical Service Corps of the Naval Reserve."

TRANSFERS OF OFFICERS OF NURSE CORPS TO MEDICAL SERVICE CORPS

Act June 21, 1956, ch. 421, 70 Stat. 326, provided:

"During a period of not more than twelve months after enactment of this Act [June 21, 1956] any officer on the active list of the Nurse Corps of the Regular Navy or any officer of the Nurse Corps of the Naval Reserve in a permanent grade not above lieutenant who is qualified in one or more of the specialties of dietetics, physical therapy, or occupational therapy, may be, upon her application, transferred to and appointed in the Medical Service Corps of the Regular Navy subject to regulations to be prescribed by the Secretary of the Navy. An officer so transferred shall be appointed in her permanent grade with the precedence held by her at the time of transfer and upon transfer she may be reappointed to a higher permanent or temporary grade which corresponds to a higher temporary grade in which she was serving at the time of transfer. The reappointment in a higher temporary grade of an officer so transferred shall be regarded for all purposes as having been effected under the same authority of law pursuant to which she was serving in a higher temporary grade at time of such transfer. The running mate of an officer transferred in accordance with this authority shall be, upon transfer, a woman line officer or a male officer, as the case may be, of the Regular Navy of appropriate precedence assigned by the Secretary of the Navy. Officers so transferred who at the time of transfer had to their credit leave accrued, but not taken, shall not, by reason of such transfer, lose such accrued leave.

"SEC. 2. All provisions of law now existing or hereafter enacted relating to authorized grades, distribution in grade, selection for promotion, promotion and retirement of women staff officers of the Regular Navy appointed pursuant to the Act of June 12, 1948 (62 Stat. 356, ch. 449), as amended, or the Act of June 24, 1952 (66 Stat. 155, ch. 457) shall be construed to apply in like manner to officers transferred and appointed to the Medical Service Corps under the authority of this Act; however, officers transferred and reappointed pursuant to this Act shall not be subject to existing provisions of law relating to age limitations for appointments.

"SEC. 3. All provisions of law relating to pay, leave, money allowances for subsistence and rental of quarters, mileage and other travel allowances, or other allowances, benefits, and emoluments of women staff officers of the Regular Navy shall apply to officers transferred and appointed to the Medical Service Corps under the authority of this Act."

CROSS REFERENCES

Women, appointment of, see section 5590 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5763, 6392 of this title.

§ 5580. Regular Navy: Nurse Corps.

(a) Original appointments to the active list of the Navy in the Nurse Corps may be made from persons who are at least 21 years of age on July 1 of the calendar year in which appointed and who have physical, mental, moral, educational, and professional qualifications satisfactory to the Secretary of the Navy.

(b) A person appointed under this section shall be appointed in the grade of—

(1) ensign, if the person has not reached the age of 27 on the date of nomination by the President and is not qualified for appointment as a lieutenant (junior grade) under clause (2); or

(2) lieutenant (junior grade), if the person is qualified under regulations prescribed by the Secretary and has not reached the age of 30 on the date of nomination by the President.

(c) The maximum ages specified in subsection (b) are increased by the period of active commissioned service performed after December 31, 1947. However, a maximum age is not so increased by more than five years. (Aug. 10, 1956, ch. 1041, 70A Stat. 323; Sept. 30, 1966, Pub. L. 89–609, § 1(7)–(9), 80 Stat. 853.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5580	34 U. S. C. 43c (less applicability to revocation and discharge).	Apr. 16, 1947, ch. 38, § 204 (less applicability to revocation and discharge), 61 Stat. 48; May 27, 1953, ch. 71, § 3, 67 Stat. 36.

The words "Except as provided in sections 203 (34 U. S. C. 43b) and 211 (34 U. S. C. 43j) of this title" are omitted. Section 203 is executed. Section 211 makes members of the Nurse Corps Reserve eligible for transfer to the Regular Navy under the act of April 18, 1946, ch. 141, § 5 (34 U. S. C. 15), but that provision is temporary law which expired on July 1, 1955; hence the exception is also temporary. The citizenship requirement is omitted, as it is covered in § 5571 of this title. Section 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a) abolished the grade of nurse and replaced it by grades corresponding to those in the line. Grades and ranks now have the same titles; hence the section is worded accordingly.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–609, § 1(7), struck out "female" preceding "persons".

Subsec. (b). Pub. L. 89–609, § 1 (8), (9), substituted "the person has not reached the age of 27" for "she has not passed her twenty-seventh birthday" in clause (1) and "the person" and "reached the age of 30" for "she" and "passed her thirtieth birthday" in clause (2), respectively.

§ 5581. Naval Reserve: Medical Corps, Dental Corps, Medical Service Corps: women.

Women may be appointed in the Naval Reserve in the Medical Corps, the Judge Advocate General's Corps, the Dental Corps, and the Medical Service Corps. Except as otherwise specifically provided,

provisions of this title relating to male officers of the Naval Reserve in these corps apply to women appointed under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 323; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5581	34 U. S. C. 21e (as authorizes appointment of women in the Naval Reserve, in the Medical Corps, the Dental Corps, and the Medical Service Corps).	June 24, 1952, ch. 457 (as authorizes appointment of women in the Naval Reserve, in the Medical Corps, the Dental Corps, and the Medical Service Corps), 66 Stat. 155.

The source text makes applicable to women all laws authorizing the appointment of male officers in the Naval Reserve in the Medical, Dental, and Medical Service Corps. There is no law specifically authorizing the appointment of male reserve officers in these corps. Such appointments are effected under the general authority to make appointments in reserve components contained in § 217 (a) of the Armed Forces Reserve Act of 1952 (50 U. S. C. 941) codified in § 591 of this title. Section 217 (b) of the same act, which authorizes the appointment of women in the Naval Reserve, also codified in § 591 of this title, would appear at first glance to make the source text superfluous, but it does not. Women appointed under the Reserve Act are subject to the restrictions contained in the Women's Armed Services Integration Act of 1948. Specifically, they may not be placed on a lineal list when on active duty and may not be considered for promotion with their contemporaries in the regular Navy. Women appointed under 34 U. S. C. 21e, on the other hand, when on active duty, are on the appropriate lineal list with male officers, have male line officers as running mates, and are considered for promotion with their male contemporaries in the Regular Navy and Naval Reserve. Since women may be appointed in the Reserve in the three named corps under either the Armed Forces Reserve Act of 1952 or the source statute, and since the choice of appointing authority has such different consequences, it is necessary to codify the source text as separate and distinct from the Reserve Act provisions.

AMENDMENTS

1967—Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

APPOINTMENT OF WOMEN OFFICERS IN THE MEDICAL SERVICE CORPS BEFORE AUGUST 21, 1957

Women officers appointed in the Medical Service Corps before August 21, 1957, considered for all purposes to have been appointed under this section, see section 203 (c) of Pub. L. 85–155, set out as a note under section 5579 of this title.

CROSS REFERENCES

Appointees under this section not excluded from lineal lists, see section 5504 (k) (6) of this title.

Distribution in grade provisions as inapplicable to appointees under this section, see section 5446 (b) (2) of this title.

Eligibility for consideration by selection board, see section 5711 (c) (1) of this title.

Reserve components, qualifications for appointment as reserve officers, see section 591 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5446, 5504, 5663, 5665, 5711, 5763, 5896, 5897, 5898, 5899, 6389, 6403 of this title.

§ 5582. Regular Navy: transfers, line and staff corps.

(a) Any male officer on the active list of the Navy in a staff corps in a grade not above lieutenant commander may be appointed to the active list in the line of the Navy in the same grade. An officer so appointed holds the lineal position he would have held if he had originally been appointed in and had remained in the line, and he is an additional number in the grade in which he is serving and in each grade to which he is later promoted.

(b) Any male officer on the active list in the line of the Navy in a grade not above lieutenant commander may be appointed to the active list of the Navy in the Supply Corps or the Civil Engineer Corps, in the same grade, without regard to his age. (Aug. 10, 1956, ch. 1041, 70A Stat. 324.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5582 (a)	34 U. S. C. 14 (less statement of appointing authority).	July 22, 1935, ch. 402, § 7 (less statement of appointing authority), 49 Stat. 490.
5582 (b)	34 U. S. C. 13 (less statement of appointing authority).	July 22, 1935, ch. 402, § 6 (less statement of appointing authority), 49 Stat. 490.

The words "active list" are inserted so that this section will apply only to officers of the Regular Navy holding permanent appointments in grades above commissioned warrant officer, as this was the intent of the source statute. The words "same grade" are substituted for the words "corresponding rank and grade" in subsection (a) and for the words "corresponding grade" in subsection (b), since, under § 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a), the grades in the staff corps are the same as those in the line. The words "transfer and" and "transferred and" are omitted as surplusage.

In subsection (a) the words "and precedence in the line" are omitted as surplusage.

In subsection (b) reference to the Construction Corps is omitted because that corps was abolished by the Act of June 25, 1940, ch. 420, § 1, 54 Stat. 528.

The word "male" is inserted in both subsections to limit their application to men. Authority to appoint women is covered in § 5590 of this title.

§ 5583. Regular Marine Corps: from noncommissioned officers.

Original appointments to the active list of the Marine Corps may be made from meritorious male noncommissioned officers of the Regular Marine Corps who are at least 20 and under 30 years of age. Appointments under this section shall be in the grade of second lieutenant. (Aug. 10, 1956, ch. 1041, 70A Stat. 324.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5583	34 U. S. C. 634 (as applicable to appointment of NCO's); 34 U. S. C. 637.	Mar. 3, 1899, ch. 413, § 19 (as applicable to appointment of NCO's), 30 Stat. 1008; Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (1st proviso in 5th par., as applicable to appointment of NCO's). Mar. 3, 1899, ch. 413, § 20 (1st sentence), 30 Stat. 1009.

The section is written as authority to appoint noncommissioned officers as second lieutenants in the Regular Marine Corps, as the source text has been uniformly so interpreted. The age limitations are derived from 34 U. S. C. 637, in conformance with the opinion of the Judge Advocate General of the Navy in JAG file 13261–426, May 29, 1913.

The word "male" is inserted to limit the application of the section to men. Authority to appoint women in the Marine Corps is covered in § 5590 of this title.

§ 5584. Regular Marine Corps: from former officers.

(a) Original appointments to the active list of the Marine Corps in the grade of second lieutenant may be made from male former officers of the Marine Corps who resigned from the naval service in good standing.

(b) To be eligible for an appointment under this section a person must—

(1) establish his physical, mental, moral, and professional qualifications to perform the duties of the grade of second lieutenant, to the satisfaction of the Secretary of the Navy; and

(2) be of such an age that he can complete a total of 30 years of active service before he becomes 62 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5584	34 U. S. C. 639 (less appointing authority and less applicability to rank).	Aug. 29, 1916, ch. 417, 39 Stat. 610 (last par., 1st proviso, less appointing authority and less applicability to rank; and 2d, 3d, and 4th provisos).

In subsection (b) the words "age of retirement" are changed to "62 years of age" because present law directs retirement for age in grade at a number of different ages. The general rule, in the absence of age-in-grade factors, is that officers retire at age 62, and this subsection is worded accordingly.

The word "male" is inserted to limit the application of the section to men. Authority to appoint women in the Marine Corps is covered in § 5590 of this title.

CROSS REFERENCES

Lineal list, position on, see section 5504 (i) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5504 of this title.

§ 5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant.

Vacancies on the active list of the Marine Corps in the grade of second lieutenant shall be filled, so far as practicable, first, from members of the graduating class of the Naval Academy; second, from meritorious noncommissioned officers of the Regular Marine Corps; and third, from other persons. (Aug. 10, 1956, ch. 1041, 70A Stat. 324.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5585	34 U. S. C. 634.	Mar. 3, 1899, ch. 413, § 19, 30 Stat. 1008; Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (1st proviso in 5th par., 48th word to end of proviso).

The words "from other persons" are substituted for the words "from civil life" because 34 U. S. C. 1020e authorizes the appointment of graduates of the NROTC program as well as of other persons in civil life. Such graduates are, properly, persons in "civil life", since they are members of the Naval Reserve who are not on active duty. However, since the status of members of the NROTC is not always clear, the statement of the class is expanded.

§ 5586. Regular Navy and Regular Marine Corps: from warrant officers and enlisted members.

(a) Original appointments may be made—

(1) to the active list of the Navy in the line or in any staff corps, except the Medical Service Corps and the Nurse Corps, in grades not above lieutenant from male warrant officers and chief petty officers of the Regular Navy who, by June 30 of the calendar year in which appointed, will have completed at least three years of service in the Regular Navy in the grade of chief petty officer or above; and

(2) to the active list of the Marine Corps in grades not above captain from male warrant officers of the Regular Marine Corps who, by June 30 of the calendar year in which appointed, will have completed at least three years of service in the Regular Marine Corps in the grade of warrant officer, W–1, or above.

To be eligible for appointment under this subsection to the grade of lieutenant, lieutenant (junior grade), or ensign on the active list of the Navy or captain, first lieutenant, or second lieutenant on the active list of the Marine Corps, members must be under 40, 35, and 32 years of age, respectively, on June 29 of the calendar year in which they are to be appointed.

(b) Original appointments to the active list of the Navy in the line and in any appropriate staff corps in the grade of ensign may be made from male enlisted members of the Regular Navy. To be eligible for such an appointment a member must be under 33 years of age on the date of appointment and must have had at least four years of continuous service, immediately preceding the date of his appointment, in the Regular Navy.

(c) Before he may be appointed under this section, a member must apply for appointment, must be recommended by a commanding officer under whom he has served in the grade he holds at the time he applies, and, under regulations prescribed by the Secretary of the Navy, must establish his qualifications by—

(1) recommendation of a naval examining board that he is mentally, morally, and professionally qualified; and

(2) finding of a board of medical examiners that he is physically qualified.

A member who twice fails to establish his qualifications is ineligible for appointment under this section.

(d) Each appointment under subsection (a) shall be in the grade for which the member applies and for which he is found qualified.

(e) Each officer appointed under this section in the grade of lieutenant in the line of the Navy or in the grade of captain in the Marine Corps is an additional number in that grade only and, while in that grade, becomes eligible for consideration for promotion when the officer next senior to him becomes eligible.

(f) An officer appointed under this section may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former status. (Aug. 10, 1956, ch. 1041, 70A Stat. 324.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5586 (a)	34 U. S. C. 338 (less statement of appointing authority and less 24th through 35th words); 34 U. S. C. 339 (a); 34 U. S. C. 338g; 34 U. S. C. 338a (less provisos).	June 27, 1942, ch. 451, § 1 (less statement of appointing authority and less 25th through 36th words), 56 Stat. 422; Aug. 7, 1947, ch. 512, § 419, 61 Stat. 877. Aug. 10, 1946, ch. 952, § 4 (a), 60 Stat. 994.
5586 (b)	34 U. S. C. 339 (b).	
5586 (c)	34 U. S. C. 338b.	June 27, 1942, ch. 451, § 8, 56 Stat. 423; Aug. 4, 1949, ch. 393, § 16, 63 Stat. 560.
5586 (d)	34 U. S. C. 338 (24th through 35th words).	June 27, 1942, ch. 451, § 2 (less provisos), 56 Stat. 423; May 25, 1943, ch. 101, § 1, 57 Stat. 84.
5586 (e)	34 U. S. C. 338d; 34 U. S. C. 338g.	Aug. 10, 1946, ch. 952, § 4 (b), 60 Stat. 994. June 27, 1942, ch. 451, § 3, 56 Stat. 423.
5586 (f)	34 U. S. C. 338f (proviso).	June 27, 1942, ch. 451, § 1 (25th through 36th words), 56 Stat. 422; Aug. 7, 1947, ch. 512, § 419, 61 Stat. 877. June 27, 1942, ch. 451, § 5, 56 Stat. 423. June 27, 1942, ch. 451, § 8, 56 Stat. 423; Aug. 4, 1949, ch. 393, § 16, 63 Stat. 560. June 27, 1942, ch. 451, § 7 (proviso), 56 Stat. 423.

In subsection (a) the application to the Marine Corps is set out and § 4 (a) of the act of Aug. 10, 1946, ch. 952, 60 Stat. 994, is integrated in the subsection. The act of Aug. 10, 1946, has not been considered applicable to the Marine Corps; consequently the authority to appoint master sergeants as officers has not been included. The words "annually" and "rank" are omitted as surplusage. The three-year service requirement is written so as to authorize service in any of the grades to be counted. While this may seem ambiguous in the statute, it is the reasonable interpretation. Otherwise, as an example, a warrant officer with less than three years as such, but with service as a chief petty officer, would be ineligible. The words "must be under 40, 35, and 32 years of age" are substituted for the words "be not more than 40, 35, or 32 years of age" in 34 U. S. C. 338a to conform to interpretation and for uniformity.

In subsection (b) the proviso of 34 U. S. C. 339b is omitted as unnecessary, as the authority to appoint does not contain the authority to increase the "authorized number" or to carry appointees as "extra numbers in grade". Since the 1946 act is considered in applicable to the Marine Corps, the subsection is written only in Navy terms.

In subsection (c) the words "apply for appointment" are inserted for clarity. The fact that an application must be made is indicated by 34 U. S. C. 338 (see subsection (d) of this section). The words "in the grade he holds at the time he applies" are substituted for the words "as a commissioned warrant or warrant officer" because § 4 of the act of Aug. 10, 1946, ch. 952, 60 Stat. 994, makes enlisted members eligible for appointment under the same conditions as warrant and commissioned warrant officers. The requirement now means that the man must be recommended by a commanding officer who has observed him in his current grade.

In subsection (f) the words "was entitled at the time of his appointment because of his former status" are substituted for the words "he would have been entitled had he not been so appointed" for uniformity with similar statements in this subtitle.

The word "male" is inserted to limit the application of the section to men. Auhority to appoint women is covered in § 5590 of this title.

CROSS REFERENCES

Lineal list, position on, see section 5504 (i) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5504 of this title.

§ 5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.

(a) Male persons may be originally appointed to the active list in the line of the Navy as officers designated for engineering duty, aeronautical engineering duty, or special duty. Each person so appointed shall be appointed in the grade of—

(1) ensign, if designated for engineering duty, aeronautical engineering duty, or any type of special duty for which a graduate degree is not required; or

(2) lieutenant (junior grade), if designated for a type of special duty for which a graduate degree is required.

The number of appointments in each of these grades and designations may not exceed, in any fiscal year, the number of vacancies that the Secretary of the Navy estimates will occur in the fiscal year for officers of the grade and designation concerned.

(b) With the approval of the Secretary, any officer on the active list in the line of the Navy may, upon his application, be designated for engineering duty, aeronautical engineering duty, or special duty.

(c) The types of engineering duty for which officers may be designated include ship engineering and ordnance engineering. The types of aeronautical engineering duty for which officers may be designated include aeronautical engineering and aviation maintenance. The types of special duty for which officers may be designated include communications, law, naval intelligence, photography, public information, psychology, and hydrography.

(d) Officers designated for engineering duty, aeronautical engineering duty, or special duty are additional numbers in grade. They shall perform sea or shore duty appropriate to their special qualifications but may not succeed to command except on shore and then only as authorized by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 325; Dec. 8, 1967, Pub. L. 90–179, § 5(2), 81 Stat. 547; July 5, 1968, Pub. L. 90–386, § 1(5), 82 Stat. 293.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5587	34 U. S. C. 77 (less statement of appointing authority); 34 U. S. C. 71, 73; 34 U. S. C. 78 (less (b)); 34 U. S. C. 211b (less (b)).	Aug. 7, 1947, ch. 512, § 408 (less statement of appointing authority), 61 Stat. 873. Aug. 29, 1916, ch. 417, 39 Stat. 580 (words preceding 3d proviso of 1st par. under "Officers for Engineering Duty Only"); May 11, 1928, ch. 522, 45 Stat. 498; Aug. 7, 1947, ch. 512, § 402 (a), (c), 61 Stat. 870. Aug. 7, 1947, ch. 512, § 403 (less (b)), 61 Stat. 870. Aug. 7, 1947, ch. 512, § 401 (less (b)), 61 Stat. 869.

In subsection (a) the word "annually" and the words "and regularly commission" are omitted as surplusage. The word "male" is inserted in subsection (a) to limit the application of the appointing authority in this subsection to men. Authority to appoint women is covered in § 5590 of this title.

In subsection (b) the words "on the active list" are inserted in order to exclude reserve and temporary officers, which is the intention of Congress determined from the

use of the words "additional numbers in grade" and "percentage of officers on the active list" which apply only to regular officers holding permanent appointments. In the same subsection and in subsections (c) and (d) the provisions of the law that these officers are assigned to a certain duty and then "described and known as officers designated" for that duty have been written simply as providing that these officers may be "designated" for that duty. This is done as there is no apparent reason for any distinction between these officers and those appointed under subsection (a). In subsection (c) the words "specialized duties in the fields of" are omitted as surplusage.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90-386 enumerated the types of engineering duty and aeronautical engineering duty for which officers may be designated.

1967—Subsec. (c). Pub. L. 90-179 struck out "law," following "communications,".

§ 5587a. Regular Marine Corps: judge advocates.

(a) With the approval of the Secretary of the Navy, any officer on the active list of the Marine Corps who is qualified under section 827(b) of this title may, upon his application, be designated as a judge advocate.

(b) For the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, a person appointed to the active list of the Marine Corps with a view to designation as a judge advocate may be credited with the amount of service prescribed by the Secretary of the Navy, but not more than three years. (Added Pub. L. 90-179, § 5(3), Dec. 8, 1967, 81 Stat. 548.)

§ 5588. Repealed. Pub. L. 87-123, § 5(8), Aug. 3, 1961, 75 Stat. 265.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 326, related to the designation of Marine Corps officers for supply duty.

§ 5589. Regular Navy and Regular Marine Corps: officers designated for limited duty.

(a) Original appointments to the active list of the Navy in the grade of ensign in the line, in the Supply Corps, and in the Civil Engineer Corps may be made from male—

(1) warrant officers;

(2) chief petty officers; and

(3) first-class petty officers;

in the Regular Navy, for the performance of duty in the technical fields indicated by their warrants or ratings.

(b) Original appointments to the active list of the Marine Corps in the grade of second lieutenant may be made from male—

(1) warrant officers;

(2) master sergeants; and

(3) technical sergeants;

in the Regular Marine Corps, for the performance of duty in the technical fields in which they are proficient.

(c) To be eligible for an appointment under this section a member must have completed at least 10 years of active naval service, excluding active duty for training in a reserve component.

(d) Each officer appointed under this section is known as an officer designated for limited duty. He may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former permanent status.

(e) Any officer designated for limited duty, upon his application and upon determination by the Secretary of the Navy that he is qualified, may—

(1) if he is in the line of the Navy, be designated for engineering duty, aeronautical engineering duty, or special duty, or be assigned to unrestricted performance of duty;

(2) if he is in a staff corps of the Navy, be assigned to unrestricted performance of duty in that corps; or

(3) if he is in the Marine Corps, be assigned to unrestricted performance of duty.

When an officer is so designated or assigned, his status as an officer designated for limited duty terminates.

(f) The Secretary shall prescribe regulations for the appointment, designation, and assignment of officers under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 326; Aug. 3, 1961, Pub. L. 87-123, § 5(10), 75 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5589	34 U. S. C. 211c ((a) (less statement of appointing authority), and less (e)—(h)).	Aug. 7, 1947, ch. 512, § 404 ((a) (less statement of appointing authority), and less (e)—(h)), 61 Stat. 870; Aug. 5, 1949, ch. 402, § 1 (f), 63 Stat. 568.

In subsections (a) and (b) the authority to make appointments under this section is confined to appointments in the grades of ensign and second lieutenant, since the authority in the source statute to make appointments in higher grades was limited and has been completely executed. The words "commissioned warrant officers" are omitted as surplusage, since the term "warrant officers" includes commissioned warrant officers.

The word "male" is inserted to limit the application of the section to men. Authority to appoint women is covered in § 5590 of this title.

AMENDMENTS

1961—Subsec. (e)(3). Pub. L. 87-123 eliminated "be designated for supply duty or" which preceded "be assigned to."

§ 5590. Regular Navy and Regular Marine Corps: women.

(a) Women may be appointed to the active list of the Navy in the line or in any staff corps or to the active list of the Marine Corps. Except as provided in subsection (b), original appointments under this section shall be made under the same conditions as prescribed in other sections of this title for appointments under those sections.

(b) Original appointments to the active list of the Navy under this section shall be either in the grade of ensign or in the grade of lieutenant (junior grade) in the discretion of the President, and original appointments to the active list of the Marine Corps shall be either in the grade of second lieutenant or in the grade of first lieutenant in the discretion of the President. To be eligible for such an appointment a woman must—

(1) be at least 21 and under 30 years of age on July 1 of the year in which appointed; and

(2) have mental, moral, educational, professional, and physical qualifications satisfactory to the Secretary of the Navy.

(c) This section does not authorize the appointment of officers in the Nurse Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 327.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5590 (a) (b)	34 U. S. C. 105 (as applicable to appointment of women to grades above the grade of chief warrant officer, W-4); 34 U. S. C. 625h (a); 34 U. S. C. 105c.	June 12, 1948, ch. 449, § 201 (as applicable to appointment of women to grades above the grade of chief warrant officer, W-4), 62 Stat. 363.
5590 (c)	34 U. S. C. 105k.	June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 12, 1948, ch. 449, § 204, 62 Stat. 364. June 12, 1948, ch. 449, § 217, 62 Stat. 370.

Subsection (a) combines the provisions of §§ 201, 204, and 213 (a) of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105, 105c, 625h (a)) and restates them as an affirmative authority to appoint women in grades above chief warrant officer, W-4, in the line and staff corps of the Regular Navy and in the Marine Corps. This is the effect of the cited sections, although they are not stated in those terms. Sections 201 and 213 (a) of the 1948 act make applicable to women all laws authorizing the appointment of male officers, except as otherwise specifically provided in the act. Sections 204 and 213 (a) provide that women appointed in the Regular Navy and Regular Marine Corps, other than those appointed under the act of April 18, 1946, ch. 141, 60 Stat. 92, shall be between 21 and 30 years of age and shall be appointed in the grade of ensign or lieutenant (junior grade) in the Navy or in corresponding grades in the Marine Corps. Thus, the sections, taken together, are substantive authority for the appointment of women officers under the same conditions as male officers except for the age and grade limitations stated in § 204.

In subsection (b) the exception as to appointments effected pursuant to the act of April 18, 1946, ch. 141 (34 U. S. C. 15), is omitted because the authority to make appointments under that act expired on July 1, 1955. The 1946 act authorized the appointment of reserve officers in the Regular Navy and the Regular Marine Corps in the grades they held in the reserve components. It was made applicable to women officers by § 201 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105), and pursuant thereto, women have been appointed in the Regular Navy and Regular Marine Corps in grades up to lieutenant commander and major and at ages up to 50. Women officers who have been so appointed have already had the benefit of the exception in § 204 of the Women's Armed Services Integration Act of 1948, so that, as to them it is executed. For the purposes of this subtitle women officers appointed under the 1946 act, as made applicable to women by § 201 of the Women's Armed Services Integration Act of 1948, are considered as having been appointed under the 1948 act rather than under the 1946 act. Thus, by the savings provision of the act enacting this title, they will be considered as appointed under the instant section of this title, and they may be distinguished by reference to this section from women officers appointed in the Medical Corps, Dental Corps, and Medical Service Corps under laws authorizing the appointment of male officers in those corps (including the act of April 18, 1946, supra) as made applicable to women by the act of June 24, 1952, ch. 457 (34 U. S. C. 21e). The distinction is essential because the provisions of the Women's Armed Services Integration Act of 1948 relating to the authorized strength, distribution in grade, promotion, retirement, and discharge of women officers apply only to women whose appointment was authorized by that act, whereas women appointed under laws made applicable to them by the 1952 act are promoted and retired under the laws applicable to male officers in their respective corps. It will be noted that women may be appointed in the Medical Corps, Dental Corps, and Medical Service Corps under either the 1948 act or the 1952 act; hence the line of demarcation cannot be drawn on the basis of the corps but must be drawn on the basis of the laws under which the appointments are made.

CROSS REFERENCES

Distribution in grade provisions as inapplicable to appointees under this section, see section 5446 (b) (1) of this title.

Distribution in permanent grade of staff corps officers on active list in Navy, exclusion from computation, see section 5449 (e) (2) of this title.

Exclusion from lineal lists, see section 5504 (k) (5) of this title.

Promotions—

Appointments as permanent, see section 5778 of this title.

Eligibility of Navy staff corps officers for consideration by selection board, see section 5753 of this title.

Eligibility of Navy staff corps officers for promotion to grades below rear admiral, exception of appointees under this section, see section 5773 (a) of this title.

Promotion zones of Navy staff corps officers, exception of appointees under this section, see section 5766 (a) of this title.

Numbers of Navy staff corps officers that may be recommended for promotion to grades below rear admiral, exception of appointees under this section, see section 5762(a) of this title.

Regular Navy staff corps officers appointed under this section, number that may be recommended, see section 5763 of this title.

Suspension by President, exception of appointees in Navy under this section, see section 5785 of this title.

Running mates for staff corps officers, see section 5664 of this title.

Selection boards—

Certification of report as to fitness and qualifications, see section 5708 of this title.

Officers to be recommended for promotion or continuation, see section 5707 of this title.

Rejection by President of recommendation for promotion, see section 5710 (c) of this title.

Staff corps officers, recommendation for promotion and continuation on active list, exception of appointees under this section, see section 5702 (a) of this title.

Suspension by President, exception of appointees in Navy under this section, see section 5711 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5143, 5449, 5663, 5664, 5702, 5704, 5707, 5708, 5710, 5711, 5753, 5762, 5766, 5773, 5784, 5785, 6015, 6376, 6379, 6380, 6382, 6384, 6386, 6388, 6395, 6397, 6400 of this title.

§ 5591. Regular Navy: Supply Corps: maximum number of ensigns appointed annually.

(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Supply Corps in the grade of ensign is equal to 12 percent of the number of appointments made that year to the active list in the line in the grade of ensign.

(b) If, in any year, the number of officers on the active list in the Supply Corps is less than 12 percent of the number of officers on the active list in the line, the number of appointments in that year to the active list in the Supply Corps in the grade of ensign may be increased as the President determines necessary, so long as that percentage is not exceeded. (Aug. 10, 1956, ch. 1041, 70A Stat. 327.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5591	34 U. S. C. 5b (less applicability to appointments in Civil Engineer, Medical Service, and Nurse Corps).	Aug. 7, 1947, ch. 512, § 409 (less applicability to appointments in Civil Engineer, Medical Service, and Nurse Corps), 61 Stat. 873.

Subsection (a) is written in terms of the "maximum number of appointments that may be made in any year" to show that the section is a limitation on the authority to make original appointments in the grade of ensign in the Supply Corps.

Since the authorized number of officers on the active list of the Navy in the Supply Corps is fixed at 12 percent of the authorized number of officers on the active list in the line of the Navy, both subsections (a) and (b) are expressed in terms of this percentage rather than in terms of a proportion or ratio between the authorized number of officers in the Supply Corps and in the line.

§ 5592. Regular Navy: Civil Engineer Corps: maximum number of ensigns appointed annually.

(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Civil Engineer Corps in the grade of ensign is equal to 3 percent of the number of appointments made that year to the active list in the line in the grade of ensign.

(b) If, in any year, the number of officers on the active list in the Civil Engineer Corps is less than 3 percent of the number of officers on the active list in the line, the number of appointments in that year to the active list in the Civil Engineer Corps in the grade of ensign may be increased as the President determines necessary, so long as that percentage is not exceeded. (Aug. 10, 1956, ch. 1041, 70A Stat. 327.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5592	34 U. S. C. 5b (as applicable to appointments in Civil Engineer Corps).	Aug. 7, 1947, ch. 512, § 409 (as applicable to appointments in Civil Engineer Corps), 61 Stat. 873.

Subsection (a) is written in terms of the "maximum number of appointments that may be made in any year" to show that the section is a limitation on the authority to make original appointments in the grade of ensign in the Civil Engineer Corps.

Since the authorized number of officers on the active list of the Navy in the Civil Engineer Corps is fixed at 3 percent of the authorized number of officers on the active list in the line of the Navy, both subsections (a) and (b) are expressed in terms of this percentage rather than in terms of a proportion or ratio between the authorized number of officers in the Civil Engineer Corps and in the line.

§ 5593. Regular Navy: Medical Service Corps: maximum number of ensigns appointed annually.

(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Medical Service Corps in the grade of ensign is the same percentage of the number of appointments made in that year to the active list in the line in the grade of ensign as the authorized number of officers on the active list in the Medical Service Corps in that year is of the authorized number of officers on the active list in the line.

(b) If, in any year, the ratio of the number of officers on the active list in the Medical Service Corps to the number of officers on the active list in the line is less than the ratio of the number of officers authorized to be on the active list in the Medical Service Corps in that year to the number of officers authorized to be on the active list in the line, the number of appointments in that year to the active list in the Medical Service Corps in the grade of ensign may be increased as the President determines necessary to meet the needs of the service, not to exceed the number required to equalize these ratios. (Aug. 10, 1956, ch. 1041, 70A Stat. 328.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5593	34 U. S. C. 5b (as applicable to appointments in Medical Service Corps).	Aug. 7, 1947, ch. 512, § 409 (as applicable to appointments in Medical Service Corps), 61 Stat. 873.

Subsection (a) is written in terms of the "maximum number of appointments that may be made in any year" to show that the section is a limitation on the authority to make original appointments in the grade of ensign in the Medical Service Corps.

Since the authorized number of officers on the active list of the Navy in the Medical Service Corps is not a fixed number but varies from year to year according to the actual number of members on active duty in certain grades, such as midshipmen and warrant officers, it is necessary in both subsections (a) and (b) to insert the words "in that year".

§ 5594. Regular Navy: Nurse Corps: maximum number of ensigns appointed annually.

(a) Subject to subsection (b), the maximum number of appointments that may be made in any year to the active list of the Navy in the Nurse Corps in the grade of ensign is the same percentage of the number of appointments made in that year to the active list in the line in the grade of ensign as the authorized number of officers on the active list in the Nurse Corps in that year is of the authorized number of officers on the active list in the line.

(b) If, in any year, the ratio of the number of officers on the active list in the Nurse Corps to the number of officers on the active list in the line is less than the ratio of the number of officers authorized to be on the active list in the Nurse Corps in that year to the number of officers authorized to be on the active list in the line, the number of appointments in that year to the active list in the Nurse Corps in the grade of ensign may be increased as the President determines necessary to meet the needs of the service, not to exceed the number required to equalize these ratios. (Aug. 10, 1956, ch. 1041, 70A Stat. 328.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5594	34 U. S. C. 5b (as applicable to appointments in Nurse Corps).	Aug. 7, 1947, ch. 512, § 409 (as applicable to appointments in Nurse Corps), 61 Stat. 873.

Subsection (a) is written in terms of the "maximum number of appointments that may be made in any year" to show that the section is a limitation on the authority to make original appointments in the grade of ensign in the Nurse Corps.

Since the authorized number of officers on the active list of the Navy in the Nurse Corps is not a fixed number but varies from year to year according to the actual number of members on active duty in certain grades, such as midshipmen and warrant officers, it is necessary in both subsections (a) and (b) to insert the words "in that year".

§ 5595. Regular Marine Corps: restriction on appointments of former midshipmen and cadets.

No person who was a midshipman at the United States Naval Academy or who was a cadet at the United States Military Academy may be appointed in a commissioned grade in the Regular Marine Corps until after the graduation of the class of which he was a member. (Aug. 10, 1956, ch. 1041, 70A Stat. 328.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5595	34 U. S. C. 635.	Aug. 29, 1916, ch. 417, 39 Stat. 611 (4th proviso).

The word "Regular" is inserted before the words "Marine Corps" to conform to the long-standing interpretation that this provision applies only to the Regular Marine Corps. This interpretation is based on the fact that the act of Aug. 29, 1916, of which this provision is a part, established the Marine Corps Reserve, and a distinction between members of the Reserve and members of the "Marine Corps" is apparent throughout the act. The words "No person who was a midshipman * * * or who was a cadet" are substituted for the words "No midshipman * * * or cadet" for clarity and the words "who fails to graduate therefrom" are omitted as surplusage. The words "in a commissioned grade" are substituted for the words "as a commissioned officer" for uniformity of expression.

§ 5596. Navy and Marine Corps: temporary appointments.

(a) Temporary appointments may be made under this section only when the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy. Officers in a category covered by subsection (g) are not considered as officers on active duty for the purpose of this section.

(b) Temporary appointments in the Regular Navy, except in the Nurse Corps, in grades not above lieutenant and in the Regular Marine Corps in grades not above captain may be made from—

(1) warrant officers of the Regular Navy and the Regular Marine Corps, respectively; and

(2) chief and first-class petty officers of the Regular Navy and master, technical, and staff sergeants of the Regular Marine Corps, respectively.

(c) Temporary appointments in the Naval Reserve, except in the Nurse Corps, in grades not above lieutenant and in the Marine Corps Reserve in grades not above captain may be made from—

(1) warrant officers of the Naval Reserve and the Marine Corps Reserve, respectively, on active duty; and

(2) chief and first-class petty officers of the Naval Reserve and master, technical, and staff sergeants of the Marine Corps Reserve, respectively, on active duty.

(d) Temporary appointments in warrant officer grades under this section shall be made by the Secretary of the Navy under such regulations as he prescribes. Such appointments shall be made by warrant if in the grade of warrant officer, W-1, or by commission if in a higher warrant officer grade.

(e) The number of persons appointed in the Regular Navy under this section in grades above chief warrant officer, W-4, may not exceed the difference between the actual number of officers on the active list of the Navy in the line or in the staff corps concerned and the authorized number of such officers. The number of persons so appointed in the Regular Marine Corps under this section in grades above chief warrant officer, W-4, may not exceed the difference between the actual number of officers on the active list of the Marine Corps and the authorized number of such officers.

(f) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(g) The following members of the naval service are ineligible for temporary appointments under this section:

(1) Women members.

(2) Retired members.

(3) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty for training.

(4) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

(5) Members of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(h) The President may terminate any appointment made under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 328.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5596 (a)	34 U. S. C. 3d.	Aug. 7, 1947, ch. 512, § 301, 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108.
5596 (b)	34 U. S. C. 3c (c).	Aug. 7, 1947, ch. 512, § 302 (c), 61 Stat. 830.
5596 (c)	34 U. S. C. 3c (h) (less 14th through 53d words).	Aug. 7, 1947, ch. 512, § 302 (h) (less 14th through 53d words), 61 Stat. 830.
5596 (d)	34 U. S. C. 135a (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 135c (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 330 (last sentence as applicable to temporary promotions).	May 29, 1954, ch. 249, § 3 (a) (3d sentence as applicable to temporary appointments), 68 Stat. 158. May 29, 1954, ch. 249, § 5 (a) (last sentence as applicable to temporary appointments), 68 Stat. 159. May 29, 1954, ch. 249, § 7 (last sentence as applicable to temporary promotions), 68 Stat. 159.
5596 (e)	34 U. S. C. 3c (g); 34 U. S. C. 626-1 (a).	Aug. 7, 1947, ch. 512, § 302 (g), 61 Stat. 830.

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5596 (f)	34 U. S. C. 3c (e); 34 U. S. C. 135a (b).	Aug. 7, 1947, ch. 512, § 314 (a), 61 Stat. 863. Aug. 7, 1947, ch. 512, § 302 (e), 61 Stat. 830. May 29, 1954, ch. 249, § 3 (b), 68 Stat. 158.
5596 (g)	34 U. S. C. 105j; 34 U. S. C. 625h (a); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers"); 34 U. S. C. 3c (h) (14th through 53d words).	June 12, 1948, ch. 449, § 215, 62 Stat. 370. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 302 (h), (14th through 53d words), 61 Stat. 830.
5596 (h)	34 U. S. C. 306h (as applicable to temporary appointments under 34 U. S. C. 3c (c)).	Aug. 7, 1947, ch. 512, § 316 (d), (as applicable to temporary appointments under § 302 (c)), 61 Stat. 867.

Since appointments under this section are either made, or not made, in the discretion of the President, the proviso of 34 U. S. C. 3d, authorizing the President to suspend the operation of this section with respect to lieutenants (junior grade) and lieutenants in the Navy and first lieutenants and captains in the Marine Corps, is omitted from subsection (a) as unnecessary.

In subsections (b) and (c) the words "and above" have been executed by naming the grades they imply, to wit, chief petty officers and master and technical sergeants. In the statement of the grades to which appointments may be made, the words "including the grades of warrant officer and commissioned warrant officer" are omitted as surplusage. In the list of persons who may be appointed, reference to commissioned warrant officers is omitted because they are included within the term "warrant officers."

In subsection (f) the words "do not change the * * * status" are substituted for the words "appointments * * * shall not be vacated." The word "advancement", the words "in accordance with laws relating to the Regular Navy or Marine Corps", and the words "privileges and gratuities" are omitted as surplusage. The first proviso is omitted as unnecessary in view of the Career Compensation Act of 1949.

In subsection (g) (2) that portion of 34 U. S. C. 3c (a) which excludes officers on the retired list from the definition of the word "officers" is treated as precluding the appointment of such officers under this section. There is no express statement of law making retired enlisted members ineligible for such appointments; however, the context indicates this to be the intent of Congress. In subsection (g) (3) that portion of 34 U. S. C. 3c (a) which excludes officers on active duty for training from the definition of the word "officers" is treated as precluding the appointment of persons on training duty under this section. While there is no statement of law making enlisted members of the Naval Reserve and the Marine Corps Reserve on active duty for training ineligible for appointments under this section, the context indicates this to be the intent of Congress and clause (3) is thus written. The exception as to the Fleet Reserve is omitted as unnecessary inasmuch as, pursuant to the Armed Forces Reserve Act of 1952, the Fleet Reserve is no longer a part of the Naval Reserve but is a separate and distinct component of the Navy.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 3c (g) of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Coast Guard warrant officers, temporary appointments, see section 214 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 415.

§ 5597. Navy and Marine Corps: temporary appointments in time of war or national emergency.

(a) Temporary appointments may be made under this section only in time of war or during a national emergency declared by the President.

(b) Temporary appointments in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain may be made from—

(1) warrant officers of the Regular Navy and the Regular Marine Corps, respectively, including retired members on active duty;

(2) chief and first-class petty officers of the Regular Navy and master, technical, and staff sergeants of the Regular Marine Corps, respectively, including retired members on active duty; and

(3) chief and first-class petty officers of the Fleet Reserve and master, technical, and staff sergeants of the Fleet Marine Corps Reserve, respectively, on active duty.

(c) Temporary appointments in the Naval Reserve in grades not above lieutenant and in the Marine Corps Reserve in grades not above captain may be made from—

(1) warrant officers of the Naval Reserve and the Marine Corps Reserve, respectively, on active duty; and

(2) chief and first-class petty officers of the Naval Reserve and master, technical, and staff sergeants of the Marine Corps Reserve, respectively, on active duty.

(d) Temporary appointments in warrant officer grades under this section shall be made by the Secretary of the Navy under such regulations as he prescribes. Such appointments shall be made by warrant if in the grade of warrant officer, W–1, or by commission if in a higher warrant officer grade.

(e) Temporary appointments under this section in grades above chief warrant officer, W–4, shall be made under regulations prescribed by the President and in such numbers as he determines the needs of the service require. Such appointments shall be made by the President alone, except that appointments under subsections (f) and (g) in grades above captain in the Navy shall be made by the President, by and with the advice and consent of the Senate. The grade of commodore is established for the purposes of subsections (f) and (g).

(f) Temporary appointments in a staff corps and in the line or in a different staff corps of the Regular Navy may be made from retired officers of the Regular Navy in the line and staff corps, respectively, who

are on active duty. Each officer appointed under this subsection shall be appointed in the grade in which he was serving at the time of appointment.

(g) Temporary appointments in a staff corps and in the line or in a different staff corps of the Naval Reserve may be made from retired officers of the Naval Reserve in the line and staff corps, respectively, who are on active duty. Each officer appointed under this subsection shall be appointed in the grade in which he was serving at the time of appointment.

(h) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits.

(i) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance or oath of office, regarded as accepted on the date made.

(j) Temporary appointments under this section are effective for such periods as the President determines. However, no such appointment may be effective later than—

(1) six months after the end of the war or national emergency; or

(2) the date the appointee is released from active duty;

whichever is earlier.

(k) When his temporary appointment under this section is terminated, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 330; Sept. 7, 1962, Pub. L. 87-649, §§ 5(a), 14c(28), 76 Stat. 493, 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5597 (a)	34 U. S. C. 350 (as applicable to appointments); 34 U. S. C. 211a (n).	July 24, 1941, ch. 320, § 1 (as applicable to appointments), 55 Stat. 603.
5597 (b)	34 U. S. C. 350a (b); 34 U. S. C. 350c (a).	Aug. 7, 1947, ch. 512, § 304 (n), 61 Stat. 840; June 30, 1951, ch. 196, § 1 (e), 65 Stat. 108.
5597 (c)	34 U. S. C. 350j (a) (less proviso).	July 24, 1941, ch. 320 § 2 (b), 55 Stat. 603.
5597 (d)	34 U. S. C. 135a (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 135c (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 330 (last sentence as applicable to temporary promotions).	July 24, 1941, ch. 320, § 4 (a), 55 Stat. 603. July 24, 1941, ch. 320, § 11 (a) (less proviso), 55 Stat. 605; added June 29, 1945, ch. 194, § 2, 59 Stat. 262. May 29, 1954, ch. 249, § 3 (a) (3d sentence as applicable to temporary appointments), 68 Stat. 158.
5597 (e)	34 U. S. C. 350d (a) (as applicable to appointments); 34 U. S. C. 350e (less 1st sentence).	May 29, 1954, ch. 249, § 5 (a) (last sentence as applicable to temporary appointments), 68 Stat. 159.
5597 (f)	34 U. S. C. 350a (c) (1st 31 words).	May 29, 1954, ch. 249, § 7 (last sentence as applicable to temporary promotions), 68 Stat. 159.
5597 (g)	34 U. S. C. 350j (a) (proviso, as applicable to appointments).	July 24, 1941, ch. 320, § 5 (a) (as applicable to appointments), 55 Stat. 603; renumbered and amended, June 30, 1951, ch. 196, § 2, 65 Stat. 109.
5597 (h)	34 U. S. C. 350f (a) (less 1st, 3d, and 4th provisos); 34 U. S. C. 350a (c) (less 1st 31 words); 34 U. S. C. 350j (a) (proviso, less applicability to appointments); 34 U. S. C. 135a (b).	July 24, 1941, ch. 320, § 6 (less 1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531 (b) (28), 63 Stat. 839.
5597 (i)	34 U. S. C. 350k (as applicable to appointments).	July 24, 1941, ch. 320, § 2 (c) (1st 31 words); added June 29, 1945, ch. 194, § 1, 59 Stat. 262.
5597 (j)	34 U. S. C. 350i (a) (1st sentence as applicable to appointments).	
5597 (k)	34 U. S. C. 350i (a) (1st 25 words of 2d sentence); 34 U. S. C. 350f (a) (1st 34 words).	July 24, 1941, ch. 320, § 11 (a) (proviso, as applicable to appointments); added June 29, 1945, ch. 194, § 2, 59 Stat. 262. July 24, 1941, ch. 320, § 7 (a) (less 1st, 3d, and 4th provisos), 55 Stat. 604; Nov. 30, 1942, ch. 643, 56 Stat. 1023. July 24, 1941, ch. 320, § 2 (c) (less 1st 31 words); added June 29, 1945, ch. 194, § 1, 59 Stat. 262. July 24, 1941, ch. 320, § 11 (a) (proviso, less applicability to appointments); added June 29, 1945, ch. 194, § 2, 59 Stat. 262. May 29, 1954, ch. 249, § 3 (b), 68 Stat. 158. July 24, 1941, ch. 320, § 12 (as applicable to appointments); added May 22, 1950, ch. 193, § 3, 64 Stat. 187. July 24, 1941, ch. 320, § 10 (a) (1st sentence as applicable to appointments), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28. July 24, 1941, ch. 320, § 10 (a) (1st 25 words of 2d sentence), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28. July 24, 1941, ch. 320, § 7 (1st 29 words), 55 Stat. 604.)

HISTORICAL AND REVISION NOTES—Continued

The act of July 24, 1941, ch. 320, as amended (34 U. S. C. 350 et seq.), is codified in this section only to the extent that it authorizes original temporary appointments. The temporary promotion aspects of the law are codified in Chapter 545.

In subsection (a) the first five words of 34 U. S. C. 350 are omitted as unnecessary. The words "authority granted * * * shall be exercised only" have been executed by identifying the authority to be exercised. The provisions of 34 U. S. C. 211a (n) are omitted as being no longer necessary. They were included in the Officer Personnel Act of 1947 in order to prevent exercise of the authority granted in 34 U. S. C. 350—350j during the period between Aug. 7, 1947, and the declaration of a subsequent war or emergency. That purpose has been served. The 1951 amendment, authorizing the President to suspend the operation of the subsection, was enacted after the declaration of a new emergency to remove any possible doubt as to the President's authority to make appointments under 34 U. S. C. 350—350j during that emergency. Since the prohibition as to such appointments was temporary and its period of operation has expired, there is no need to codify either the prohibition or the President's power to suspend it.

In subsection (b) the words "in such manner", in 34 U. S. C. 350d (a), are omitted as unnecessary. The proviso in 34 U. S. C. 350d (a) is omitted because it is construed to apply only to temporary promotions and not to original temporary appointments. The words "rank or", in 34 U. S. C. 350e, are omitted as surplusage. The words "under subsections (e) and (f)" are inserted for clarity.

In subsection (b) reference to commissioned warrant officers is omitted because they are included within the term warrant officers. The words "chief and first-class petty officers" are substituted for the words "First-class petty officers and above" and the words "master, technical, and staff sergeants" are substituted for the words "platoon or staff sergeants and above" for clarity. The grade of platoon sergeant was abolished by administrative action. The second sentence of 34 U. S. C. 350c (a) is omitted as unnecessary, since it is covered by the Career Compensation Act of 1949.

Subsection (c) is a restatement of the substance of subsection (b) in terms of the Naval Reserve and the Marine

Corps Reserve as authorized by 34 U. S. C. 350j (a). The words "except the Fleet Reserve" and "except the Fleet Marine Corps Reserve" in 34 U. S. C. 350j (a) are omitted as unnecessary, since the effect of the Armed Forces Reserve Act of 1952 is to remove these organizations from the Naval Reserve and the Marine Corps Reserve.

In subsection (h) the words "do not change the * * * status" are substituted for the words "appointments * * * shall not be vacated". The word "advancement", the words "in accordance with laws relating to the Regular Navy and Marine Corps", and the words "privileges and gratuities" are omitted as surplusage.

34 U. S. C. 350i (a) states that personnel of the regular components, other than retired personnel, shall resume their permanent status when their temporary appointments terminate. It is silent as to reserve and retired personnel remaining on active duty after the termination date. However, 34 U. S. C. 350f (a) provides that these temporary appointments shall not affect the prior permanent, probationary, or acting appointments of appointees. Read together, these sections indicate that all personnel, if on active duty when their temporary appointments terminate, revert to whatever status they had before. Subsection (k) is worded accordingly.

AMENDMENTS

1962—Subsec. (h). Pub. L. 87-649, 14c(28), repealed sentence which prohibited a person receiving a temporary appointment under this section from suffering any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (i). Pub. L. 87-649, § 5(a), eliminated provisions which related to pay and allowances of members receiving temporary appointments. See section 905(g) of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Coast Guard warrant officers, temporary appointments, see section 214 of Title 14, Coast Guard.

Distribution in grade—

Line officers on active duty in Navy appointed under this section, grade counted, see section 5442 (i) of this title.

Marine Corps officers on active duty appointed under this section, grade counted, see section 5443 (j) of this title.

Staff officers on active duty in Navy appointed under this section, grade counted, see section 5444 (f) of this title.

Lineal lists—

Exclusion from, see section 5540 of this title.

Permanent grade on, see section 5504 (d) of this title.

Pay and allowances of members appointed under this section, see section 905(g) of Title 37, Pay and Allowances of the Uniformed Services.

Ranks of officers in grade of commodore, see section 5501 (b) of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 5442, 5443, 5444, 5501, 5504, 5786, 6325, 6488 of this title; title 37 sections 415, 905.

§ 5598. Naval Reserve and Marine Corps Reserve: temporary appointments in time of war or national emergency.

(a) In time of national emergency declared by the President or by Congress, and in time of war, temporary appointments may be made in any commissioned grade in the Naval Reserve or the Marine Corps Reserve from qualified persons.

(b) Appointments under this section in the grades of chief warrant officer, W-2, chief warrant officer, W-3, and chief warrant officer, W-4, shall be made by the Secretary of the Navy, by commission, under such regulations as he prescribes.

(c) An officer appointed under this section may be ordered to active duty for such period as the President prescribes.

(d) An appointment under this section may be vacated by the President at any time. Unless sooner vacated, the appointment is effective during the war or emergency in which it is made and for six months thereafter.

(e) The appointment of a permanent warrant officer to a higher grade under this section does not vacate his permanent grade or prejudice any right, privilege, benefit, or promotion status to which he was entitled because of his permanent grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 331.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5508 (a)	34 U. S. C. 1050 (1st sentence, less 56th through 75th words).	July 9, 1952, ch. 608, § 411 (1st sentence, less 56th through 75th words), 66 Stat. 499.
5508 (b)	34 U. S. C. 135a (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 135c (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 330 (last sentence as applicable to temporary promotions).	May 29, 1954, ch. 249, § 3 (a) (3d sentence as applicable to temporary appointments), 68 Stat. 158. May 29, 1954, ch. 249, § 5 (a) (last sentence as applicable to temporary appointments), 68 Stat. 159. May 29, 1954, ch. 249, § 7 (last sentence as applicable to temporary promotions), 68 Stat. 159.
5508 (c)	50 U. S. C. 1050 (1st sentence, 56th through 75th words).	July 9, 1952, ch. 608, § 411 (1st sentence, 56th through 75th words), 66 Stat. 499.
5508 (d)	50 U. S. C. 1050 (less 1st sentence).	July 9, 1952, ch. 608, § 411 (less 1st sentence), 66 Stat. 499.
5508 (e)	34 U. S. C. 135a (b).	May 29, 1954, ch. 249, § 3 (b) 68 Stat. 158.

In subsection (a) the words "(including persons who hold no Regular or Reserve status)" are omitted as surplusage. The words "the President is authorized to appoint" are omitted because they are covered as to appointments in grades above chief warrant officer, W-4, by § 593 of this title, and they are superseded as to appointments in warrant officer grades by the provisions of the Warrant Officer Act of 1954 that are cited to subsection (b) of this section.

The last sentence of 50 U. S. C. 1050 is omitted as unnecessary.

§ 5599. Medical Corps: acting appointments for temporary service.

(a) Appointments for temporary service in the Medical Corps in the grade of lieutenant (junior grade) may be made by the President alone.

(b) Appointees under this section may not be placed on the lineal list, may not be assigned running mates, and are ineligible for promotion. The number of such appointees may not be more than 250 at any time, except that in time of war or declared national emergency the number may be increased by the President as he considers necessary to meet the needs of the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 331.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5599	34 U. S. C. 21.	May 4, 1898, ch. 234, 30 Stat. 380 (last full par.); Mar. 18, 1940, ch. 65, 54 Stat. 54; Mar. 17, 1941, ch. 17, 55 Stat. 43; Aug. 8, 1946, ch. 884, 60 Stat. 932; Aug. 7, 1947, ch. 512, § 424, 61 Stat. 879.

The pay provisions are omitted as they are now covered by the Career Compensation Act of 1949.

The words "without the advice and consent of the Senate" are omitted and the word "alone" is inserted after the word "President" to conform to the appointment language used in the Constitution. The words "In addition to the number of officers of the Medical Corps of the Navy authorized by other provisions of law" are omitted as unnecessary. The only statutory limitation affecting the strength of the Medical Corps is a limitation on the total number of officers authorized to be on the active list in that corps. Since appointees under this section do not hold permanent appointments, they are not on the active list as defined in this title.

§ 5600. Naval Reserve and Marine Corps Reserve: service credit upon original appointment.

(a) For the purpose of determining his grade and lineal position, a person may be credited, at the time of his original appointment as an officer of the Naval Reserve or the Marine Corps Reserve, with an amount of service in an active status that will reflect his combined years of experience and education and such other qualifications as the Secretary of the Navy prescribes by regulations. The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives by March 1 of each year on the number, categories, and grades of reserve officers (other than in the Medical Corps or Dental Corps) originally appointed in the reserve grade of lieutenant in the Naval Reserve, or captain in the Marine Corps Reserve, or above, during the preceding calendar year.

(b) For the purposes of this section—

(1) a person appointed in the Naval Reserve in any of the following corps shall be credited with at least the following amounts of service in an active status:

(A) Medical Corps—4 years;

(B) Dental Corps—3 years;

(C) Chaplain Corps—3 years;

(D) Judge Advocate General's Corps—3 years;

(2) a person who is appointed in the Naval Reserve in the Medical Service Corps, and who holds a degree of doctor of philosophy or a comparable degree in a science allied to medicine as determined by the Secretary, may be credited with at least 3 years of service in an active status.

(Added Pub. L. 85-861, § 1 (121) (A), Sept. 2, 1958, 72 Stat. 1494, and amended Pub. L. 86-559, § 1(41), June 30, 1960, 74 Stat. 274; Pub. L. 90-179, § 5(4), Dec. 8, 1967, 81 Stat. 548.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5600	50: 1191.	Sept. 3, 1954, ch. 1257, § 201, 68 Stat. 1150; June 30, 1955, ch. 247, § 1 (a), 69 Stat. 218.

AMENDMENTS

1967—Subsec. (b)(1). Pub. L. 90-179, § 5(4)(A), added subpar. (D).

Subsec. (b)(2), (3). Pub. L. 90-179, § 5(4)(B), (C), struck out former par. (2) which provided that a person appointed in the Naval Reserve with a view to designation as a law specialist should be credited with at least 3 years of service in an active status and renumbered former par. (3) as par. (2).

1960—Subsec. (a). Pub. L. 86-559 eliminated words "who is not already an officer in an armed force in a permanent grade above chief warrant officer, W-4," which preceded "may be credited", and inserted sentence requiring an annual report to the Committees on Armed Services of the Senate and House of Representatives.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or of national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5601. Repealed. Pub. L. 89-609, § 1(10), Sept. 30, 1966, 80 Stat. 853.

Section, Pub. L. 85-861, § 1(121)(A), Sept. 2, 1958, 72 Stat. 1495, authorized appointment of men in the Naval Reserve in the Nurse Corps.

Chapter 541.—RUNNING MATES

Sec.
5651. Eligibility of officers to be running mates.
5652. Regular Navy: lieutenants (junior grade).
5652a. Regular Navy: lieutenants (junior grade); Medical and Dental Corps.
5652b. Regular Navy: lieutenants (junior grade) originally appointed as ensigns under section 2106, 2107, 5573, or 6909 of this title.
5652c. Regular Navy: officers appointed from the Naval Reserve or from temporary officers.
5653. Regular Navy: lieutenants and above.
5654. Regular Navy: transfers from line.
5655. Naval Reserve: officers ordered to active duty.
5656. Reassignment: running mate separated, released, or loses numbers.
5657. Reassignment: staff corps officer promoted.
5658. Reassignment: staff corps officer not promoted.
5659. Reassignment: staff corps officer loses numbers.
5660. Reassignment: running mate advanced.
5661. Reassignment: staff corps officer advanced.
5662. Suspension: preceding sections.
5663. Application: preceding sections.
5664. Regular Navy: women staff corps officers appointed under section 5590 of this title.
5665. Naval Reserve and Marine Corps Reserve: active status officers in permanent grades above chief warrant officer, W-4.
5666. Appointments for limited duration not considered.

AMENDMENTS

1964—Pub. L. 88-647, title III, § 301(14)(A), Oct. 13, 1964, 78 Stat. 1072, substituted "2106, 2107, 5573" for "5573, 6904, 6906" in item 5652b.

1958—Pub. L. 85-861, § 1(123)(B), (125)(B), Sept. 2, 1958, 72 Stat. 1496, 1497, added items 5652a—5652c and 5665.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5752, 5753, 5760, 5762, 5763, 5771, 5773, 5776 of this title.

§ 5651. Eligibility of officers to be running mates.

(a) To be eligible to be the running mate of a staff corps officer not restricted in the performance of duty, a line officer must be an officer who is not restricted in the performance of duty.

(b) To be eligible to be the running mate of a staff corps officer designated for limited duty, a line officer must be an officer who is designated for limited duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5651	34 U. S. C. 306f (d) (13).	Aug. 7, 1947, ch. 512, § 311 (d) (13), 61 Stat. 858.

This section is phrased in terms of the eligibility of line officers to be running mates in order to permit reference back to this basic rule by the insertion of the word "eligible" before the words "line officer" in subsequent sections.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.) by President, see section 5662 of this title.

§ 5652. Regular Navy: lieutenants (junior grade).

(a) Except as provided in sections 5652a, 5652b, 5652c, 5653, and 5654 of this title, officers serving in the grade of lieutenant (junior grade) on the active list of the Navy in each staff corps who have dates of rank in the same calendar year shall, after the end of that calendar year, have assigned to them, in the order of their lineal rank, running mates from among eligible line officers who are serving on active duty in the grade of lieutenant (junior grade) and who have dates of rank in the same calendar year as the staff corps officers.

(b) The officer to be assigned as the running mate of a staff corps officer under this section is the eligible line officer whose numerical position in the order of lineal rank, among the line lieutenants (junior grade) on active duty having dates of rank in the same calendar year as the staff corps officer, most nearly equals the product of—

(1) the numerical position of the staff corps officer in his order of lineal rank as determined under subsection (c) or (d); and

(2) a fraction, of which—

(A) the numerator is the number of line lieutenants (junior grade) on active duty having dates of rank in the same calendar year as the staff corps officer; and

(B) the denominator is the number of lieutenants (junior grade) in the staff corps concerned who have dates of rank in the same calendar year as such staff corps officer and who are to have running mates assigned to them under this section.

However, if in any year there is only one lieutenant (junior grade) in any corps to have a running mate assigned to him under this section, the officer to be so assigned is the eligible line officer whose numerical position is nearest the middle of the line lieutenants (junior grade) on active duty having dates of rank in the same calendar year as the staff corps officer.

(c) In each staff corps in which officers may be originally appointed either in the grade of ensign or in that of lieutenant (junior grade), all the lieutenants (junior grade) who are to have running mates assigned to them under this section at any one time are regarded, for the purpose of this section, as having lineal rank among themselves in the order recommended in the approved report of a board of officers of the corps concerned. Such boards shall be convened as soon as practicable after the end of each calendar year, and their recommendations, when approved by the Secretary of the Navy, are conclusive.

(d) In each staff corps in which appointments in the grade of ensign are not authorized, all the lieutenants (junior grade) who are to have running mates assigned to them under this section at any one time are regarded, for the purposes of this section, as having lineal rank among themselves in the chronological order of their dates of rank. **(Aug. 10, 1956, ch. 1041, 70A Stat. 332; Sept. 2, 1958, Pub. L. 85–861, § 1 (122), 72 Stat. 1495.)**

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5652	34 U. S. C. 306f (d) (3); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (3), 61 Stat. 856. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

Officers of the Naval Reserve are excepted from this section inasmuch as the method for the assignment of their running mates is provided in § 5655 of this title.

Officers appointed to a staff corps by transfer from the line are excepted from subsection (a) because a different method of assigning running mates to such officers is provided in § 5654 of this title.

Subsection (d) is inserted for completeness. Authority for this statement is supplied by § 311 (d) (2) of the Officer Personnel Act of 1947, as amended (34 U. S. C. 306f (d) (2)).

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861, § 1(133)(A), eliminated provisions which excepted lieutenants (junior grade) appointed to the staff corps by transfer from the line, and which related to assignment of running mates for lieutenants (junior grade) in the Medical Corps.

Subsec. (b). Pub. L. 85–861, § 1(122)(B), substituted "same calendar year as the staff corps officer" for "calendar year prescribed in subsection (a)", and for "prescribed calendar year" in two instances.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.) by President, see section 5662 of this title.

§ 5652a. Regular Navy: lieutenants (junior grade); Medical and Dental Corps.

An officer appointed to the active list of the Navy in the grade of lieutenant (junior grade) in the

Medical Corps, the Judge Advocate General's Corps, or the Dental Corps shall have assigned as his running mate the junior eligible line officer serving on active duty in the grade of lieutenant (junior grade) with the same date of rank as himself or, if there is none, the junior eligible line officer serving on active duty in that grade with the next earlier date of rank. (Added Pub. L. 85–861, § 1(123)(A), Sept. 2, 1958, 72 Stat. 1495, and amended Pub. L. 90–179, § 12, Dec. 8, 1967, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5652a	10 App.: 91a (f). 10 App.: 121a (f). 34 App.: 21c (f). 34 App.: 51b (f).	Apr. 30, 1956, ch. 223, § 1 (6th par.), 70 Stat. 120.

The words "serving on active duty" are inserted to make clear that a reserve officer on inactive duty may not be assigned as a running mate and to conform to the usage in the other sections of this chapter.

AMENDMENTS

1967—Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5652 of this title.

§ 5652b. Regular Navy: lieutenants (junior grade) originally appointed as ensigns under section 2106, 2107, 5573, or 6909 of this title.

Each officer appointed to the active list of the Navy in the grade of ensign under section 2106, 2107, 5573, or 6909 of this title who is serving as a staff corps officer at the time of his promotion to the grade of lieutenant (junior grade) shall, upon that promotion, have assigned to him as his running mate the eligible officer serving on active duty in the grade of lieutenant (junior grade), with date of rank in the same calendar year, who would be next senior to him if the staff corps officer had been originally appointed in the grade of ensign in the line and had continued to serve as a line officer until the date of his promotion to the grade of lieutenant (junior grade), or, if there is none, the eligible line officer who would have been next junior to the staff corps officer. (Added Pub. L. 85–861, § 1(123)(A), Sept. 2, 1958, 72 Stat. 1495, and amended Pub. L. 88–647, title III, § 301(14)(B), Oct. 13, 1964, 78 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5652b	34 App.: 306f (d) (3) (last proviso).	June 15, 1956, ch. 389, § 1 (b), 70 Stat. 283.

AMENDMENTS

1964—Pub. L. 88–647 substituted "2106, 2107, 5573" for "5573, 6904, 6906" in the text and in the catchilne.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5652 of this title.

§ 5652c. Regular Navy: officers appointed from the Naval Reserve or from temporary officers.

An officer appointed to the active list of the Navy in a staff corps under section 5573a of this title shall have a running mate assigned to him under regulations to be prescribed by the President. (Added Pub. L. 85–861, § 1 (123) (A), Sept. 2, 1958, 72 Stat. 1496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5652c	[No source.]	[No source.]

This section is inserted to reflect 34 App.: 17 (b) (3). (See new section 5573a of this title and the revision note thereon.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5652, 5653 of this title.

§ 5653. Regular Navy: lieutenants and above.

The Secretary of the Navy shall assign a running mate to each officer whose original appointment to the active list of the Navy in a staff corps is in the grade of lieutenant or above. Except as provided in sections 5652c and 5654 of this title, the officer to be assigned as the running mate may be any eligible line officer on active duty having the same date of rank as the staff corps officer concerned in the highest grade, permanent or temporary, to which the staff corps officer is appointed. If no eligible line officer serving on active duty in that grade has the same date of rank as the staff corps officer, the officer to be assigned as his running mate is the junior eligible line officer on active duty having the next earlier date of rank in that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 333; Sept. 2, 1958, Pub. L. 85–861, § 1 (124), 72 Stat. 1496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5653	34 U. S. C. 306f (d) (4); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (4), 61 Stat. 856. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

The exception is inserted for clarity. Reference to the act of April 18, 1946, ch. 141, 60 Stat. 92, is omitted since authority to appoint officers in the Regular Navy and the Regular Marine Corps under that Act terminated on July 1, 1955. Officers of the Naval Reserve are excepted from this section inasmuch as the method for the assignment of their running mates is provided in § 5655 of this title.

AMENDMENTS

1958—Pub. L. 85–861 substituted "section 5652c and 5654 of this title" for "section 5654 of this title".

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5652 of this title.

§ 5654. Regular Navy: transfers from line.

When an officer on the active list in the line of the Navy is transferred to a staff corps in the grade of lieutenant (junior grade) or above, he shall have assigned to him as his running mate the eligible line officer on active duty who was next senior to him at the time of his transfer. (Aug. 10, 1956, ch. 1041, 70A Stat. 333.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5634	34 U. S. C. 306f (d) (6); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (6) 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

The words "Notwithstanding the provisions of paragraphs (3) and (4) of this subsection" are omitted as surplusage because officers appointed to a staff corps by transfer from the line are excepted from the codification of those paragraphs in §§ 5652 and 5653 of this title. Officers of the Naval Reserve are excepted from this section inasmuch as the method for the assignment of their running mates is provided in § 5655 of this title.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5652, 5653 of this title.

§ 5655. Naval Reserve: officers ordered to active duty.

When an officer of the Naval Reserve in a staff corps is ordered to active duty and placed on a lineal list, the Secretary of the Navy shall assign to him as his running mate an eligible line officer serving on active duty in the same grade and appropriate to his lineal position. (Aug. 10, 1956, ch. 1041, 70A Stat. 333.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5655	34 U. S. C. 306f (d) (5); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (5), 61 Stat. 856; Aug. 5, 1949, ch. 402, § 1 (d), 63 Stat. 568. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

The word "ordered" is substituted for the word "assigned". The words "upon assignment to active duty and appointment to adjust his precedence as provided in subsection 304 (o) (as amended) [34 U. S. C. 211a (o)] of this title" are omitted as surplusage. The words "lineal position" are substituted for the words "adjusted precedence" for uniformity of expression.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5656. Reassignment: running mate separated, released, or loses numbers.

If the running mate of a staff corps officer on active duty is separated from the active list, is released from active duty, or loses numbers, the staff corps officer shall have a new running mate assigned to him. The officer to be so assigned is the eligible line officer who was next senior to the former running mate, or if there is none, the eligible line officer who was next junior to him. (Aug. 10, 1956, ch. 1041, 70A Stat. 334.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5656	34 U. S. C. 306f (d) (7); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (7) 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5657. Reassignment: staff corps officer promoted.

(a) When a staff corps officer on active duty is promoted after selection, he shall have a running mate assigned to him in the higher grade. The officer to be so assigned is an eligible line officer serving in the higher grade whose name was placed on the promotion list for that grade upon approval of the report of the line selection board immediately preceding the staff corps selection board that selected the staff corps officer.

(b) The officer to be assigned as the running mate of a staff corps officer under subsection (a) is the same line officer who was the running mate of the staff corps officer before the staff corps officer was promoted, if the former running mate was selected for promotion by the line selection board immediately preceding the staff corps board. Otherwise, the officer to be assigned as the new running mate is the eligible line officer, among those so selected, who was next senior to the former running mate in the grade from which promoted, or the next junior if none senior were so selected.

(c) If a selection board for a grade in a staff corps is not convened between the dates of convening of two or more line selection boards for the grade, the earliest of those line selection boards is considered to be the line selection board immediately preceding the staff corps board for the purpose of this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 334.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5657	34 U. S. C. 306f (d) (8); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (8), 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5658. Reassignment: staff corps officer not promoted.

If the running mate of a staff corps officer on active duty is promoted to a higher grade and the staff corps officer is not so promoted, the staff corps officer shall have a new running mate assigned to him in the grade in which he remains. The officer to be so assigned is the eligible line officer in that grade who was next senior to the former running mate or, if there is none, the eligible line officer in that grade who was next junior to him. (Aug. 10, 1956, ch. 1041, 70A Stat. 334.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5658	34 U. S. C. 306f (d) (9); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (9), 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5659. Reassignment: staff corps officer loses numbers.

(a) If a staff corps officer not restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above loses numbers in grade, he shall have assigned to him as his new running mate the line officer who is the running mate of the most junior officer of his corps, not restricted in the performance of duty, who becomes senior to him as the result of his loss of numbers.

(b) If a staff corps officer restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above loses numbers in grade, he shall have assigned to him as his new running mate the line officer who is the running mate of the most junior officer of his corps, restricted in the performance of duty, who becomes senior to him as the result of his loss of numbers. (Aug. 10, 1956, ch. 1041, 70A Stat. 334.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5659	34 U. S. C. 306f (d) (10); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (10), 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

The rule stated in the source text is stated in subsection (a) for officers not restricted in the performance of duty and in subsection (b) for officers restricted in the performance of duty to avoid the erroneous implication that a restricted officer may have an unrestricted running mate or vice versa.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5660. Reassignment: running mate advanced.

If the running mate of a staff corps officer on active duty is advanced in numbers, or advanced in grade under section 5789 of this title, the staff corps officer shall have a new running mate assigned to him. The officer to be so assigned is the eligible line officer, not advanced, who was next senior to the former running mate before the advancement of such former running mate or, if there is none, the senior eligible line officer remaining in the grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5660	34 U. S. C. 306f (d) (11); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (11), 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line

of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5661. Reassignment: staff corps officer advanced.

(a) If a staff corps officer not restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above is advanced in numbers in his grade, he shall have assigned to him as his new running mate the running mate of the officer of his grade and corps, not restricted in the performance of duty, who is next senior to him in the position to which he is advanced or, if there is none, the running mate of the officer of his grade and corps, not restricted in the performance of duty, who is next junior to him in his new position.

(b) If a staff corps officer restricted in the performance of duty serving on active duty in the grade of lieutenant (junior grade) or above is advanced in numbers in his grade, he shall have assigned to him as his new running mate the running mate of the officer of his grade and corps, restricted in the performance of duty, who is next senior to him in the position to which he is advanced or, if there is none, the running mate of the officer of his grade and corps, restricted in the performance of duty, who is next junior to him in his new position. (Aug. 10, 1956, ch. 1041, 70A Stat. 335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5661	34 U. S. C. 306f (d) (12); 34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 311 (d) (12), 61 Stat. 857. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers") 61 Stat. 829.

The rule stated in the source text is stated in subsection (a) for officers not restricted in the performance of duty and in subsection (b) for officers restricted in the performance of duty to avoid the erroneous implication that a restricted officer may have an unrestricted running mate or vice versa.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Non-applicability of section to certain women, retired, and Reserve officers, see section 5663 of this title.

Suspension of provisions relating to lieutenant and lieutenant (j. g.), see section 5662 of this title.

§ 5662. Suspension: preceding sections.

(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) during any period when—

(1) the number of officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of officers on the active list in the line of the Navy; and

(2) he determines that the needs of the service so require.

(b) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5662 (a)	34 U. S. C. 3d.	Aug. 7, 1947, ch. 512, § 301, 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108.
5662 (b)	34 U. S. C. 3c.	Aug. 7, 1947, ch. 512, § 426 (c); added June 30, 1951, ch. 196, § 1 (h), 65 Stat. 109.

The suspension authority given in the source for subsection (b) permits suspension of provisions relating to "the distribution in grades, promotion by selection, involuntary retirement and discharge of officers." The assignment and reassignment of running mates is not specifically mentioned. However, the running mate system largely determines the distribution of staff corps officers in grades, governs their eligibility for promotion, and determines their attrition rate. It is therefore considered to be covered by the suspension provision.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5663 of this title.

§ 5663. Application: preceding sections.

(a) The preceding sections of this chapter do not apply to—

(1) women officers appointed under section 5590 of this title;

(2) women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title;

(3) retired officers;

(4) officers of the Navy Reserve assigned to active duty for training;

(5) officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve; or

(6) officers of the Naval Reserve ordered to temporary active duty to prosecute special work.

(b) For the purpose of the preceding sections of this chapter, officers listed in subsection (a) may not be included in any list for determining the numerical position in order of lineal rank of either line or staff corps officers, nor are they counted as officers serving on active duty for the purpose of section 5662 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 335.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5663 (a) (b).	34 U. S. C. 105j, 105k; 34 U. S. C. 3c (a) (as applicable to meaning of word "officers"); 34 U. S. C. 21e (less appointing authority and less provisos).	June 12, 1948, ch. 449, §§ 215, 217, 62 Stat. 370. Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 830. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

§ 5664. Regular Navy: women staff corps officers appointed under section 5590 of this title.

Women officers on the active list of the Navy appointed under section 5590 of this title in any staff corps shall have running mates assigned to them from among women officers on the active list in the line of the Navy. Running mates for such officers shall be assigned in the manner prescribed in this chapter for the assignment of running mates to other staff corps officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 336.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5664	34 U. S. C. 307(e); 34 U. S. C. 105k.	June 12, 1948, ch. 449, § 206 (e), 62 Stat. 364. June 12, 1948, ch. 449, § 217, 62 Stat. 370.

Reference to women officers appointed under the act of April 18, 1946, ch. 141, 60 Stat. 92, is omitted since the authority to appoint officers in the Regular Navy and the Regular Marine Corps under that act terminated on July 1, 1955.

This section codifies § 206 (e), as modified by § 217, of the Women's Armed Services Integration Act of 1948. Section 206 (e) provides that running mates shall be assigned to women staff corps officers appointed in the Regular Navy under the 1948 act "in the manner prescribed by law now existing or hereafter enacted relating to the assignment of running mates to male staff officers of the Regular Navy". Section 215 of the 1948 act provides that title III of the Officer Personnel Act of 1947 shall not be applicable to women officers and that certain provisions of titles I and II, currently inoperative as to male officers, shall be operative as to women. The provisions of title III that are codified in this chapter are identical with their counterparts in title II except for the provisions codified in §§ 5653, 5655, and 5657. Sections 5653 and 5655 are not incorporated by (junior grade); and (2) this section covers regular officers reference in this section because (1) women officers cannot be initially appointed in grades above lieutenan. only. The difference between the source for § 5657 and its title II counterpart was immaterial and has been eliminated in the codification.

§ 5665. Naval Reserve and Marine Corps Reserve: active status officers in permanent grades above chief warrant officer, W-4.

(a) While in the grade of lieutenant (junior grade) or in a higher grade in which initially appointed, each officer in an active status in the Naval Reserve shall have a running mate of the same grade. Except as provided in subsection (d), the running mate shall be the officer not restricted in the performance of duty on the lineal list of line officers of the Navy who is next junior to the reserve officer.

(b) While in the grade of first lieutenant or in a higher grade in which initially appointed, each officer in an active status in the Marine Corps Reserve shall have a running mate of the same grade. Except as provided in subsection (d), the running mate shall be the officer not restricted in the performance of duty on the active list of the Marine Corps who is next junior to the reserve officer.

(c) An officer in an active status in the Naval Reserve or the Marine Corps Reserve who is assigned a running mate after the initial assignment under subsection (a) or (b) shall be assigned a running mate in accordance with the principles prescribed by this chapter for the assignment of running mates to staff corps officers on the active list of the Navy. However, except as provided in subsection (d), the running mate shall, whenever possible, be the officer not restricted in the performance of duty on the lineal list of line officers of the Navy or on the active list of the Marine Corps, as appropriate, who is next junior to the reserve officer.

(d) The running mate of a woman officer of the Naval Reserve, except an officer in the Nurse Corps or an officer appointed under section 5581 of this title, shall be the woman officer on the active list in the line of the Navy who is next junior to her. The running mate of a woman officer of the Marine Corps Reserve shall be the woman officer on the active list of the Marine Corps who is next junior to her.

(e) A reserve officer who was assigned a running mate under laws in effect before July 1, 1955, continues to have that running mate unless assigned a new one under subsection (c). (Added Pub. L. 85-861, § 1 (125) (A), Sept. 2, 1958, 72 Stat. 1496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5665	50: 1304. 50: 1307.	Sept. 3, 1954, ch. 1257, §§ 404, 407 (a) (1st sentence), 68 Stat. 1167, 1169.

In subsection (d), the words "except an officer in the Nurse Corps or an officer appointed under section 5581 of this title" are inserted because these officers, although of the female sex, are not "women officers" within the meaning of the Reserve Officer Personnel Act of 1954. Several sections of the source statute contain separate provisions for women officers and for officers of the Nurse Corps Reserve, and section 405 (a) recognizes the fact that the latter, like Regular Navy nurses, have lineal list line officers (all of whom are male) as running mates. The legislative history of the source statute and its amendments shows clearly that "women officers" and "officers of the Nurse Corps Reserve" were considered as two distinct categories. "Officers appointed under section 5581 of this title" constitute an additional category. There is no indication in the legislative history of the source statute that Congress had any intention to supersede, as to Reserves, the act of June 24, 1952, ch. 457 (66 Stat. 155; 34 U. S. C. 21e) (codified in section 5581 of this title). That act made applicable to women all laws authorizing

the appointment of men as officers in the Medical, Dental, and Medical Service Corps, and provided that all laws relating to male officers in these corps should also apply to women. Accordingly, women appointed in the Regular Navy pursuant to that act have male line officers as running mates and are considered for promotion with their male contemporaries. To provide the same treatment for women appointed in the Naval Reserve in these corps, it is necessary to exclude them from the provisions of the Reserve Officer Personnel Act of 1954 relating to "women officers". Throughout the latter act, it is apparent that Congress intended reserve officers in each category to be administered in a manner as similar as possible to the administration of regular officers in the same category.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5666. Appointments for limited duration not considered.

For the purpose of this chapter an officer serving in a grade to which he has been appointed for a period of limited duration is considered as serving in the grade he would hold if he had not been so appointed. (Aug. 10, 1956, ch. 1041, 70A Stat. 336.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5666	34 U. S. C. 3c (b) (proviso).	Aug. 7, 1947, ch. 512, § 302 (b) (proviso), 61 Stat. 829.

Chapter 543.—SELECTION BOARDS

Sec.
5701. Navy; line officers: promotion and continuation on the active list.
5702. Navy; staff corps officers: promotion and continuation on the active list.
5703. Marine Corps; officers: promotion and continuation on the active list.
5704. Navy and Marine Corps; women officers: promotion.
5705. Oath of members.
5706. Information furnished to boards.
5707. Officers to be recommended for promotion or continuation.
5708. Reports: certification required.
5709. Navy and Marine Corps: retention of rear admirals and major generals on the active list.
5710. Reports: submission to President or Secretary of the Navy.
5711. Suspension and exceptions: preceding sections.

AMENDMENTS

1961—Pub. L. 87-123, § 5(15), Aug. 3, 1961, 75 Stat. 265, substituted "and major generals on the active list" for ", major generals, and brigadier generals on the active list," in item 5709.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5450, 5751, 5753, 5754, 5756, 5757, 5758, 5760, 5761, 5762, 5763, 5764, 5765, 5769, 5771, 5772, 5776, 5891, 5906, 6384, 6407 of this title.

§ 5701. Navy; line officers: promotion and continuation on the active list.

(a) At least once each year the Secretary of the Navy shall convene the following selection boards to recommend male officers in the line of the Navy for promotion and continuation on the active list:

(1) A board to recommend rear admirals not restricted in the performance of duty for continuation on the active list, consisting of five officers of the Regular Navy on the active list or the retired list senior in permanent rank to all officers under consideration.

(2) A board to recommend captains restricted in the performance of duty for continuation on the active list, consisting of nine officers serving in the grade of rear admiral or above.

(3) A board to recommend captains for promotion to the grade of rear admiral and a board to recommend commanders for promotion to the grade of captain, each consisting of not less than nine officers serving in the grade of rear admiral or above.

(4) A board to recommend lieutenant commanders for promotion to the grade of commander, consisting of three officers serving in the grade of rear admiral and six officers serving in the grade of captain.

(5) A board to recommend lieutenants for promotion to the grade of lieutenant commander and a board to recommend lieutenants (junior grade) for promotion to the grade of lieutenant, each consisting of nine officers serving in the grade of captain or above.

(b) Except as provided in subsections (c) and (d), selection boards convened under clauses (2) through (5) of subsection (a) shall be composed of officers on the active list in the line of the Navy not restricted in the performance of duty.

(c) When officers designated for engineering duty, aeronautical engineering duty, or special duty are eligible for consideration by a selection board convened under subsection (a), the Secretary shall appoint, as alternate members of the board, three officers on the active list of the Navy of the same designation and classification as any such eligible officer. If three such officers are not available, he shall appoint as many as are available. Junior members of the board who are not restricted in the performance of duty, in like number, may not act upon the case of any officer designated for engineering duty, aeronautical engineering duty, or special duty. No alternate member may act upon the case of any officer who is not of the same designation as himself. When a board convened under subsection (a)(3) consists of more than nine members, only nine officers may act upon the case of any officer designated for engineering duty, aeronautical engineering duty, or special duty; namely, the three alternate members of the same designation as the officer under consideration (or the lesser available number of such officers) plus the number of the most senior members not restricted in the performance of duty necessary to make a total of nine.

(d) When officers of the Naval Reserve are eligible for consideration by a selection board convened under subsection (a), the Secretary shall appoint an appropriate number of reserve officers, otherwise qualified under this section, as members of the board and shall appoint officers on the active list of the Navy, qualified under this section, to complete the prescribed membership.

(e) No officer may be a member of two successive boards for the consideration of officers for promotion to the same grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 336; Feb. 26, 1970, Pub. L. 91-199, § 1, 84 Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5701	34 U. S. C. 306 (a).	Aug. 7, 1947, ch. 512, § 305 (a), 61 Stat. 841; June 23, 1950, ch. 344, § 3, 64 Stat. 253; June 30, 1951, ch. 196, § 1 (f), 65 Stat. 109.

In subsection (a) the words "these boards shall be appointed by the Secretary of the Navy" and the words "and at such other times as the Secretary of the Navy may direct" are omitted as surplusage. In subsection (a) (1) the words "or officers of higher grades" are omitted as surplusage. The words "not restricted in the performance of duty" are inserted in subsection (a) (1) because rear admirals in the line restricted in the performance of duty are not eligible to be considered by such a board.

In subsection (c) the last sentence of 34 U. S. C. 306 (a) (1) is omitted as surplusage.

Subsection (d) is inserted to reflect the effect on this section of § 254 of the Armed Forces Reserve Act of 1952 (50 U. S. C. 1005), which is codified in § 266 of this title.

AMENDMENTS

1970—Subsec. (a) (3). Pub. L. 91–199, § 1(1), substituted "not less than nine officers" for "nine officers".

Subsec. (c). Pub. L. 91–199, § 1(2), added provision that when the composition of the board exceeds nine, only nine officers could act upon the case of any officer designated for engineering duty, aeronautical engineering duty or special duty and set out the method of determining which nine officers would act.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

SUSPENSION OF CERTAIN PROVISIONS RELATING TO LINE REAR ADMIRALS.

For suspension of provisions under subsection (a) (1) of this section relating to continuation on active list of line rear admirals not restricted in performance of duty, see Ex. Ord. No. 11284, May 27, 1966, 31 F.R. 7669, set out as a note under section 6371 of this title.

OFFICER PERSONNEL ACT OF 1947

Titles I and II of the Officer Personnel Act of 1947, act Aug. 7, 1947, ch. 512, 61 Stat. 798, as amended by acts June 23, 1950, ch. 344, §§ 1(a) 2, 64 Stat. 250, 253; Apr. 30, 1956 ch. 223 § 4(1) 70 Stat. 121; Sept. 2, 1958, Pub. L. 85–861, § 8, 72 Stat. 1556; June 28, 1962, Pub. L. 87–509, § 4(b), 76 Stat. 121 provided:

"TITLE I—PERMANENT PROVISIONS RELATING TO OFFICERS OF THE LINE OF THE NAVY

"PERMANENT STATUS OF TITLE I

"SEC. 101. The provisions of this title shall constitute permanent, as distinguished from terminable, provisions of law relating to the distribution of commissioned officers in the various grades of the line of the Regular Navy, to the promotion of such officers to the grades above that of lieutenant (junior grade), and to the involuntary separation from the active list.

"DEFINITIONS

"SEC. 102. (a) As used in this title, the word 'officers' shall be held to mean commissioned officers holding permanent appointments as such on the active list in the line of the Regular Navy. Unless otherwise qualified, it shall be held to include officers designated for engineering duty, aeronautical engineering duty, special duty, and limited duty, and to exclude commissioned warrant officers. [See §§ 5447, 5448 of this title.]

"(b) As used in this tile, military titles shall be held to describe an officer or officers, as the case may be, holding permanent appointment on the active list in the line of the Regular Navy in the grade concerned. [See §§ 5447, 5448 of this title.]

"(c) As used in this title, the words 'not restricted in the performance of duty' shall be held to describe officers not designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or officers of the Marine Corps not designated for supply duty or limited duty.

"(d) For the purposes of this title in respect to eligibility for continuation on the active list and in respect to separation from the active list, the total commissioned service of an officer who shall have served continuously in the Regular Navy following appointment therein in the grade or rank of ensign upon graduation from the Naval Academy or pursuant to the Act of August 13, 1946 (Public Law 729, Seventy-ninth Congress), shall be computed from June 30 of the fiscal year in which he accepted such appointment. Each other officer shall be deemed to have for these purposes as much total commissioned service as any officer described above in this subsection who shall not have lost numbers or precedence and who is, or shall have been, junior to such other officer for the purpose of eligibility for promotion or selection for promotion since the date of the latter's first appointment to permanent commissioned rank in the Regular Navy above the grade of commissioned warrant officer, following which he shall have served continuously on the active list of the Regular Navy. [See § 6387 of this title.]

"(e) The words 'active-duty pay' as used in sections 112 and 113 of this title shall be construed to mean the base and longevity pay the retired officer concerned would receive if serving on active duty in his grade.

"DISTRIBUTION OF OFFICERS

"SEC. 103. (a) The total number of officers on the active list at any one time, exclusive of officers carried by law as additional numbers in grade and of fleet admirals, shall be distributed in the proportion of seventy-five one-hundredths of one in the grade of rear admiral, to six in the grade of captain, to twelve in the grade of commander, to eighteen in the grade of lieutenant commander, to twenty-four and seventy-five one-hundredths in the grade of lieutenant, to thirty-eight and fifty one-hundredths in the combined grades of lieutenant (junior grade) and ensign: *Provided,* That of the number of officers so authorized in each grade below captain, not to exceed the following percentages may be officers designated for limited duty: In the grade of commander three and sixty-four one hundredths; in the grade of lieutenant commander eight and sixty-two one hundredths; in the grade of lieutenant seven and seventy-two one-hundredths; and in the combined grades of lieutenant (junior grade) and ensign, six and four one-hundredths: *And provided further,* That, except in time of war or national emergency declared after the effective date of this Act, the number of rear admirals not restricted in the performance of duty shall not exceed one hundred and fifty. [Repealed. See §§ 5447, 5448 of this title.]

"(b) The total number of rear admirals designated for engineering duty, aeronautical engineering duty, and special duty shall not exceed at any one time a number equal to 13 per centum of the authorized number of officers, not restricted in the performance of duty, of the grade of rear admiral at that time: *Provided,* That, except in time of war or national emergency declared after the effective date of this Act, the number of such rear admirals shall not exceed nineteen. [Repealed. See § 5447 of this title.]

"(c) The total number of officers designated for engineering duty, in the combined grades of captain, commander, and lieutenant commander, shall not exceed at any one time a number equal to 9 per centum of the total number of officers, not restricted in the performance of duty, authorized in those grades at that time. [Repealed. See § 5447 of this title.]

"(d) The total number of officers designated for aeronautical engineering duty, in the combined grades of captain, commander, and lieutenant commander, shall not exceed at any one time a number equal to 5 per centum of the total number of officers, not restricted in the performance of duty, authorized in those grades at that time. [Repealed. See § 5447 of this title.]

"(e) The total number of officers designated for special duty, in the combined grades of captain, commander, and lieutenant commander, shall not exceed at any one time a number equal to 5 percentum of the total number of officers, not restricted in the performance of duty, authorized in those grades at that time. [Repealed. See § 5447 of this title.]

"(f) To determine the authorized number of officers in each of the various grades above lieutenant (junior grade), and in the combined grades of lieutenant (junior grade) and ensign, as provided in this section, computations shall be made by the Secretary of the Navy as of the date of approval of this Act and thereafter as of January 1 of each year, and the resulting number in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, as so computed, shall be held and considered for all purposes as the authorized number of officers in each of such various grades and in the combined grades of lieutenant (junior grade) and ensign, and shall not be varied between such computations: *Provided,* That should it be found at the time of making any such computation that the authorized number which would result in the grade of captain could not be attained because of the minimum total commissioned service requirement prescribed by subsection 107 (c) of this title, the Secretary of the Navy shall determine such lesser number as may be appropriate and such lesser number shall be regarded as the authorized number, and the authorized number in any lower grade or grades shall be increased accordingly as may be determined by the Secretary of the Navy: *Provided further,* That to determine the authorized number of officers designated for limited duty in each of the various grades above lieutenant (junior grade) and in the combined grades of lieutenant (junior grade) and ensign, the Secretary of the Navy, as of the date of the approval of this Act and thereafter as of January 1 of each year, shall compute the maximum number of such officers who may serve in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, as provided in subsection (a) of this section, and shall determine the number of such officers in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, not to exceed such maximum number, required to meet the needs of the service during the ensuing year, and the resulting number of each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, as so determined, shall be held and considered for all purposes as the authorized number of such officers in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, and shall not be varied between such determinations: *Provided further,* That no officer shall be reduced in grade or pay or separated from the active list of the Navy as a result of any such computation or determination: *And provided further,* That notwithstanding the provisions of this subsection relating to the authorized number of officers in grade, in order to make adjustment for the number of officers originally appointed each year in any grade pursuant to titles I through IV of this Act or to other provisions of law, the authorized number of officers in each grade concerned may be temporarily exceeded by such number of original appointments in such grade until the next succeeding annual computation authorized by this subsection shall be made. [Repealed. See §§ 5447, 5448, 5455 of this title.]

"(g) Whenever a final fraction occurs in any computation made pursuant to this title, the nearest whole number shall be taken, and if such fraction be one-half the next higher whole number shall be taken. [Repealed. See § 5454 of this title.]

"PROMOTION BY SELECTION; RETENTION OF REAR ADMIRALS

"SEC. 104. (a) Subject to the provisions of section 1508 of the Revised Statutes, all promotions to grades above that of lieutenant (junior grade), including the promotion of those officers who are, or may be, carried on the Navy list as additional numbers in grade, shall be only upon the recommendation of a board of naval officers as herein prescribed.

"(b) Rear admirals, not restricted in the performance of duty, who complete four years of service in that grade and thirty-four years of total commissioned service shall, subject to the provisions of subsection 107 (a) of this title, be continued on the active list only upon the recommendation of a board of naval officers as prescribed by titles I through IV of this Act.

"SELECTION BOARDS

"SEC. 105. (a) A board for the recommendation of rear admirals for continuation on the active list shall consist of five rear admirals, or officers of higher rank, senior to any officer under consideration. Boards for the recommendation of officers for promotion to the grades of rear admiral and captain, and for the recommendation of captains for continuation on the active list, shall consist of nine rear admirals; a board for the recommendation of officers for promotion to the grade of commander shall consist of three rear admirals and six captains; and boards for the recommendation of officers for promotion to the grades of lieutenant commander and lieutenant shall consist of nine officers above the grade of commander. Whenever officers designated for engineering duty, areonautical engineering duty, or special duty are eligible for consideration by a selection board for promotion or for continuation on the active list, the Secretary of the Navy shall appoint, as alternate members of the appropriate selection board, three officers of the same designation and classification as any such eligible officer, and if there be not three available he shall so appoint such lesser number as shall be available, and the junior members who are not restricted in the performance of duty, in like numbers, shall not act upon the cases of officers designated for engineering duty, aeronautical engineering duty, or special duty. No such alternate member shall act upon the cases of officers other than those of the same designation as himself. No officer designated for engineering duty, aeronautical engineering duty, or special duty shall act upon the cases of officers not restricted in the performance of duty.

"(b) The officers composing these boards shall be officers on the active list of the Navy. No officer may be a member of two successive selection boards for the consideration of officers for promotion to the same grade, or for the consideration of officers for continuation on the active list in the same grade.

"(c) These boards shall be appointed by the Secretary of the Navy and convened at least once each year and at such times as the Secretary of the Navy may direct.

"OATH FOR MEMBERS OF SELECTION BOARDS

"SEC. 106. Each member of a board provided for in section 105 of this title shall swear or affirm, that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon him as herein provided.

"ELIGIBILITY OF OFFICERS FOR CONSIDERATION BY SELECTION BOARDS

"SEC. 107. (a) Rear admirals, not restricted in the performance of duty, who, at any time during the fiscal year in which this title becomes effective or at any time during any subsequent fiscal year, first attain the status of having completed four years of service in grade and thirty-four years of total commissioned service shall become eligible for consideration by a selection board convened in such fiscal year for recommendation for continuation on the active list: *Provided,* That such a rear admiral who at any time shall have lost numbers or precedence shall become eligible for such consideration in the fiscal year in which the most senior rear admiral junior to him who shall not have lost numbers or precedence becomes eligible therefor: *Provided further,* That such eligibility shall continue until the officer concerned shall have been selected for continuation on the active list or until he shall have twice failed of such selection, whichever shall occur earlier: *Provided further,* That a rear admiral who shall have been selected for continuation on the active list pursuant to title III of this Act shall not be considered for selection for continuation pursuant to this subsection.

"(b) Captains designated for engineering duty, aeronautical engineering duty, or special duty, within the following categories shall be eligible for consideration by a selection board for recommendation for continuation on the active list: (1) Those who have twice failed of selection for promotion to rear admiral, and (2) those who have failed of selection for promotion to rear admiral

in the immediately preceding year and who are not recommended for promotion by the selection board concerned: *Provided,* That such captains who will complete thirty-five years' total commissioned service or who will attain the age of sixty-two years in the fiscal year in which such board is convened will not be eligible for consideration for continuation on the active list.

"(c) Officers shall be eligible for consideration by a selection board for promotion to the next higher grade when they will have completed, on June 30 of the fiscal year of the convening of the appropriate board, the following periods of service in the grades in which they are serving: Captains, three years; commanders, five years; lieutenant commanders and lieutenants, four years; lieutenants (junior grade), two years: *Provided,* That no officer of the grade of commander shall be eligible for consideration by a selection board for promotion to captain who, on June 30 of the fiscal year of the convening of the board, will have completed less than eighteen years commissioned service as defined in subsection 102 (d) of this title, nor shall any such officer be so eligible until all officers senior to him in his grade are likewise eligible. An officer in any grade who shall become eligible for such consideration shall, regardless of failure or failures of selection for such promotion, remain so eligible while on the active list: *Provided,* That officers whose names are on the promotion list for any grade on the date of the convening of the board shall not be considered for the same grade by the board.

"(d) Of the officers, in any grade, designated for limited duty, who would otherwise be eligible for consideration for promotion pursuant to the provisions of subsection (c) of this section, only the junior officer in the promotion zone and officers senior to him in the grade concerned shall be eligible for such consideration.

"INFORMATION TO BE FURNISHED SELECTION BOARDS

"SEC. 108. (a) The Secretary of the Navy shall furnish the appropriate selection board with (1) the number of officers not restricted in the performance of duty, the number of officers designated for engineering duty, the number of officers designated for aeronautical engineering duty, the number of officers designated for special duty, and the number of officers designated for limited duty, which the board may recommend for promotion to the next higher grade; (2) the names of all officers eligible for consideration for promotion to each grade or grades to which the board will recommend officers for promotion; (3) the number of rear admirals not restricted in the performance of duty which the board may recommend for continuation on the active list; (4) the names of all rear admirals eligible for consideration for continuation on the active list; (5) the number of captains designated for engineering duty, the number of captains designated for aeronautical engineering duty, and the number of captains designated for special duty, which the board may recommend for continuation on the active list; (6) the names of captains eligible for consideration for continuation on the active list; (7) the records of all officers whose names are furnished to a board; and (8) the names of officers in the respective promotion zones in the grade or grades under consideration for promotion.

"(b) The number to be furnished the board in respect to the promotion of officers not restricted in the performance of duty shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be equal to the number of vacancies existing among such officers in each grade for promotion to which the board will recommend such officers plus the estimated number of such vacancies which will occur during the ensuing twelve-month period and minus the number of such officers then on the promotion list.

"(c) The number to be furnished the board in respect to the promotion of officers designated for limited duty shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be equal to the number of vacancies existing among such officers in each grade for promotion to which the board will recommend such officers plus the estimated number of such vacancies which will occur during the ensuing twelve-month period and minus the number of such officers then on the promotion list.

"(d) The numbers to be furnished the board in respect to the promotion of officers designated for engineering duty, aeronautical engineering duty, or special duty to the grade of rear admiral shall be determined by the Secretary of the Navy as of the date of the convening of the board. Their total shall be equal to the number of vacancies existing among such officers in the grade of rear admiral plus the estimated number of such vacancies which will occur during the ensuing twelve-month period and minus the number of such officers then on the promotion list. Within and to such total the Secretary of the Navy shall allocate such numbers to any or all of the named categories as he shall determine to be necessary to meet the requirements of the Navy.

"(e) The number to be furnished the board in respect to the promotion of officers designated for engineering duty from a grade below captain shall be determined by the Secretary of the Navy as of the date of the convening of the board as necessary to meet the needs of the service. Such number shall not exceed the number of such officers in the promotion zone in the grade concerned, nor be less than the product of that number and a fraction which for each such grade shall have as its numerator a number equal to the number of line officers in the same grade, not restricted in the performance of duty, which may be recommended for promotion to the next higher grade in the same fiscal year, and as its denominator a number equal to the number of line officers, not restricted in the performance of duty, in the promotion zone of the grade concerned in such year.

"(f) The number to be furnished the board in respect to the promotion of officers designated for aeronautical engineering duty from a grade below captain shall be determined by the Secretary of the Navy as of the date of the convening of the board as necessary to meet the needs of the service. Such number shall not exceed the number of such officers in the promotion zone in the grade concerned, nor be less than the product of that number and a fraction which for each such grade shall have as its numerator a number equal to the number of line officers in the same grade, not restricted in the performance of duty, which may be recommended for promotion to the next higher grade in the same fiscal year, and as its denominator a number equal to the number of line officers, not restricted in the performance of duty, in the promotion zone of the grade concerned in such year.

"(g) The number to be furnished the board in respect to the promotion of officers designated for special duty from a grade below captain shall be determined by the Secretary of the Navy as of the date of the convening of the board as necessary to meet the needs of the service. Such number shall not exceed the number of such officers in the promotion zone in the grade concerned, nor be less than the product of that number and a fraction which for each such grade shall have as its numerator a number equal to the number of line officers in the same grade, not restricted in the performance of duty, which may be recommended for promotion to the next higher grade in the same fiscal year, and as its denomination a number equal to the number of line officers, not restricted in the performance of duty, in the promotion zone of the grade concerned in such year.

"(h) The number to be furnished the board in respect to rear admirals not restricted in the performance of duty to be continued on the active list shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be computed by dividing the authorized number of such rear admirals by three and subtracting from the quotient thus obtained the number of such rear admirals, exclusive of those who have once failed of selection for such continuation, who shall have completed prior to the end of the preceding fiscal year four years of service in that grade and thirty-four years of total commissioned sevice, which it is estimated will remain on the active list at the end of the current fiscal year: *Provided,* That the number to be so furnished shall not be less than 50 per centum of the number of such rear admirals, exclusive of those who have once failed of selection for such continuation, eligible for consideration by the board for continuation on the active list.

"(i) The number to be furnished the board in respect to captains designated for engineering duty, aeronautical engineering duty, or special duty to be continued on the

active list shall be such a number in each case not to exceed in each instance the number prescribed in subsection 112 (a) of this title, as the Secretary of the Navy shall determine to be necessary to meet the requirements of the Navy.

"(j) The promotion zone in any grade for officers not restricted in the performance of duty shall be established by the Secretary of the Navy as of the date of the convening of a selection board to consider officers of that grade for recommendation for promotion to the next higher grade. It shall consist of that number of the most senior such officers of the grade under consideration, who are eligible for selection for promotion to the next higher grade and have not previously failed of such selection, which must be either selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in subsection (m) of this section and to best assure to individuals in succeeding years equality of opportunity for promotion. The number shall be determined by the Secretary of the Navy and shall be based upon a consideration of the estimated number of vacancies which will occur in the next higher grade for each of the ensuing five years, the number of such officers who will be eligible for selection, and the terms of service which they will have completed.

"(k) The promotion zones in any grade, below that of captain, for officers designated for engineering duty, for officers designated for aeronautical engineering duty, and for officers designated for special duty, shall each be composed of all officers of each such designation in the grade who have not previously failed of selection to the next higher grade and who are senior to the junior officer in the promotion zone determined as provided in subsection (j) of this section.

"(*l*) The promotion zone in any grade for officers designated for limited duty shall be established by the Secretary of the Navy as of the date of the convening of a selection board to consider officers of that grade for recommendation for promotion to the next higher grade. It shall consist of that number of the most senior such officers of the grade under consideration, who are eligible for selection for promotion to the next higher grade and have not previously failed of such selection, which must be either selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in subsection (n) of this section and to best assure to individuals in succeeding years equality of opportunity for promotion. The number shall be determined by the Secretary of the Navy and shall be based upon a consideration of the estimated number of vacancies which will occur in the next higher grade for each of the ensuing five years, the number of such officers who will be eligible for selection, and the terms of service which they will have completed.

"(m) The normal terms of service of officers, other than officers designated for limited duty, in the various grades below rear admiral shall be:

Grade	Service in grade	Total commissioned service
	Years	*Years*
Captains	5	30
Commanders	7	25
Lieutenant commanders	6	18
Lieutenants	6	12
Lieutenants (junior grade)	3	6

"(n) The normal terms of service in grade of officers designated for limited duty in the various grades below that of commander shall be the same as those set out in subsection (m) of this section.

"(o) Any officer eligible for consideration by a selection board shall have the right to forward through official channels at any time not later than ten days after the convening of said board a written communication inviting attention to any matter of record in the Navy Department concerning himself which he deems important in the consideration of his case: *Provided,* That such communication shall not contain any reflection upon the character, conduct, or motives of or criticism of any officer.

"DUTIES OF SELECTION BOARDS

"SEC. 109. (a) From among those officers who are eligible for consideration for promotion, each board shall recommend for promotion those officers whom it considers best fitted for promotion, in number not exceeding the number furnished the board by the Secretary of the Navy as provided in section 108 of this title: *Provided,* That, from among eligible officers junior in lineal rank to the junior officer in the appropriate promotion zone in a grade below that of captain, the board may not recommend, as best fitted for promotion, a number exceeding 5 per centum of the total number that the board is authorized to recommend for promotion to the grade concerned or, if such 5 per centum shall not equal the whole number one, a number exceeding one: *Provided further,* That in each grade the junior officer in a promotion zone and all officers of his category senior to him in lineal rank who are eligible for consideration shall, if not selected for promotion, be considered as having failed of selection for promotion, and no such officer junior in lineal rank to said junior officer in said promotion zone shall, if not selected for promotion, be considered as having failed of selection for promotion: *Provided further,* That any captain designated for the performance of engineering duty, aeronautical engineering duty, or special duty, shall, if not on the promotion list for the grade of rear admiral on June 30 of the fiscal year in which he completes thirty years of total commissioned service, be held for all purposes to have once failed of selection for promotion, and if not on such list on June 30 of the succeeding year shall, subject to the provisions of subsection 111 (c) of this title, be held for all purposes to have twice failed of selection for promotion, and no such officer shall be held to have failed of selection for promotion solely by reason of the approved recommendation for promotion of any officer junior to him: *Provided further,* That an officer who has lost numbers or precedence shall not be held to have completed the service prescribed in the preceding proviso until he completes five years of service in the grade of captain: *And provided further,* That the status of having once failed of selection for promotion shall not be considered as prejudicial to an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection by the next succeeding selection board.

"(b) From among those rear admirals not restricted in the performance of duty who are eligible for consideration for continuation on the active list, the board shall recommend for such continuation those officers whom it considers best fitted for continued service on the active list, in number equal to the number furnished the board by the Secretary of the Navy as provided in section 108 of this title.

"(c) From among those captains designated for engineering duty, aeronautical engineering duty, or special duty, who are eligible for consideration for continuation on the active list, the board shall recommend for such continuation those officers, of each such category, whom it considers best fitted for continued service on the active list, in number not exceeding the number furnished the board by the Secretary of the Navy, with respect to that category, as provided in section 108 of this title.

"(d) The recommendation of the board in respect to the promotion of officers who are now or may hereafter be designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, shall be based upon their comparative fitness, within such categories, for the duties prescribed for them by law.

"(e) All reports or recommendations of a selection board under any provision of this title shall require the concurrence of at least two-thirds of the acting members: *Provided,* That the report or recommendation of a board composed of five acting members shall require the concurrence of at least a majority of the acting members.

"(f) The selection board shall also report the names of any officers among those eligible for consideration and of less than twenty years' service whose reports and

records in its opinion indicate their unsatisfactory performance of duty in their present grades and in its opinion indicate that they would not satisfactorily perform the duties of a higher grade.

"REPORTS OF SELECTION BOARDS

"SEC. 110. (a) The report of the board shall be in writing, signed by all of the acting members thereof, and shall certify that the board has carefully considered the case of every officer whose name was furnished to the board by the Secretary of the Navy, as provided in section 108 of this title, and that, in the opinion of at at least two-thirds of the acting members, the officers therein recommended are selected as the best fitted to assume the duties of the next higher grade subject to the limitations prescribed in subsection 109 (a) of this title, except that the recommendation of the board in the cases of officers who are now or may hereafter be designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, shall be based upon their comparative fitness as prescribed in section 109 of this title. The report of a board convened to recommend rear admirals or captains for continuation on the active list shall certify that, in the opinion of at least two-thirds of the acting members, and, if the board has but five acting members, in the opinion of at least a majority of the acting members, the officers therein recommended are selected as the best fitted for continued service on the active list.

"(b) The report of the board shall be submitted to the President for approval or disapproval: *Provided,* That in case any officer or officers recommended by the board for promotion, or, in the case of rear admirals or captains, for continuation on the active list, be not acceptable to the President, the board shall be informed of the name of such officer or officers and shall recommend a number of officers for promotion or for continuation on the active list, as the case may be, equal to the number of those found not acceptable to the President and, if necessary, the board shall be reconvened for this purpose.

"PROMOTION OF OFFICERS

"SEC. 111. (a) Officers recommended for promotion in the approved report of a selection board shall be regarded as having been selected for promotion and their names shall be placed upon a promotion list for the grade for which recommended in the order of their seniority at the time of approval of such report except that the names of officers recommended in an earlier approved report shall be placed upon the promotion list ahead of those recommended for promotion to the same grade in a later approved report. Promotions to fill vacancies in any grade among officers not restricted in the performance of duty or officers designated for the performance of limited duty and to fill vacancies in the grade of rear admiral among officers restricted in the performance of duty shall be made from among officers of the appropriate category whose names appear on the promotion list for the grade concerned and in the order of placement on the said promotion list. Each commander, lieutenant commander, and lieutenant (junior grade) restricted in the performance of duty whose name appears on a promotion list shall be eligible for promotion to the next higher grade when the officer not restricted in the performance of duty whose name appears next below his on the promotion list becomes eligible for promotion and, for the purposes of this section, such date of eligibility for promotion shall be regarded as the date of vacancy in the higher grade. Each lieutenant restricted in the performance of duty whose name appears on a promotion list shall be eligible for promotion to the grade of lieutenant commander when the officer not restricted in the performance of duty whose name appears next below his on the promotion list becomes eligible for promotion or when a vacancy exists in the combined grades of captain, commander, and lieutenant commander among officers restricted in the performance of duty, whichever may be the later, and for the purposes of this section, such date of eligibility for promotion shall be regarded as the date of vacancy in the higher grade.

"(b) The commission of each officer promoted to a higher grade shall bear such date of rank and precedence number which, upon his promotion, will assure him precedence in accordance with the order in which his name appeared on the promotion list; no increased pay or allowances shall accrue to any officer prior to the date of the occurrence of the vacancy which he is promoted to fill.

"(c) The President may remove the name of any officer from the promotion list. An officer whose name is so removed from the promotion list, or one whose appointment is rejected by the Senate, shall continue to be eligible for consideration for recommendation for promotion: *Provided,* That the next ensuing selection board may recommend the officer concerned for promotion, and thereupon, with the approval of the President, the name of such officer shall be replaced on the promotion list, without prejudice by reason of its having been temporarily removed therefrom, and when promoted such officer shall take the same lineal rank and date of rank that he would have had had his name not been so removed: *And provided further,* That if such officer is not so recommended by such next ensuing selection board or if the President shall again remove his name from the promotion list or if the Senate shall again reject his appointment, he shall be held for all purposes to have twice failed of selection for promotion.

"(d) No officer shall be promoted to a grade above lieutenant unless he has had not less than two years' sea or foreign service in the grade in which serving and on the promotion list for that grade: *Provided,* That the qualification of sea or foreign service shall not apply to officers restricted by law to the performance of engineering duty only, aeronautical engineering duty only, or special duty only: *And provided further,* That the Secretary of the Navy shall determine the types of duty which may be counted for the purpose of this subsection.

"RETIREMENT OF OFFICERS BELOW THE GRADE OF REAR ADMIRAL

"SEC. 112. (a) Captains whose names, on June 30 of the fiscal year in which they complete thirty-one years of total commissioned service, are not on a promotion list, shall, subject to the provisions of subsection 111 (c) of this title, if not otherwise retired pursuant to law, be placed on the retired list on that date: *Provided,* That such an officer who has lost numbers or precedence shall not be placed on the retired list by reason of completion of thirty-one years of total commissioned service until June 30 of the fiscal year in which he completes five years of service in the grade of captain: *Provided further,* That captains not restricted in the performance of duty whose names, on June 30 of the fiscal year in which they complete thirty years of total commissioned service, are not on a promotion list, shall, subject to the provisions of subsection 111 (c), if not otherwise retired pursuant to law, and if they shall have twice failed of selection for promotion to rear admiral, be placed on the retired list on that date: *Provided further,* That not to exceed ten captains designated for engineering duty, and not to exceed five captains designated for aeronautical engineering duty, and not to exceed ten captains designated for special duty, recommended for continuation on the active list in the report of a selection board as approved by the President, may be so continued until the report of the next succeeding selection board is approved, but no such captain shall be continued on the active list beyond June 30 of the fiscal year in which he shall have completed thirty-five years of total commissioned service: *And provided further,* That a captain so continued on the active list shall, if not again recommended for continuation on the active list in the approved report of the next succeeding selection board, thereafter be carried in excess of the number authorized to be so continued and shall be placed on the retired list on June 30 of the then current fiscal year.

"(b) Commanders, except commanders designated for limited duty, whose names, on June 30 of the fiscal year in which they complete twenty-six years of total commissioned service, are not on a promotion list, shall, subject to the provisions of section 111 (c) of this title, if not otherwise retired pursuant to law and if they shall have twice failed of selection for promotion to captain, be placed on the retired list on that date. Commanders,

except commanders designated for limited duty, who shall twice fail of selection for promotion to captain, if such second failure shall occur subsequent to June 30 of the fiscal year in which they complete twenty-six years of total commissioned service, shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the fiscal year in which such second failure shall occur.

"(c) Officers designated for limited duty shall, if not otherwise retired pursuant to law, be placed on the retired list on the last day of the month following the month in which they complete thirty years of active naval service exclusive of active duty for training in a Reserve component.

"(d) Lieutenant commanders, except lieutenant commanders designated for limited duty, whose names, on June 30 of the fiscal year in which they complete twenty years of total commissioned service, are not on a promotion list, shall, subject to the provisions of section 111 (c) of this title, if not otherwise retired pursuant to law and if they shall have twice failed of selection for promotion to commander, be placed on the retired list on that date. Lieutenant commanders, except lieutenant commanders designated for limited duty, who shall twice fail of selection for promotion to commander, if such second failure shall occur subsequent to June 30 of the fiscal year in which they complete twenty years of total commissioned service, shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the fiscal year in which such second failure shall occur.

"(e) Lieutenant commanders designated for limited duty shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the fiscal year in which they shall have twice failed of selection for promotion to commander: *Provided,* That such an officer instead of such separation from the active list shall, if he had the permanent status of warrant officer or commissioned warrant officer when first appointed an officer for the performance of limited duty only, have the option of reverting to the grade and status he would have held had he not been so appointed, and if he had a permanent rating below warrant officer when first so appointed he shall have the option of reverting to the grade and status he would have held had he not been so appointed but had instead been appointed a warrant officer, and in any computation to determine such grade and status all active service as an officer designated for limited duty or as a temporary or Reserve officer shall be included: *And provided further,* That such an officer exercising such option shall, if not otherwise retired pursuant to law, be placed on the retired list in the grade in which then serving, upon the completion of a total of thirty years of active naval service, exclusive of active duty for training in a Reserve component, with retired pay at the rate of 75 per centum of his active-duty pay.

"(f) Officers above the grade of lieutenant who are placed on the retired list pursuant to the provisions of this section shall be placed thereon with retired pay at the rate of 2½ per centum of their active-duty pay at the time of retirement multiplied by the number of years of service for which entitled to credit in the computation of their pay on the active list, not to exceed a total of 75 per centum of said active-duty pay: *Provided,* That a fractional year of six months or more shall be considered a full year in computing the number of years of service by which the rate of 2½ per centum is multiplied: *Provided further,* That the retired pay of an officer commissioned in the Regular Navy pursuant to the provisions of the Act approved April 18, 1946 (Public Law 347, Seventy-ninth Congress), or one commissioned in the Regular Navy subsequent to September 8, 1939, while serving on active duty as an officer of the Naval Reserve, who is so placed on the retired list, shall not be less than 50 per centum of his active-duty pay at the time of retirement.

"(g) Lieutenants, and lieutenants (junior grade), who shall have twice failed of selection for promotion to lieutenant commander and lieutenant, respectively, and officers whose names are reported in accordance with subsection 109(f) of this Act, shall be honorably discharged from the Navy on June 30 of the fiscal year in which they fail of such selection the second time, or in which their names are reported in accordance with subsection 109 (f) of this Act, with a lump-sum payment computed on the basis of two months' active-duty pay at the time of discharge for each year of commissioned service computed in accordance with subsection 102(d), but not to exceed a total of two years' active-duty pay: *Provided,* That, for the purpose of this subsection a fractional year of six months or more shall be considered a full year in computing the number of years' commissioned service upon which the base such lump-sum payment: *And provided further,* That an officer designated for limited duty, instead of such separation from the active list, shall have the option described in subsection (a) of this section. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

"(h) Officers on a promotion list who, at any time prior to promotion, are found incapacitated for service by reason of physical disability contracted in line of duty shall, when retired, be retired in the grade for which they were selected, with retired pay at the rate of 75 per centum of the active-duty pay of the rank to which selected.

"(i) The provisions of this title relating to the discharge or retirement of officers who have twice failed of selection for promotion shall be applicable to officers above the grade of ensign who fail on professional reexamination for promotion in the same manner as if such officers had twice failed of selection for promotion. [Repealed. Act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.]

"(j) Nothing in this section shall be held to reduce the retired rank or pay to which an officer would be entitled under other provisions of law.

"RETIREMENT OF OFFICERS ABOVE THE GRADE OF CAPTAIN

"SEC. 113. (a) Rear admirals who, having been considered by two successive selection boards for recommendation for continuation on the active list, are not so recommended in the approval report of such a board shall, if not otherwise retired pursuant to law, be placed upon the retired list on June 30 of the then current fiscal year with retired pay at the rate of 2½ per centum of their active-duty pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which they would be entitled to credit in the computation of pay on the active list had they been serving in the grade of captain at the time of their retirement, but retired pay so computed shall not exceed a total of 75 per centum of said active-duty pay.

"(b) Should it be found, as of the time of the convening of a board for the consideration of rear admirals who are not restricted in the performance of duty for continuation on the active list, that the number to be furnished the board as determined pursuant to the provisions of subsection 108 (h) would, except for the proviso to said subsection, be less than 50 per centum of the number of such rear admirals, excluding those who have once failed of selection for continuation on the active list, eligible for such consideration, the Secretary of the Navy shall convene a board of not less than five officers, not restricted in the performance of duty and serving in ranks above that of rear admiral, to consider such rear admirals, excluding those who have once failed of selection for continuation on the active list, who completed four years of service in that grade and thirty-four years of total commissioned service prior to July 1 of the then current fiscal year, and recommended for retirement a sufficient number so that the number to be furnished the board as so determined shall equal said 50 per centum.

"(c) Should it be found, as of the time of the convening of a board for the consideration of captains who are not restricted in the performance of duty for promotion to the grade of rear admiral, that the number of vacancies existing plus the estimated number of vacancies which will occur during the ensuing twelve-month period in the grade of rear admiral is less than will permit the selection for promotion of a number of captains equal to 10 per centum of the authorized number of rear admirals, not restricted in the performance of duty, the Secretary of the Navy shall convene a board of not less than five officers, not restricted in the performance of duty and serving in ranks above that of rear admiral, to consider and recommend for retirement a sufficient number of such rear admirals to permit the selection for promotion of the said number of such captains.

"(d) Should it be found, as of the time of the convening of a board for the consideration of captains designated for engineering duty, aeronautical engineering duty, or special duty for promotion to the grade of rear admiral, that the number of vacancies existing plus the estimated number of vacancies which will occur during the ensuing twelve-month period in the grade of rear admiral is less than will permit the selection for promotion of a number of such captains equal to 15 per centum of the authorized number of rear admirals designated for engineering duty, aeronautical engineering duty, or special duty, the Secretary of the Navy shall convene a board of not less than five officers, serving in ranks above that of rear admiral, to consider and recommend for retirement a sufficient number of such rear admirals to permit the selection for promotion of the said number of such captains.

"(e) The report of a board convened pursuant to the provisions of this section shall be submitted to the President for approval or disapproval; if the President shall disapprove the recommendations of the board in whole or in part, the board shall then recommend additional rear admirals for retirement equal to the number disapproved by the President.

"(f) Officers so recommended for retirement as approved by the President shall, if not otherwise retired pursuant to law, be placed upon the retired list on June 30 of the then current fiscal year with retired pay at the rate of 2½ per centum of their active-duty pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which they would be entitled to credit in the computation of pay on the active list had they been serving in the grade of captain at the time of their retirement, but retired pay so computed shall not exceed a total of 75 per centum of said active-duty pay.

"(g) Nothing in this section shall be held to reduce the retired rank or pay to which an officer would be entitled under other provision of law.

"MARINE CORPS

"SEC. 114. (a) Commissioned officers of the Marine Corps shall be authorized in number in the same proportion to authorized enlisted strength and shall be distributed in grades, promoted, retired, and discharged in like manner and with the same relative conditions in all respects as provided for commissioned officers of the line of the Navy, by existing law, or by laws hereafter enacted, except as may be necessary to adapt the said provisions to the Marine Corps, or as herein otherwise provided. [See §§ 5405, 5448, 5454, 5455, 6387 of this title.]

"(b) Of the authorized number of commissioned officers above the grade of colonel who are not restricted in the performance of duty, not more than 50 per centum may be major generals and the remainder brigadier generals: *Provided,* That after July 1, 1948, except in time of war or national emergency declared after the effective date of this Act, the number of such officers shall not exceed thirty-two. [Repealed. See § 5448 of this title.]

"(c) The number of brigadier generals designated for supply duty, including the officer serving as the head of the Supply Department, shall not exceed at any one time a number equal to 13 per centum of the number of general officers of the Marine Corps not restricted in the performance of duty authorized at that time: *Provided,* That except in time of war or national emergency declared after the effective date of this Act, such number shall not exceed four. [Repealed. See § 5448 of this title.]

"(d) The total number of officers designated for supply duty in the combined grades of colonel, lieutenant colonel, and major shall not exceed at any one time a number equal to 8 per centum of the total number of officers not restricted in the performance of duty authorized in those grades at that time. [Repealed. See § 5448 of this title.]

"(e) The requirement of sea or foreign service in grade shall not apply to promotion of officers of the Marine Corps.

"(f) Selection boards shall consist of nine officers of the active list of the Marine Corps, the composition of the boards to be determined by the Secretary of the Navy: *Provided,* That no officer shall be recommended for promotion or for continuation on the active list unless he shall have received the recommendation of not less than two-thirds of the acting members of the board: *Provided further,* That whenever there are insufficient general officers available to comprise a selection board for the recommendation of officers for promotion to the grades of brigadier general and colonel without placing thereon general officers who served as members of the same corresponding board the preceding year, officers of the active list of the line of the Navy, not restricted in the performance of duty, of the grade of rear admiral may be substituted for general officers of the Marine Corps in order to comply with the provisions of subsection 105 (b) of this title: *Provided further,* That selection boards to recommend brigadier generals for promotion to major general shall be composed of officers of the permanent grade of major general on the active list of the Marine Corps to the extent that such officers are deemed available for this duty by the Secretary of the Navy, and the remainder of the board shall be composed of rear admirals on the active list of the line of the Navy, not restricted in the performance of duty: *And provided further,* That administrative staff duty performed by any officer under appointment or detail, and duty in aviation, or in any technical specialty, shall be given weight by the selection board in determining his fitness for promotion equal to that given to line duty equally well performed.

"(g) Whenever officers designated for supply duty are eligible for consideration by a selection board for promotion or for continuation on the active list, the Secretary of the Navy shall appoint, as alternate members of the appropriate selection board, three officers of that designation, and if there be not three available, he shall so appoint such lesser number as may be available, and the junior members of the board who are not restricted in the performance of duty, in like number, shall not act upon the cases of officers designated for supply duty. No such alternate member shall act upon the cases of officers other than those designated for supply duty. No officer designated for supply duty or for limited duty shall act upon the cases of officers not restricted in the performance of duty.

"(h) Promotion to major general shall be from brigadier generals who are not restricted in the performance of duty, and such officers shall be eligible for consideration by a selection board for promotion to major general when they will have completed, on June 30 of the fiscal year of the convening of the board, three years' service in that grade. The date of rank of an officer appointed in the grade of major general shall be the date of rank held by such officer in the grade of brigadier general under permanent or temporary appointment: *Provided,* That subject to the provisions of subsection 111 (c) of this title and of subsection 423 (b) of title IV of this Act, such date of rank shall not be earlier than that of the junior officer in the grade of major general: *And provided further,* That such an officer shall be entitled to the pay and allowances of the higher grade from the date of occurence of the vacancy which he is promoted to fill.

"(i) The promotion zone in the grade of brigadier general for officers not restricted in the performance of duty shall be established by the Secretary of the Navy as of the date of the convening of a selection board to consider officers of that grade for recommendation for promotion to the next higher grade. It shall consist of that number of the most senior such officers of the grade of brigadier general, who are eligible for selection for promotion to the next higher grade and have not previously failed of such selection, which must be either selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the needs of the service and to best assure to individuals in succeeding years equality of opportunity for promotion. The number shall be determined by the Secretary of the Navy and shall be based upon a consideration of the estimated number of vacancies which will occur in the next higher grade for each of the ensuing five years and the number of such officers who will be eligible for selection.

"(j) Officers serving in the grade of major general in the Marine Corps and officers serving in the grade of rear admiral in the Navy who are entitled to the pay of the

upper half of that grade shall take rank among themselves according to their respective dates of rank in such grades. Officers serving in the grade of brigadier general in the Marine Corps and officers serving in the grade of rear admiral in the Navy who are entitled to the pay of the lower half of that grade shall take rank among themselves according to their respective dates of rank in such grades.

"(k) The provisions of this title relating to the selection of rear admirals for continuation on the active list shall not be applicable to major generals.

"(*l*) Should it be found, as of the time of the convening of a board for the consideration of brigadier generals for promotion to the grade of major general, that the number of vacancies existing plus the estimated number of vacancies which will occur during the ensuing twelve-month period in the grade of major general is less than will permit the selection for promotion of a number of brigadier generals equal to 50 per centum of the number of such officers comprising the promotion zone for that grade, the Secretary of the Navy shall convene a board of not less less than five officers serving in ranks above that of major general or rear admiral to consider and recommend for retirement a sufficient number of major generals to permit the selection for promotion of the said number of brigadier generals.

"(m) Should it be found, as of the time of the convening of a board for the consideration of colonels who are not restricted in the performance of duty for promotion to the grade of brigadier general, that the number of vacancies existing plus the estimated number of vacancies which will occur during the ensuing twelve-month period is less than will permit the selection for promotion of a number of such colonels equal to 10 per centum of the authorized number of general officers who are not restricted in the performance of duty, the Secretary of the Navy shall convene a board of not less than five officers serving in ranks above that of major general or rear admiral to consider and recommend for retirement a sufficient number of general officers to permit the selection for promotion of the said number of colonels.

"(n) Brigadier generals, who are not restricted in the performance of duty, whose names are not on the promotion list shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the fiscal year in which they fail of selection for promotion the second time with retired pay at the rate of 2½ per centum of their active-duty pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which they would be entitled to credit in the computation of pay on the active list had they been serving in the grade of colonel at the time of their retirement, but retired pay so computed shall not exceed a total of 75 per centum of said active-duty pay.

"(o) The provisions of this title relating to officers of the Navy designated for limited duty shall be applicable in like manner and with like effect to officers of the Marine Corps designated for limited duty. [See § 5448 of this title.]

"(p) The provisions of this title relating to officers of the Navy designated for engineering duty shall be applicable in like manner and with like effect to officers of the Marine Corps designated for supply duty, except as may be necessary to adopt the said provisions to the Marine Corps or as herein otherwise provided. [See § 5448 of this title.]

"(q) Brigadier generals designated for supply duty, if not retired pursuant to other provisions of law, shall, except as otherwise provided in this section, be placed on the retired list on June 30 of the fiscal year in which they complete five years' service in that grade and thirty-five years' total commissioned service with retired pay at the rate of 2½ per centum of their active-duty pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which they would be entitled to credit in the computation of pay on the active list had they been serving in the grade of colonel at the time of their retirement, but retired pay so computed shall not exceed a total of 75 per centum of said active-duty pay.

"(r) Brigadier generals of the Marine Corps designated for supply duty who in the then current fiscal year complete or will complete five years' service in their grade and have completed or will complete in such fiscal year thirty-five years of total commissioned service; those who prior to the then current fiscal year have completed five years' service in their grade and in such fiscal year complete or will complete thirty-five years of total commissioned service; and those who were recommended for continuation on the active list in the approved report of the immediately preceding appropriate selection board, shall be eligible for consideration by a selection board for continuation on the active list: *Provided,* That not to exceed two such brigadier generals recommended for continuation on the active list in the report of a selection board as approved by the President may be so continued until the report of the next succeeding selection board is approved: *And provided further,* That a brigadier general so continued on the active list shall, if not again recommended for continuation on the active list in the approved report of the next succeeding selection board, thereafter be carried in excess of the number authorized to be so continued and shall be placed on the retired list on June 30 of the then current fiscal year.

"(s) In addition to the information otherwise required by this title, the Secretary of the Navy shall furnish the appropriate selection board with the number of brigadier generals designated for supply duty which the board may recommend for continuation on the active list. The number so furnished shall be such number as the Secretary of the Navy shall determine to be necessary to meet the requirements of the Marine Corps not to exceed two.

"(t) Should it be found, as of the time of the convening of a board for the consideration of colonels designated for supply duty for promotion to the grade of brigadier general, that the number of vacancies existing plus the estimated number of vacancies which will occur during the ensuing twelve-month period in the grade of brigadier general is less than will permit the selection for promotion in such period of a number of such colonels equal to 15 per centum of the authorized number of brigadier generals designated for supply duty, the Secretary of the Navy shall convene a board of not less than five officers serving in ranks above that of brigadier general to consider and recommend for retirement a sufficient number of brigadier generals designated for supply duty to permit the selection for promotion in such period of the said number of such colonels.

"(u) The number to be furnished the board in respect to colonels designated for supply duty to be continued on the active list shall be such number, not to exceed two, as the Secretary of the Navy shall determine to be necesary to meet the requirements of the Marine Corps.

"(v) Officers recommended for retirement in the report of a board convened pursuant to subsections (*l*), (m), and (t) of this section, as approved by the President, shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the then current fiscal year with retired pay at the rate of 2½ per centum of their active-duty pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which they would be entitled to credit in the computation of pay on the active list had they been serving in the grade of colonel at the time of their retirement, but retired pay so computed shall not exceed a total of 75 per centum of said active-duty pay.

"(w) From among the officers designated for supply duty who are eligible for consideration for continuation on the active list the Board shall recommend for such continuation those officers whom it considers best fitted for continued service on the active list in number equal to the number furnished the board by the Secretary of the Navy.

"(x) Nothing in this section shall be held to reduce the retired rank or pay to which an officer would be entitled under other provisions of law.

"(y) The report of a board convened pursuant to the provisions of subsections (*l*), (m), and (t) of this section shall be submitted to the President for approval or disapproval; if the President shall disapprove the recommendations of the board in whole or in part, the board shall then recommend additional appropriate general officers for retirement equal to the number disapproved by the President.

"DETERMINATION OF UPPER AND LOWER HALF REAR ADMIRALS

"SEC. 115. Rear admirals on the active list of the line in the upper half of that grade, exclusive of officers carried as additional numbers in grade, shall be entitled to the pay and allowances prescribed by law for rear admirals of the upper half: *Provided,* That for the purpose of determining the number of rear admirals in the upper half, there shall be excluded those officers carried as additional numbers in that grade, and each rear admiral carried as an additional number in that grade shall be entitled to such pay and allowances from the date on which the officer next junior to him becomes entitled thereto pursuant to this section. [Repealed. See § 5507 of this title.]

"EFFECTIVE DATE OF TITLE I

"SEC. 116. Sections 101, 102, and, as to distribution, sections 103 and 114 of this title shall be effective upon the date of approval of this Act. The remaining provisions of this title shall be effective upon the termination of title III of this Act. [Repealed. Act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.]

"TITLE II—PERMANENT PROVISIONS RELATING TO OFFICERS OF THE STAFF CORPS OF THE NAVY

"PERMANENT STATUS OF TITLE II

"SEC. 201. The provisions of this title shall constitute permanent, as distinguished from terminable, provisions of law relating to the distribution of commissioned officers in the various grades of the Staff Corps of the Regular Navy, to the promotion of such officers to the grades above that of lieutenant (junior grade), and to their involuntary separation from the active list.

"DEFINITIONS

"SEC. 202. (a) As used in this title, the word 'officers' shall be held to mean commissioned officers holding permanent appointments as such on the active list in the Staff Corps of the Regular Navy. Unless otherwise qualified it shall be held to include officers of the Medical, Supply, Chaplain, Civil Engineer, Dental, Medical Service, and Nurse Corps of the Navy, including officers designated for limited duty in such corps, and to exclude commissioned warrant officers. [See § 5449 of this title.]

"(b) As used in this title, military titles shall be held to describe an officer or officers, as the case may be, holding permanent appointment on the active list in a Staff Corps of the Regular Navy in the grade concerned. [See § 5449 of this title.]

"(c) As used in this title, the words 'not restricted in the performance of duty' shall be held to describe officers not designated for limited duty. [See § 6388 of this title.]

"(d) (1) For the purposes of this title in respect to eligibility for continuation on the active list and in respect to separation from the active list, the total commissioned service of an officer originally appointed in the grade or rank of lieutenant (junior grade) or ensign in the Regular Navy, who has served continuously on the active list shall be computed from June 30 of the fiscal year in which he accepted such appointment, except for officers appointed pursuant to the Act of April 18, 1946 (Public Law 347, Seventy-ninth Congress). Each other officer shall be deemed to have for these purposes as much total commissioned service as any officer described above in this subsection who shall not have lost numbers or precedence and who is, or shall have been, junior to such other officer in his corps for the purpose of eligibility for promotion or selection for promotion since the date of the latter's first appointment to permanent, commissioned rank in the Regular Navy above the grade of commissioned warrant officer, following which he shall have served continuously on the active list of the Regular Navy.

"(2) Notwithstanding the foregoing provisions of this subsection, the number of years' service to be credited to each lieutenant (junior grade) of the Nurse Corps shall, for the purpose of this title in regard to separation from the active list, be based on her total active service under an appointment as a commissioned officer in the Nurse Corps of the Navy or the reserve component thereof and all active service in the Nurse Corps and the Nurse Corps Reserve abolished by the Act of April 16, 1947 (Public Law 36, Eightieth Congress), shall, for this purpose, be regarded as commissioned service in the Navy.

"(3) Notwithstanding the provisions of paragraph (1) of this subsection, an officer commissioned in the Medical Service Corps pursuant to the Act of April 18, 1946 (Public Law 347, Seventy-ninth Congress) shall, for the purpose of this title in respect to separation from the active list, be deemed to have total commissioned service equivalent to that of his line officer running mate.

"(e) The words 'active-duty pay' as used in sections 212 and 213 of this title shall be construed to mean the base and longevity pay the retired officer concerned would receive if serving on active duty in his grade. [See § 6371 of this title.]

"DISTRIBUTION OF OFFICERS

"SEC. 203. (a) Officers of the Staff Corps of the Navy shall be distributed in the various grades in each Staff Corps in accordance with the provisions of this title: *Provided,* That the number of rear admirals in the Medical Corps, Supply Corps, Chaplain Corps, Civil Engineer Corps, and Dental Corps, respectively, exclusive of any such rear admiral serving as a chief of bureau, shall not exceed in each corps five-tenths of 1 per centum of the officers in that corps on the active list of the Navy at any one time: *Provided further,* That such a rear admiral serving as a chief of bureau shall upon termination of his tenure as chief of bureau be carried in excess until the next vacancy occurs in the grade of rear admiral in the corps concerned: *Provided further,* That notwithstanding the foregoing provisions, except in time of war or national emergency declared after the effective date of this Act, the number of rear admirals in the Medical Corps, Supply Corps, Chaplain Corps, Civil Engineer Corps, and Dental Corps shall not exceed fifteen, thirteen, two, four, and four, respectively: *And provided further,* That the number of captains in the Medical Service Corps and the number of commanders and lieutenant commanders in the Nurse Corps shall not exceed 2 per centum, seven-tenths of 1 per centum, and 1 6/10 per centum, respectively, of the officers in the corps concerned on the active list of the Navy at any one time. [Repealed. See § 5449 of this title.]

"(b) To determine the authorized number of officers in the grade of rear admiral in the Medical Corps, Supply Corps, Chaplain Corps, Civil Engineer Corps, and Dental Corps, respectively, and the authorized number of captains in the Medical Service Corps and the authorized number of commanders and lieutenant commanders in the Nurse Corps, as provided in this section, computations shall be made by the Secretary of the Navy as of the date of approval of this Act and as of January 1 of each year thereafter; the resulting number in the grade of rear admiral in each corps in which such grade is authorized, as so computed, shall be held and considered for all purposes as the authorized number of officers in the grade of rear admiral in each such corps and shall not be varied between computations; the resulting number in the grade of captain in the Medical Service Corps and in each of the grades of commander and lieutenant commander in the Nurse Corps, as so computed, shall be held and considered as the authorized number of officers in the grade of the corps concerned until a subsequent computation shall be made: *Provided,* That no officer shall be reduced in grade or pay or separated from the active list of the Navy as a result of any such computation. [Repealed. See §§ 5449, 5455 of this title.]

"(c) Whenever a final fraction occurs in any computation made pursuant to this title, the nearest whole number shall be taken, and if such fraction be one-half the next higher whole number shall be taken. [Repealed. See § 5454 of this title.]

"PROMOTION BY SELECTION

"SEC. 204. All promotions to grades above that of lieutenant (junior grade), including the promotion of those officers who are, or may be, carried on the Navy list as additional numbers in grade, shall be only upon the recommendation of a board of naval officers as herein prescribed.

"SELECTION BOARDS

"SEC. 205. (a) A board for the recommendation of officers for promotion to the grade of rear admiral, and for the recommendation of captains for continuation on the active list, shall consist of not less than three nor more than nine rear admirals of the corps concerned. Boards for the recommendation of officers for promotion to the grades of captain and commander except with respect to officers of the Medical Service Corps and of the Nurse Corps shall consist of not less than six nor more than nine officers of the corps concerned of the grade of captain or above. Boards for the recommendation of officers for promotion to the grades of lieutenant commander and lieutenant, except with respect to officers of the Medical Service Corps and of the Nurse Corps, shall consist of not less than six nor more than nine officers of the corps concerned above the grade of commander.

"(b) The officers composing these boards shall be officers on the active or retired list of the Navy. In case there be not a sufficient number of officers of the corps concerned legally or physically capacitated to serve on a selection board of such corps, officers of the line on the active list of equivalent rank may be detailed to duty on such board to constitute the required minimum membership.

"(c) Boards for the recommendation of officers of the Medical Service Corps and of the Nurse Corps for promotion to grades above lieutenant (junior grade) shall be composed of not less than six nor more than nine officers above the grade of commander on the active or retired list of the Medical Corps: *Provided,* That in case there be not a sufficient number of officers of the Medical Corps legally or physically capacitated to serve on such a selection board, officers of the line of the active list of the grade of captain may be detailed to duty on such board to constitute the required minimum membership.

"(d) No officer may be a member of two successive selection boards for the consideration of officers for promotion to the same grade.

"(e) The boards prescribed in this section shall be appointed by the Secretary of the Navy and convened at least once each year at a time as soon as practicable after the report of a corresponding board for the selection of line officers has been approved by the President, and at such times as the Secretary of the Navy may direct: *Provided,* That a selection board to recommend officers of the Medical Service Corps for promotion to the grade of captain or officers of the Nurse Corps for promotion to the grade of commander or lieutenant commander shall be convened only if there exists a vacancy in the grade concerned or if the Secretary of the Navy estimates or determines that a vacancy will occur in the ensuing twelve-month period.

"OATH FOR MEMBERS OF SELECTION BOARDS

"SEC. 206. Each member of a board provided for in section 205 of this title shall swear, or affirm, that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon him as herein provided.

"ELIGIBILITY OF OFFICERS FOR CONSIDERATION BY SELECTION BOARDS

"SEC. 207. (a) Captains within the following categories shall be eligible for consideration by a selection board for recommendation for continuation on the active list: (1) Those who have twice failed of selection for promotion to rear admiral, and (2) those who have failed of selection for promotion to rear admiral in the immediately preceding year and who are not recommended for promotion by the selection board concerned: *Provided,* That such captains who will complete thirty-five years' total commissioned service or who will attain the age of sixty-two years in the fiscal year in which such board is convened will not be eligible for consideration for continuation on the active list.

"(b) An officer in any grade, except captains in the Medical Service Corps and commanders in the Nurse Corps, shall become eligible for consideration by a selection board for promotion to the next higher grade when his running mate becomes eligible for such selection, except that officers of the Medical, Dental, Medical Service, and Chaplain Corps in the grades of lieutenant (junior grade) and lieutenant, and officers of the Nurse Corps in the grade of lieutenant (junior grade) shall not be eligible for such selection unless they are in the promotion zone in such grade or are senior to the officers in the promotion zone of the grade in which they are serving. An officer in any grade who shall become eligible for such consideration shall, regardless of failure or failures of selection for such promotion, remain so eligible while on the active list: *Provided,* That officers whose names are on the promotion list for any grade on the date of the convening of the board shall not be considered for the same grade by the board.

"(c) Of the officers, in any grade in any corps, designated for limited duty, who would otherwise be eligible for consideration for promotion pursuant to the provisions of subsection (b) of this section, only the officer in that corps whose running mate is the junior officer in the promotion zone for line officers designated for limited duty and officers in that corps senior to him in the grade concerned shall be eligible for such consideration.

"INFORMATION TO BE FURNISHED SELECTION BOARDS

"SEC. 208. (a) The Secretary of the Navy shall furnish the appropriate selection board with (1) the number of officers not restricted in the performance of duty and the number of officers designated for limited duty which the board may recommend for promotion to the next higher grade; (2) the names of all officers eligible for consideration for promotion; (3) the number of captains which the board may recommend for continuation on the active list; (4) the names of captains eligible for consideration for continuation on the active list; (5) the records of all officers whose names are furnished to a board; and (6) the names of officers in the respective promotion zones in the grade or grades under consideration for promotion.

"(b) The number to be furnished the board in respect to the promotion of officers not restricted in the performance of duty to the grades of captain and commander, except with respect to the promotion of officers of the Medical Service Corps to the grade of captain and of officers of the Nurse Corps to the grade of commander, shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be a fraction of the number of officers in the promotion zone in the grade and in the corps concerned. The enumerator of this fraction shall be a number equal to the number of officers not restricted in the performance of duty placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year. The denominator of this fraction shall be a number equal to the number of officers, not restricted in the performance of duty, in the promotion zone considered by said board for the selection of line officers.

"(c) The number to be furnished the board in respect to the promotion of officers designated for limited duty shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be a fraction of the number of such officers in the promotion zone in the grade and in the corps concerned. The numerator of this fraction shall be a number equal to the number of officers designated for limited duty placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year. The denominator of this fraction shall be a number equal to the number of officers designated for limited duty in the promotion zone considered by said board for the selection of line officers.

"(d) The number to be furnished the board in respect to the promotion of officers of the Supply Corps and Civil Engineer Corps not restricted in the performance of duty to the grades of lieutenant commander and lieutenant shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be a fraction of the number of such officers in the promotion zone in the grade and in the corps concerned. The numerator of this fraction shall be a number equal to the number of officers not restricted in the performance of duty placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year. The denominator of this fraction shall be a number equal to the number

of officers, not restricted in the performance of duty, in the promotion zone considered by said board for the selection of line officers.

"(e) The number to be furnished the board in respect to the promotion of officers, except officers of the Supply Corps, Civil Engineer Corps, and Nurse Corps to the grade of lieutenant commander and lieutenant shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be equal to the number of such officers in the promotion zones in the grades of lieutenant and lieutenant (junior grade), respectively.

"(f) The number to be furnished the board in respect to the promotion of captains to the grade of rear admiral shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be equal to the number of vacancies existing in the grade of rear admiral plus the estimated number of such vacancies which will occur during the ensuing twelve-month period and minus the number of captains then on the promotion list.

"(g) The number to be furnished the board in respect to captains to be continued on the active list shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be such a number in each case, not to exceed in each instance the number prescribed in subsection 212 (a) of this title, as the Secretary of the Navy shall determine to be necessary to meet the requirements of the Navy.

"(h) An officer in any grade, not restricted in the performance of duty, who has not failed of selection for promotion to the next higher grade, shall be deemed to be in the promotion zone when his running mate in the same grade has been determined to be in the promotion zone of officers not restrictd in the performance of duty in that grade.

"(i) An officer in any grade, designated for limited duty, who has not failed of selection for promotion to the next higher grade, shall be deemed to be in the promotion zone when his running mate in the same grade has been determined to be in the promotion zone of officers designated for limited duty.

"(j) The number to be furnished the board in respect to the promotion of officers of the Medical Service Corps to the grade of captain shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be equal to the difference between the allowed number of officers in that grade and the actual number of officers therein plus the number of officers estimated to be separated from that grade during the ensuing twelve-month period and minus the number of commanders then on the promotion list.

"(k) The number to be furnished the board in respect to the promotion of officers of the Nurse Corps to the grades of commander and lieutenant commander shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall for each grade be equal to the difference between the allowed number of officers in the grade and the actual number of officers therein plus the number of officers estimated to be separated from the grade during the ensuing twelve-month period and minus the number of officers of the next lower grade then on the promotion list.

"(*l*) The number to be furnished the board in respect to the promotion of officers of the Nurse Corps to the grade of lieutenant shall be determined by the Secretary of the Navy as of the date of the convening of the board and shall be equal to the number of lieutenants (junior grade) in that corps in and senior to the promotion zone minus the number of lieutenants (junior grade) then on the promotion list.

"(m) Any officer eligible for consideration for selection shall have the right to forward through official channels at any time not later than ten days after the convening of said board a written communication inviting attention to any matter of record in the Navy Department concerning himself which he deems important in the consideration of his case: *Provided,* That such communication shall not contain any reflection upon the character, conduct, or motives of or criticism of any officer.

"DUTIES OF SELECTION BOARDS

"SEC. 209. (a) From among those officers who are eligible for consideration for promotion, each board shall recommend for promotion those officers, if of the grade of lieutenant commander or above, or if designated for limited duty in grades above ensign, whom it considers best fitted for promotion, and, if of the grade of lieutenant or lieutenant (junior grade), in the Supply and Civil Engineer Corps or if of the grade of lieutenant in the Nurse Corps those whom it considers best fitted for promotion, if of the grade of lieutenant or lieutenant (junior grade) in the Medical Corps, Dental Corps, Chaplain Corps, Civil Engineer Corps, or Medical Service Corps, or of the grade of lieutenant (junior grade) in the Nurse Corps, those whom it considers fitted for promotion, in number not exceding the number furnished the board by the Secretary of the Navy as provided in section 208 of this title: *Provided,* That from among eligible officers junior in lineal rank to the junior officer in the appropriate promotion zone in a grade below that of captain, the board may not recommend as best fitted for promotion, a number exceeding 5 per centum of the total number that the board is authorized to recommend for promotion to the grade concerned or, if such 5 per centum shall not equal the whole number one, a number exceeding one: *Provided further,* That in each grade, except with respect to lieutenant commander and lieutenant of the Nurse Corps the junior officer in a promotion zone and all officers of his category senior to him in lineal rank who are eligible for consideration shall, if not selected for promotion, be considered as having failed of selection for promotion, and no such officer junior in lineal rank to said junior officer in said promotion zone shall, if not selected for promotion, be considered as having failed of selection for promotion: *And provided further,* That the status of having once failed of selection for promotion shall not be considered as prejudicial to an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection by the next succeeding selection board.

"(b) From among those captains who are eligible for consideration for continuation on the active list, the board shall recommend for such continuation those officers whom it considers best fitted for continued service on the active list, in number not exceeding the number furnished the board by the Secretary of the Navy, as provided in section 208 of this title.

"(c) The recommendation of the board in respect to the promotion of officers designated for limited duty shall be based upon their comparative fitness, within such category for the duties prescribed for them by law.

"(d) All reports or recommendations of a selection board under any provision of this title shall require the concurrence of at least two-thirds of the members: Provided, That the report or recommendation of a board composed of five members or less shall require the concurrence of at least a majority of the members.

"(e) The selection board shall also report the names of any officers among those eligible for consideration and of less than twenty years' service whose reports and records in its opinion indicate their unsatisfactory performance of duty in their present grades and in its opinion indicate that they would not satisfactorily perform the duties of a higher grade.

"REPORTS OF SELECTION BOARDS

"SEC. 210. (a) The report of the board shall be in writing, signed by all the members thereof, and shall certify that the board has carefully considered the case of every officer whose name was furnished the board by the Secretary of the Navy, as provided in section 208 of this title, and that, in the opinion of at least two-thirds of the members, the officers therein recommended if of the grade of lieutenant commander or above, if of the grade of lieutenant or lieutenant (junior grade) in the Supply Corps or Civil Engineer Corps, or if of the grade of lieutenant in the Nurse Corps, are, subject to the limitations prescribed in subsection 209 (a) of this title, selected as the best fitted to assume the duties of the next higher grade, and, if of the grade of lieutenant or lieutenant (junior grade) in the Medical Corps, Chaplain Corps, Dental Corps, or Medical Service Corps, or if of the grade of lieutenant (junior grade) in the Nurse

Corps, are selected as fitted to assume the duties of the next higher grade. The report of a board convened to recommend captains for continuation on the active list shall certify that, in the opinion of at least two-thirds of the members, if the board has more than five members, and, if the board has five members or less, in the opinion of at least a majority of the members, the officers therein recommended are selected as the best fitted for continued service on the active list.

"(b) The report of the board shall be submitted to the President for approval or disapproval: *Provided,* That in case any officer or officers recommended by the board for promotion or, in the case of captains, for continuation on the active list, be not acceptable to the President, the board shall be informed of the name of such officer or officers and shall recommend a number of officers for promotion or for continuation on the active list, as the case may be, equal to the number of those found not acceptable to the President, and, if necessary, the board shall be reconvened for this purpose.

"PROMOTION OF OFFICERS; PRECEDENCE; RUNNING MATES

"SEC. 211. (a) (1) Officers recommended for promotion to a grade below rear admiral in the report of a selection board, as approved by the President, shall be regarded as having been selected for promotion and their names shall be placed upon a promotion list for the grade concerned. Each such officer except a commander of the Medical Service Corps or a lieutenant commander or lieutenant of the Nurse Corps, shall become eligible for promotion to the grade for which selected when the line officer who, pursuant to subsection (h) of this section, is to be his running mate in the higher grade becomes eligible for promotion to that grade. When promoted, the staff officer shall be assigned the same date of rank which has been or, in due course, will be, given to such running mate in such higher grade and, except officers of the Medical Service Corps promoted to the grade of captain and officers of the Nurse Corps promoted to the grades of commander and lieutenant commander, shall be entitled to the pay and allowances of the higher grade from the date upon which such running mate became eligible for promotion thereto.

"(2) Promotions to fill vacancies in the grade of captain in the Medical Service Corps and to the grades of commander and lieutenant commander in the Nurse Corps shall be made from among officers whose names appear on the promotion list for the grade concerned. When so promoted each such officer shall have the same date of rank which has been, or in due course will be, given the line officer who is to be his or her running mate in the grade to which promoted, but no increased pay or allowances shall accrue to any such officer by virtue of his promotion prior to the date of occurrence of the vacancy which he is promoted to fill or prior to the date of his selection for promotion, whichever shall be later.

"(b) The names of officers recommended by a board for promotion to the grade of rear admiral, and approved by the President, shall be placed upon a promotion list and promotions to fill vacancies shall be made from officers whose names appear on the promotion list: *Provided,* That when so promoted each such officer shall have the same date of rank which has been given to the running mate assigned him in the grade to which he is promoted: *Provided further,* That if such running mate shall not have been promoted, the staff officer shall be given as his date of rank the date of the occurrence of the vacancy which he is promoted to fill until such running mate shall have been promoted to the grade of rear admiral, at which time the staff officer shall be given a new commission with the same date of rank given to such running mate: *And provided further,* That each staff officer promoted to the grade of rear admiral shall be entitled to the pay and allowances of that grade only from the date of occurrence of the vacancy which he is promoted to fill.

"(c) The President may remove the name of any officer from the promotion list. An officer whose name is so removed from the promotion list or one whose appointment is rejected by the Senate, shall continue to be eligible for consideration for recommendation for promotion: *Provided,* That the next ensuing selection board may recommend the officer concerned for promotion, and thereupon, with the approval of the President, the name of such officer shall be replaced on the promotion list, without prejudice by reason of its having been temporarily removed therefrom, and when promoted such officer shall take the same lineal rank and date of rank that he would have had had his name not been so removed: *And provided further,* That if such officer is not so recommended by such next ensuing selection board or if the President shall again remove his name from the promotion list or if the Senate shall again reject his appointment, he shall be held for all purposes to have twice failed of selection for promotion.

"(d) Line and staff officers of the Navy, when of the same grade, shall take precedence with all other line and staff officers of the same grade from the dates of rank stated in their commissions in said grade: *Provided,* That officers serving in the same grade and having the same date of rank in that grade shall take precedence in the following order: (a) Line officers, (b) medical officers, (c) supply officers, (d) chaplains, (e) civil engineers, (f) dental officers, (g) officers of the Medical Service Corps, and (h) officers of the Nurse Corps.

"(e) (1) Lieutenants (junior grade) in a staff corps, other than the Medical and Dental Corps, appointed subsequent to the approval of this Act pursuant to any authority other than the Act of April 18, 1946 (Public Law 347, Seventy-ninth Congress), with date of rank in that grade in the same calendar year shall, in order of their lineal rank and following December 31 of that year, be assigned running mates among line lieutenants (junior grade) with dates of rank in the same calendar year, in the manner herein prescribed. Each such staff officer shall be assigned as his running mate the line officer whose numerical position in the order of lineal rank among the line lieutenants (junior grade) above described is equal, or nearest equal, to the product of the numerical position of the staff officer in his order of lineal rank in his corps and a fraction whose numerator is the number of such line officers and whose denominator is the number of such staff officers. When there is but one such staff officer, the running mate shall be the line officer whose lineal rank is nearest the middle of the line officers concerned: *Provided,* That in any staff corps where officers may be originally appointed to the grade of lieutenant (junior grade) or ensign, all staff officers of that corps with dates of rank as lieutenants (junior grade) in the same calendar year shall, for the purpose of assignment of running mates, be regarded as having lineal rank in such order as may be recommended in the approved report of a board of officers convened for that purpose; such boards shall be convened as soon as practicable after December 31 of each year, shall be composed of officers of the corps concerned, and their recommendations when approved by the Secretary of the Navy shall be conclusive.

"(2) An officer appointed to a staff corps in a grade above lieutenant (junior grade) except one appointed pursuant to the Act of April 18, 1946 (Public Law 347, Seventy-ninth Congress), shall be assigned as his running mate the junior line officer of the same grade with the same date of rank, or if there be none, the junior line officer of the same grade with next earlier date of rank.

"(f) Notwithstanding the provisions of subsection (e) of this section, a line officer hereafter transferred to a staff corps in the grade of lieutenant (junior grade) or above shall, upon transfer, have assigned as his running mate the line officer immediately senior to him at the time of transfer.

"(g) Should the running mate of a staff officer be separated from the active list or for any cause lose numbers, a new running mate shall be assigned the staff officer who shall be the line officer who was next senior to the former running mate, or the line officer who was next junior if the former running mate was the senior officer in the grade concerned.

"(h) A staff officer selected for promotion shall, when promoted, have assigned as his running mate in the grade to which promoted, a line officer of the same grade whose name was placed upon the promotion list for that grade upon approval of the line selection board immediately preceding the Staff Corps selection board which selected the staff officer. Such line officer shall be the officer who was the running mate of the staff officer in the grade from which promoted if such running mate shall have been selected and promoted; otherwise, the new running

mate shall be the line officer whose name was on the said promotion list and who shall have been selected and promoted next senior to the former running mate or, if there be no such line officer, the line officer who shall have been selected and promoted next junior to the former running mate. In the application of this subsection, if a board on selection for any staff corps and grade therein be not convened between the date of convening of two or more line selection boards for the same grade, the earliest of such boards shall be held as being the line selection board immediately preceding the staff board when convened.

"(i) Should the running mate of a staff officer be promoted to a higher grade and such staff officer be not so promoted, the latter shall have assigned as his running mate in the grade in which he remains the line officer of that grade who was next senior to the former running mate, or if there be none the line officer of that grade next junior to the former running mate.

"(j) If a staff officer of the grade of lieutenant (junior grade) or above shall lose numbers in grade for any cause he shall have assigned as his new running mate the line officer who is the running mate of the junior of those officers in his corps who becomes or will become senior to him as the result of such loss of numbers.

"(k) If the running mate of a staff officer shall be advanced in numbers or shall be advanced in grade in accordance with section 1508 of the Revised Statutes, the staff officer shall have assigned as his new running mate the line officer not advanced who was next senior to his former running mate in the grade in which the staff officer remains or, if there remain in that grade no line officer who was senior to such former running mate in the grade concerned, the staff officer shall have assigned as his new running mate the senior line officer in the grade in which the staff officer remains.

"(*l*) If a staff officer of the grade of lieutenant (junior grade) or above shall be advanced in numbers in his grade, he shall have assigned as his new running mate the line officer who is the running mate of the officer of the same grade in his corps immediately senior to such staff officer in the position to which advanced; if there be no such senior staff officer, the staff officer who is so advanced shall have assigned as his new running mate the line officer who is the running mate in the grade concerned of the staff officer of the same corps immediately junior to such staff officer in the position to which advanced.

"(m) The line officer running mate assigned a staff officer pursuant to this section shall, if the staff officer be one designated for limited duty, be an officer also designated for such duty; in all other cases, the running mate shall be a line officer not restricted in the performance of duty.

"(n) Officers of the staff corps serving in the grade of rear admiral shall receive the pay and allowances prescribed by law for rear admirals of the upper half from the date on which their respective running mates enter the upper half of the list of rear admirals, but not prior to the date of the vacancy the staff officer was promoted to fill. [Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.]

"RETIREMENT OF OFFICERS BELOW THE GRADE OF REAR ADMIRAL

"SEC. 212. (a) Captains of the Medical Service Corps shall be placed on the retired list on June 30 of the fiscal year in which they complete thirty-one years of total commissioned service, and captains of each other corps whose names, on June 30 of the fiscal year in which they complete thirty-one years of total commissioned service, are not on a promotion list, shall, subject to the provisions of subsection 211 (c) of this title, if not otherwise retired pursuant to law, be placed on the retired list on that date: *Provided,* That an officer who has lost numbers or precedence shall not be placed on the retired list by reason of completion of thirty-one years of total commissioned service until June 30 of the fiscal year in which he completes five years of service in the grade of captain: *Provided further,* That captains whose names, on June 30 of the fiscal year in which they complete thirty years of total commissioned service, are not on a promotion list, shall, subject to the provisions of subsection 211 (c), if not otherwise retired pursuant to law, and if they shall have twice failed of selection for promotion to rear admiral, be placed on the retired list on that date: *Provided further,* That not to exceed the following numbers of captains, recommended for continuation on the active list in the report of a selection board as approved by the President, may be so continued until the report of the next succeeding selection board is approved but no such captain shall be continued on the active list beyond June 30 of the fiscal year in which he shall have completed thirty-five years of total commissioned service: Twenty-two in the Medical Corps, twenty-two in the Supply Corps, twenty-five in the Chaplain Corps, seven in the Civil Engineer Corps, twelve in the Dental Corps: *And provided further,* That a captain so continued on the active list shall, if not again recommended for continuation on the active list in the approval report of the next succeeding selection board, thereafter be carried in excess of the number authorized to be so continued and shall be placed on the retired list on June 30 of the then current fiscal year.

"(b) Commanders, except commanders designated for limited duty, whose names, on June 30 of the fiscal year in which they complete twenty-six years of total commissioned service, are not on a promotion list, shall, subject to the provisions of subsection 211 (c) of this title, if not otherwise retired pursuant to law and if they shall have twice failed of selection for promotion to captain, be placed on the retired list on that date. Commanders, except commanders designated for limited duty, who shall twice fail of selection for promotion to captain, if such second failure shall occur subsequent to June 30 of the fiscal year in which they complete twenty-six years of total commissioned service, shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the fiscal year in which such second failure shall occur: *Provided,* That commanders in the Medical Service Corps shall not be involuntarily retired by reason of failure of selection for promotion until June 30 of the fiscal year in which they shall have completed thirty years of total commissioned service.

"(c) Officers designated for limited duty shall, if not otherwise retired pursuant to law, be placed on the retired list on the last day of the month following the month in which they complete thirty years of active naval service, exclusive of active duty for training in a Reserve component.

"(d) Lieutenant commanders, except lieutenant commanders designated for limited duty and lieutenant commanders of the Nurse Corps, whose names, on June 30 of the fiscal year in which they complete twenty years of total commissioned service, are not on a promotion list, shall, subject to the provisions of subsection 211 (c) of this title, if not otherwise retired pursuant to law and if they shall have twice failed of selection for promotion to commander, be placed on the retired list on that date. Lieutenant commanders, except lieutenant commanders designated for limited duty and lieutenant commanders of the Nurse Corps, who shall twice fail of selection for promotion to commander, if such second failure shall occur subsequent to June 30 of the fiscal year in which they complete twenty years of total commissioned service, shall, if not otherwise retired pursuant to law, be placed on the retired list on June 30 of the fiscal year in which such second failure shall occur.

"(e) Lieutenant commanders designated for limited duty shall, if not otherwise retired pursuant to law be placed on the retired list on June 30 for the fiscal year in which they shall have twice failed of selection for promotion to commander: *Provided,* That such an officer instead of such separation from the active list shall, if he had the permanent status of a warrant officer or a commissioned warrant officer when first appointed an officer for the performance of limited duty only, have the option of reverting to the grade and status he would have held had he not been so appointed, and if he had a permanent rating below warrant officer when first so appointed he shall have the option of reverting to the grade and status he would have held had he not been so appointed but had instead been appointed a warrant officer, and in any computation to determine such grade and

status all service as an officer designated for limited duty, or as a temporary or Reserve officer shall be included: *And provided further,* That such an officer exercising such option shall, if not otherwise retired pursuant to law, be placed on the retired list in the grade in which then serving, upon the completion of a total of thirty years of active naval service, exclusive of active duty for training in a Reserve component, with retired pay at the rate of 75 per centum of his active-duty pay.

"(f) Officers above the grade of lieutenant who are placed on the retired list pursuant to the provisions of this section shall be placed thereon with retired pay at the rate of 2½ per centum of their active-duty pay at the time of retirement multiplied by the number of years of service for which entitled to credit in the computation of their pay on the active list, not to exceed a total of 75 per centum of said active-duty pay: *Provided,* That a fractional year of six months or more shall be considerd a full year in computing the number of years' service by which the rate of 2½ per centum is multiplied: *Provided further,* That the retired pay of an officer commissioned in the Regular Navy pursuant to the provisions of the Act approved April 18, 1946 (Public Law 347, Seventy-ninth Congress), or one commissioned in the Regular Navy subsequent to September 8, 1939, while serving on active duty as an officer of the Naval Reserve, who is so placed on the retired list, shall not be less than 50 per centum of his active-duty pay at the time of retirement.

"(g) Lieutenants and lieutenants (junior grade), except lieutenants of the Nurse Corps, who shall have twice failed of selection for promotion to lieutenant commander and lieutenant, respectively, and officers whose names are reported in accordance with subsection 209(e) of this Act, shall be honorably discharged from the Navy on June 30 of the fiscal year in which they fail of such selection the second time, or in which their names are reported in accordance with subsection 209(e) of this Act, with a lump-sum payment computed on the basis of two months' active-duty pay at the time of discharge for each year of commissioned service computed in accordance with subsection 202(d), but not to exceed a total of two years' active-duty pay: *Provided,* That for the purpose of this subsection a fractional year of six months or more shall be considered a full year in computing the number of years' commissioned service upon which to base such lump-sum payment: *And provided further,* That an officer designated for limited duty, instead of such separation from the active list, shall have the option described in subsection (e) of this section. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

"(h) Officers on a promotion list who, at any time prior to promotion, are found incapacitated for service by reason of physical disability contracted in line of duty shall, when retired, be retired in the rank for which they were selected, with retired pay at the rate of 75 per centum of the active-duty pay of the grade to which selected.

"(i) The provisions of this title relating to the discharge or retirement of officers who have twice failed of selection for promotion shall be applicable to officers above the grade of ensign who failed on professional reexamination for promotion in the same manner as if such officer had twice failed of selection for promotion. [Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.]

"(j) Nothing in this section shall be held to reduce the retired rank or pay to which an officer would be entitled under other provisions of law.

"RETIREMENT OF OFFICERS ABOVE THE GRADE OF CAPTAIN

"SEC. 213. (a) The Secretary of the Navy shall make a special review of vacancies in the grade of rear admiral in the Chaplain Corps in the third fiscal year following the fiscal year in which this Act becomes effective, and in the third fiscal year of each three-year period thereafter, and, should it be found, in any such third year, as of the time of the convening of a board for the consideration of captains of the Chaplain Corps for promotion to the grade of rear admiral that no such captain was selcted during the two preceding fiscal years because of lack of existing and estimated vacancies, and that no vacancy exists and none is estimated to occur during the ensuing twelve-month period, the Secretary of the Navy shall convene a board composed of three officers of the line of the grade of rear admiral or above, to consider rear admirals of the Chaplain Corps and to recommend one such officer for retirement.

"(b) The Secretary of the Navy shall make a special review of vacancies in the grade of rear admiral in the Dental Corps in the second fiscal year following the fiscal year in which this Act becomes effective, and in the second fiscal year of each two-year period thereafter, and, should it be found, in any such second year, as of the time of the convening of a board for the consideration of captains of the Dental Corps for promotion to the grade of rear admiral, that no such captain was selected during the preceding fiscal year because of lack of existing and estimated vacancies and that no vacancy exists and none is estimated to occur during the ensuing twelve-month period, the Secretary of the Navy shall convene a board composed of one officer of the Dental Corps and two officers of the line, of the grade of rear admiral or above, to consider rear admirals of the Dental Corps and to recommend one such officer for retirement.

"(c) Should it be found, as of the time of the convening of a board for the consideration of captains in the Medical Corps or in the Supply Corps for promotion to the grade of rear admiral, that the number of vacancies existing plus the estimated number of vacancies which will occur during the ensuing twelve-month period in the grade of rear admiral is less than will permit the selection for promotion of a number of captains in the corps concerned equal to 15 per centum of the authorized number of rear admirals, the Secretary of the Navy shall convene a board of not less than five officers, serving in the rank of rear admiral or above, to consider and recommend for retirement a sufficient number of such rear admirals to permit the selection for promotion of the said number of captains.

"(d) The Secretary of the Navy shall make a special review of vacancies in the grade of rear admiral in the Civil Engineer Corps in the second fiscal year following the fiscal year in which this Act becomes effective and in the second fiscal year of each two-year period thereafter, and, should it be found, in any such second year, as of the time of the convening of a board for the consideration of captains of the Civil Engineer Corps for promotion to the grade of rear admiral, that no such captain was selected during the preceding fiscal year because of lack of existing and estimated vacancies, and that no vacancy exists and none is estimated to occur during the ensuing twelve-month period, the Secretary of the Navy shall convene a board composed of one officer of the Civil Engineer Corps and two officers of the line, of the rank of rear admiral or above, to consider rear admirals of the Civil Engineer Corps and to recommend one such officer for retirement.

"(e) The report of a board convened pursuant to the provisions of this section shall be submitted to the President for approval or disapproval; if the President shall disapprove the recommendations of the board in whole or in part, the board shall then recommend additional rear admirals for retirement equal in number to those disapproved by the President.

"(f) Officers so recommended for retirement as approved by the President shall, if not otherwise retired pursuant to law, be placed upon the retired list on June 30 of the then current fiscal year with retired pay at the rate of 2½ per centum of their active-duty pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which they would be entitled to credit in the computation of pay on the active list had they been serving in the grade of captain at the time of their retirement, but retired pay so computed shall not exceed a total of 75 per centum of said active-duty pay.

"(g) The boards provided for in this section except as otherwise specified in this section shall be composed of officers on the active list of the Navy of the corps concerned. In case there be not a sufficient number of officers of the corps concerned legally or physically capacitated to serve on a selection board of such corps, officers of the line on the active list of equivalent rank may be detailed to duty on such board to constitute the required membership.

"(h) Nothing in this section shall be held to reduce the retired rank or pay to which an officer would be entitled under other provision of law.

"EFFECTIVE DATE OF TITLE II

"SEC. 214. Sections 201, 202, and 203 of this title shall be effective upon the date of approval of this Act. The remaining provisions of this title shall be effective upon the termination of title III of this Act." [Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 1041.]

EXAMINATION OF OFFICERS PRIOR TO PROMOTION

Section 411 (a) of act Aug. 7, 1947, ch. 512, title IV, 61 Stat. 873, as amended by act Aug. 10, 1956, ch. 1041, § 48 (c), 70A Stat. 640, provided that: "Except as otherwise provided, nothing in titles I and II of this Act [Officer Personnel Act of 1947] shall be held or construed to modify the provisions of existing law relating to the physical, mental, moral, and professional examination of officers prior to promotion, and such provisions of law, as herein amended, shall be applicable to all promotions effected pursuant to titles I and II of this Act."

SERVICE IN GRADE TO INCLUDE SERVICE IN GRADE UNDER TEMPORARY APPOINTMENT

Section 421 of act Aug. 7, 1947, ch. 512, title IV, 61 Stat. 878, as amended by act Aug. 10, 1956, ch. 1041, § 48 (d), 70A Stat. 640, provided: "In computing length of service in grade under any provision of titles I and II of this Act [Officer Personnel Act of 1947] each officer on active duty on August 7, 1947, shall be credited with all time from the date of rank in his grade or in a higher grade, whether under permanent appointment or temporary appointment, whichever is earlier: *Provided,* That any officer promoted in grade subsequent to August 7, 1947, shall be credited with service in the grade to which so promoted only from the date of his eligibility for promotion to that grade: *And provided further,* That notwithstanding the foregoing, no officer who has not lost numbers or precedence shall become eligible for consideration by a selection board until all officers of his grade senior to him in lineal position become so eligible."

RETIREMENT AGE LIMIT FOR OFFICERS

Section 416 of act Aug. 7, 1947, ch. 512, title IV, 61 Stat. 877, as amended by act Aug. 10, 1956, ch. 1041, § 48 (d), 70A Stat. 640, provided:

"(a) Nothing in titles I and II of this Act [Officer Personnel Act of 1947] shall be held to supersede, amend, or repeal the provisions of existing law relating to the retirement of officers attaining the age of sixty-two years.

"(b) Nothing in titles I and II of this Act [Officer Personnel Act of 1947] shall be held to repeal sections 1506 or 1507 of the Revised Statutes [see § 5790 of this title]."

OPPORTUNITY FOR PROMOTION FOR CERTAIN OFFICERS OF REGULAR NAVY AND REGULAR MARINE CORPS

Sections 1–5, 7 and 8 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 333, as amended by Pub. L. 86–616, § 12, July 12, 1960, 74 Stat. 396; Pub. L. 88–393, §§ 1, 2, Aug. 1, 1964, 78 Stat. 375, provided:

"[Sec. 1. Recommendations for continuation on active list; Officers eligible for consideration; continuation zones; retirement of officers not recommended for continuation.] That (a) the Secretary of the Navy may, whenever the needs of the service require, convene selection boards, or direct boards convened under chapter 543 of title 10, United States Code [this chapter], to recommend for continuation on the active list officers of the Regular Navy and the Regular Marine Corps described in subsection (c) and shall convene or direct such boards to recommend for continuation on the active list officers of the Regular Navy and the Regular Marine Corps described in subsections (e)–(g). Except as otherwise provided in this section, the provisions of chapter 543 of title 10, United States Code [this chapter] (other than section 5701(e) [subsec. (e) of this section]), concerning boards to recommend captains, commanders, colonels, or lieuteuant colonels for promotion, apply to each board convened under this subsection.

"(b) Each board convened under subsection (a) to consider captains in the Medical Service Corps or the Nurse Corps shall consist of not less than three or more than nine officers on the active list or the retired list of the Regular Navy in the grade of captain or above, two-thirds of whom are officers in the Medical Corps and one-third of whom are officers in the corps concerned. To be eligible for membership on such a board, an officer on the active list in the Medical Service Corps or the Nurse Corps must have been recommended for continuation on the active list by an earlier board convened under this section. When there is an insufficient number of officers of the Medical Service Corps or the Nurse Corps available to serve, the Secretary shall complete the minimum required membership by appointing as members of the board officers of the Regular Navy in the Medical Corps.

"(c) Each officer of the Regular Navy or the Regular Marine Corps who has served on active duty for more than five years, who is not on a promotion list, and who will complete at least five years of service in the grade of captain in the Navy or colonel in the Marine Corps by June 30 of the fiscal year in which a board is convened under this section is eligible for consideration for continuation on the active list by that board. An officer who has once been recommended for continuation while serving in the grade of captain or colonel by such a board may not be considered by a subsequent board convened under this section and is not subject to the provisions of subsection (e) or (f). For purposes of this subsection, an officer is considered as serving in the grade of captain in the Navy or colonel in the Marine Corps from the date of rank assigned him upon appointment to that grade under chapter 539 or 545 of title 10, United States Code, until the effective date of his appointment in the next higher grade under chapter 545 of title 10, United States Code.

"(d) When the Secretary convenes a board under this section to consider any category of officers described in subsection (c) or (e), he shall establish a continuation zone for that category. The continuation zone for each category shall include such number of officers as the Secretary determines to be necessary to best meet the needs of the service. The senior officer in a continuation zone, for each category of officers, shall be designated by the Secretary. When the Secretary convenes a board to consider for continuation a category of officers for which a continuation board has been previously convened, the senior officer for that category shall be the officer next junior to the most junior officer of that category considered for continuation by the preceding board. The junior officer in each continuation zone shall be designated by the Secretary. In each category, all officers junior to the senior officer and senior to the junior officer in a continuation zone shall be in the continuation zone for that category. Only officers who are in a continuation zone may be considered for continuation by a selection board.

"(e) Each officer not restricted in the performance of duty serving in the grade of captain on the active list in the line of the Regular Navy, each officer serving in the grade of captain on the active list of the Regular Navy in the Supply Corps, the Chaplain Corps, or the Civil Engineer Corps, and each officer not restricted in the performance of duty serving in the grade of colonel on the active list of the Regular Marine Corps who is not on a promotion list, who has not been previously recommended for continuation in the approved report of a board, and who has at least twice failed of selection to the grade of rear admiral in the Navy or brigadier general in the Marine Corps is eligible for consideration for continuation on the active list by a board convened under this section.

"(f) Each officer designated for supply duty serving in the grade of colonel on the active list of the Regular Marine Corps who is not on a promotion list, who has not been previously recommended for continuation in the approved report of a board, and who will complete at least twenty-seven years of total commissioned service, as computed under section 6387 of title 10, United States Code [section 6387 of this title], by June 30 of the fiscal year in which a board is convened under this section is eligible for consideration for continuation on the active list by that board.

"(g) Each officer on the active list of the Regular Navy or the Regular Marine Corps serving in the grade of commander or lieutenant colonel (except an officer designated for limited duty, an officer in the Nurse Corps, or

a woman officer appointed under section 5590 of title 10, United States Code who is not on a promotion list, who has not been previously recommended for continuation in the approved report of a board, and who has at least twice failed of selection for promotion to the grade of captain in the Navy or colonel in the Marine Corps is eligible for consideration for continuation on the active list by a board convened under this section.

"(h) The Secretary shall furnish the appropriate selection board convened under this section with the names of the officers who shall be considered by the board and, based on the needs of the service, the number of these officers by categories that may be recommended for continuation on the active list. Of the officers considered for continuation by each selection board, the board shall recommend those officers whom the board considers best qualified for continuation on the active list. Each board shall certify in its written report that in the opinion of at least two-thirds of the acting members of the board the officers recommended are selected as best qualified for continued service on the active list. Of the officers considered but not recommended for continuation on the active list the board shall further report the names of any officers whose performance of duty would not warrant retention on the active list under any circumstances. Each board shall certify in its written report that in the opinion of two-thirds of the acting members of the board, based on the information available to the board, the performance of duty of each such officer whose name is so reported would not warrant retention on the active list under any circumstances. The report of each board shall be submitted to the President and shall become final upon his approval.

"(i) Unless sooner selected for promotion to the next higher grade, each officer who is considered for continuation on the active list by a board convened under this section and who is not recommended for continuation in the approved report of the board, shall, notwithstanding any other provision of law except subsection (j) or (k), be retired on June 30 of the fiscal year in which the report of the board is approved or in which he completes 20 years of total commissioned service, as computed under section 6387 or 6388 of title 10, United States Code whichever is later.

"(j) An officer in a grade below rear admiral on the active list of the Regular Navy who has the rank of rear admiral while serving in a statutory office and who would be retired under this Act may have his date of retirement deferred by the Secretary during the period the officer has the rank of rear admiral and has not attained the age of sixty-two years.

"(k) If the report of a board that considers officers for continuation on the active list under this section is approved less than six months before the end of the fiscal year, the retirement of officers who were considered but not recommended for continuation by that board shall be deferred until the first day of the seventh month following the month in which the report of the board is approved.

"Sec. 2. [Retired grade and pay; lump-sum payment; voluntary retirement.] (a) An officer who is retired under this Act, unless otherwise entitled to a higher retired grade or higher retired pay, shall be retired in the grade in which he was serving at the time of retirement and is entitled to retired pay at the rate of 2½ percent of the basic pay to which he would be entitled if serving on active duty in the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of title 10, United States Code.

"(b) The retired pay of any officer retired under this Act may not be less than 50 percent or more than 75 percent of the basic pay upon which the computation of retired pay is based.

"(c) In determining the total number of years of service to be used as a multiplier in computing retired pay under subsectiton (b), and in determining the resultant number of years of early retirement under subsection (d), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

"(d) An officer who on the date of enactment of this Act [August 11, 1959] is serving in the grade of captain or commander in the Regular Navy or colonel or lieutenant colonel in the Regular Marine Corps or is on a promotion list for promotion to one of those grades, who is not thereafter recommended for promotion to a higher grade, and whose name has not been reported in the approved report of a board in compliance with subsection 1(h) of this Act, and who is retired under this Act shall be paid, in addition to his retired pay, a lump-sum payment of $2,000, effective on the date of his retirement.

"(e) An officer who has the qualifications specified in subsection (d) and who has been considered but not recommended for continuation on the active list pursuant to section 1 of this Act shall be considered for the purpose of subsection (d) as being retired under this Act if the officer retires voluntarily prior to the date specified for his retirement under this Act.

"(f) An officer who is retired under this Act shall thereafter be considered as having retired voluntarily pursuant to section 6323 of title 10, United States Code.

"Sec. 3. [Election of annuity; effective date of change or revocation.] Notwithstanding section 1431 of title 10, United States Code, a change or revocation of an election made under that section by—

"(1) an officer who is retired under this Act; or

"(2) an officer who has been considered but not recommended for continuation on the active list under this Act and who retires voluntarily before the date specified for his retirement under this Act;

is effective if made at such a time that it would have been effective had he been retired on the date prescribed by section 6376 or 6377 of title 10, United States Code. However, an original election or a new election made after a revocation is not effective unless made before the convening date of the board that considered the officer for continuation.

"Sec. 4. [Zones of consideration for Marine Corps majors.] (a) Until December 31, 1964, the Secretary of the Navy may establish zones of consideration for male officers of the Marine Corps serving in the grade of major, in addition to or instead of the promotion zones authorized by sections 5765 (b) and (c) of title 10, United States Code. The zone of consideration for that grade shall include such number of officers who are eligible for consideration for promotion as the Secretary determines to best meet the needs of the Marine Corps. The senior officer and the junior officer in a zone of consideration shall be designated by the Secretary. All officers junior to the senior officer and senior to the junior officer in a zone of consideration shall be in the zone of consideration. The zone of consideration for officers designated for supply duty shall consist of those officers who are junior to the senior officer and senior to the junior officer in the corresponding zone of consideration for officers not restricted in the performance of duty. Only officers who are in a zone of consideration or who are senior thereto may be considered by the selection board. Notwithstanding any other provision of law except the second sentence of subsection (c) of this section, the selection board may recommend as best fitted for promotion, from among the officers who are in or senior to a zone of consideration, the number of officers serving in the grade of major that the board is authorized to recommend for promotion to the grade of lieutenant colonel. An officer who is included within a zone of consideration but is not within or senior to a promotion zone and who is not selected for promotion is not considered as having failed of selection for any purpose.

"(b) Whenever a zone of consideration is established for the grade of major pursuant to this section the term 'promotion zone' as used in section 5759(b) of title 10, United States Code, is synonymous with the term 'zone of consideration'.

"(c) Notwithstanding the last sentence of section 5765 (b) of title 10, United States Code, the Secretary shall, until December 31, 1964, determine the number of officers of the Marine Corps in a promotion zone for promotion to lieutenant colonel on the basis of a consideration of the number of vacancies estimated for the grade of lieutenant colonel in the next five years, the required number of vacancies in the grade of major, and the age and service characteristics of the officers in the grade of major. The Secretary may, until December 31, 1964, specify the maximum number of officers who may be

recommended for promotion to the grade of lieutenant colonel from within and above a promotion zone established under section 5765 of title 10, United States Code [section 5765 of this title]. That portion of section 5765(b) of title 10, United States Code, which reads 'in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and' is suspended until December 31, 1964, for the grade of major.

"Sec. 5. [Suspension during war or national emergency.] The President may suspend any provision of section 1 or 4 of this Act during a war or national emergency hereafter declared. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends.

* * * * *

"Sec. 7. [Applicability to Navy officers in the Medical Corps, Dental Corps, Medical Service Corps, or Nurse Corps.] No officer of the Navy in the Medical Corps, the Dental Corps, the Medical Service Corps, or the Nurse Corps is subject to the provisions of this Act during the effective period of the Act of June 27, 1957, Public Law 85–62 (71 Stat. 208) [see Effective and Termination Date note under section 454 of Appendix to Title 50, War and National Defense], as now or hereafter amended.

"Sec. 8. [Termination date.] Section 1 of this Act shall have no further force or effect after June 30, 1970."

Retroactive effect of 1960 amendment to section 3 of Pub. L. 86–155. Section 12 of Pub. L. 86–616 provided in part that the amendment of section 3 of Pub. L. 86–155 shall be effective as of Aug. 11, 1959.

CROSS REFERENCES

Reports—

Submission of report of board to President, see section 5710 (b) of this title.

Written report and certification required of board, see section 5708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5710, 6378 of this title.

§ 5702. Navy; staff corps officers: promotion and continuation on the active list.

(a) The Secretary of the Navy shall convene the following selection boards to recommend staff corps officers, other than women officers appointed under section 5590 of this title, for promotion and for continuation on the active list:

(1) A board for each corps, other than the Medical Service Corps, to recommend captains in each corps and commanders in the Nurse Corps for continuation on the active list or to recommend captains in each corps, other than the Medical Service Corps and the Nurse Corps, for promotion to the grade of rear admiral, each consisting of not less than three or more than nine officers serving in the grade of rear admiral or above.

(2) A board for each corps, other than the Medical Service Corps, and for each grade as appropriate, to recommend commanders, lieutenant commanders, lieutenants, and lieutenants (junior grade) for promotion to the next higher grade, each consisting of not less than six or more than nine officers serving in the grade of commander or above.

(3) A board for the Medical Service Corps to recommend captains for continuation on the active list, consisting of not less than three or more than six officers of the Regular Navy, in the Medical Corps serving in the grade of rear admiral.

(4) A board for the Medical Service Corps, for each grade, to recommend commanders, lieutenant commanders, lieutenants and lieutenants (junior grade) for promotion to the next higher grade, each consisting of not less than six or more than nine officers serving in the grade of captain or above, of whom two-thirds shall be officers in the Medical Corps and one-third officers in the Medical Service Corps, except that when officers in the Medical Service Corps in dental specialties are eligible for consideration for promotion the membership of the board shall include, in lieu of one of the officers in the Medical Corps, an officer in the Dental Corps serving in the grade of captain or above.

(b) Each board convened under this section to consider officers in the Medical Corps, the Supply Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Civil Engineer Corps, the Dental Corps, or the Nurse Corps shall consist of officers in the corps concerned, and each board convened under this section to consider officers in the Medical Service Corps shall consist of officers in the corps indicated in subsection (a). Except as provided in subsections (c) and (d), each board convened under this section shall consist of officers of the Regular Navy on the active list or the retired list.

(c) Except as provided in subsection (a), when there is an insufficient number of staff corps officers legally and physically qualified to serve on a board convened under this section, the Secretary shall complete the minimum required membership by appointing as members of the board officers on the active list in the line of the Navy serving in the grades prescribed in subsection (a). However, in the case of boards considering officers in the Nurse Corps, the Secretary may complete the minimum required membership by appointing as members of the board officers on the active list of the Navy in the Medical Corps serving in the prescribed grades.

(d) When officers of the Naval Reserve are eligible for consideration by a selection board convened under this section, the Secretary shall appoint an appropriate number of reserve officers, otherwise qualified under this section, as members of the board and shall appoint officers of the Regular Navy, qualified under this section, to complete the prescribed membership.

(e) Each board prescribed in this section shall be convened at least once each year as soon as practicable after the report of a corresponding selection board for line officers has been approved by the President and at such other times as the Secretary directs.

(f) No officer may be a member of two successive boards convened under this section for the consideration of officers for promotion to the same grade or for the consideration of captains for continuation on the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 337; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (5), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, § 1(18) (A)–(H), 81 Stat. 377; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5702	34 U. S. C. 306 (b); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 305 (b), 61 Stat. 841. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.

In subsection (a) the words "for each corps" are inserted after the words "a board" for clarity. In subsection (a) (1) the words "other than the Medical Service Corps and the Nurse Corps" are inserted to make it clear that there is no authority to promote officers of those corps to the grade of rear admiral or to select captains in the Medical Service Corps for continuation on the active list after they have completed 31 years of total commissioned service.

In subsection (b) the words "officers of the Regular Navy * * * on the active list or the retired list" are substituted for the words "officers on the active list or retired list of the Navy" for clarity. The words "officers of the Regular Navy in the Medical Corps on the active list or the retired list" are substituted for the words "officers * * * on the active or retired list of the Medical Corps" for clarity.

Subsection (d) is added to reflect the effect on this section of § 254 of the Armed Forces Reserve Act of 1952 (50 U. S. C. 1005), which is codified in § 266 of this title.

AMENDMENTS

1967—Subsec. (a) (1). Pub. L. 90–130, § 1(18) (A), authorized the convening of selection boards for the Nurse Corps to recommend commanders in the Nurse Corps for continuation on the active list.

Subsec. (a) (2). Pub. L. 90–130, § 1(18) (B), (C), authorized the convening of a board for the Nurse Corps for each grade, as appropriate, to recommend commanders, lieutenant commanders, lieutenants, and lieutenants (junior grade) for promotion to the next higher grade, and reduced from captain to commander the rank of the officers serving on the boards for each corps.

Subsec. (a) (3). Pub. L. 90–130, § 1(18) (D), struck out provisions authorizing a board for the Nurse Corps to recommend captains and commanders for continuation on the active list.

Subsec. (a) (5). Pub. L. 90–130, § 1(18) (E), struck out subsec. (a) (5) which provided for a board for the Nurse Corps to recommend commanders for promotion to captain.

Subsec. (a) (6). Pub. L. 90–130, § 1(18) (E), struck out subsec. (a) (6) which provided for a board for the Nurse Corps to recommend lieutenant commanders, lieutenants, and lieutenants (junior grade) for promotion to the next higher grade.

Subsec. (b). Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

Pub. L. 90–130, § 1(18) (F), substituted requirement that boards convened to consider officers in the Nurse Corps consist of officers in the corps concerned for requirement that such boards consist of officers in the corps indicated in subsec. (a).

Subsec. (c). Pub. L. 90–130, § 1(18) (G), added provision that, in the case of boards considering officers in the Nurse Corps, the Secretary may complete the minimum required membership by appointing as members of the board officers on the active list of the Navy in the Medical Corps serving in the prescribed grades.

Subsec. (e). Pub. L. 90–130, § 1(18) (H), struck out provision allowing an exception, in the case of boards to recommend officers in the Nurse Corps for promotion to the grades of captain and commander except when there is a vacancy in the grade concerned or the Secretary estimates or determines that a vacancy will occur during the next 12 months, from the requirement that each board be at least once each year as soon as practicable after the report of a corresponding selection board for line officers has been approved by the President and at such other times as the Secretary directs.

1957—Subsec. (a) (2). Pub. L. 85–155, § 201(5) (A), substituted "each corps, other than the Medical Service Corps and the Nurse Corps, and for each grade" for "each corps and each grade".

Subsec. (a) (3)—(6). Pub. L. 85–155, § 201(5) (B), added subsec. (a) (3—(6).

Subsec. (b). Pub. L. 85–155, § 201(5) (C), substituted provisions requiring each board to consider officers of the Medical Service Corps or the Nurse Corps to consist of officers in the Corps indicated in subsec. (a) for provisions which required such boards to be composed of officers of the Regular Navy in the Medical Corps.

Subsec. (c). Pub. L. 85–155, § 201(5) (D), substituted "Except as provided in subsection (a), when" for "When".

Subsec. (e). Pub. L. 85–155, § 201(5) (E), substituted "boards to recommend officers in the Nurse Corps for promotion to the grades of captain and commander" for "a board to recommend officers in the Medical Service Corps for promotion to grade of captain and boards to recommend officers in the Nurse Corps for promotion to the grades of commander and lieutenant commander".

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CROSS REFERENCES

Reports—

Submission to President, see section 5710 (b) of this title.

Written report and certification required of board, see section 5708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5710, 5899, 6378 of this title.

§ 5703. Marine Corps; officers: promotion and continuation on the active list.

(a) At least once each year the Secretary of the Navy shall convene the following selection boards to recommend male officers of the Marine Corps for promotion and for continuation on the active list:

(1) A board to recommend brigadier generals for promotion to the grade of major general, consisting of nine officers holding permanent appointment in the grade of major general or above.

(2) A board to recommend colonels for promotion to the grade of brigadier general and a board to recommend lieutenant colonels for promotion to the grade of colonel, each consisting of nine officers serving in the grade of brigadier general or above.

(3) A board to recommend majors for promotion to the grade of lieutenant colonel, consisting of three officers serving in the grade of major general or brigadier general and six officers serving in the grade of colonel.

(4) A board to recommend captains for promotion to the grade of major and a board to recommend first lieutenants for promotion to the grade of captain, each consisting of nine officers serving in the grade of colonel or above.

(b) Except as provided in subsections (c), (d), and (e), selection boards convened under this section shall be composed of officers of the Regular Marine Corps on the active list or the retired list, not restricted in the performance of duty.

(c) If nine general officers are not available to comprise a selection board to recommend officers for promotion to the grade of major general, brigadier general, or colonel, the Secretary shall complete the prescribed membership by appointing as members of the board officers on the active list in

the line of the Navy, not restricted in the performance of duty, serving in the grade of rear admiral or above.

(d) When officers of the Marine Corps Reserve are eligible for consideration by a selection board convened under this section, the Secretary shall appoint an appropriate number of reserve officers, otherwise qualified under this section, as members of the board and shall appoint officers of the Regular Marine Corps, qualified under this section, to complete the prescribed membership.

(e) No officer may be a member of two successive boards for the consideration of officers for promotion to the same grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 338; Aug. 3, 1961, Pub. L. 87-123, § 5(11), 75 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5703	34 U. S. C. 306 (a); 34 U. S. C. 626-1 (a) (1st sentence), (f) (less 1st and 4th provisos), (g), (k), (o), (p).	Aug. 7, 1947, ch. 512, § 305 (a), 61 Stat. 841; June 23, 1950, ch. 344, § 3, 64 Stat. 253; June 30, 1951, ch. 196, § 1 (f), 65 Stat. 109. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), (f) (less 1st and 4th provisos), (g), (k), (o), (p), 61 Stat. 863; June 30, 1951, ch. 196, § 1 (g), 65 Stat. 109; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words "these boards shall be appointed by the Secretary of the Navy", the words "the composition of the boards to be determined by the Secretary of the Navy", and the words "and at such times as the Secretary of the Navy may direct" are omitted as surplusage.

The provisions in the second and third provisos of 34 U. S. C. 626-1 (f), relating to the substitution of rear admirals for general officers on selection boards, are combined in subsection (c). The words "without placing thereon general officers who served as members of the same corresponding board the preceding year" and the words "in order to comply with the provisions of section 305 (a) (2) [34 U. S. C. 306 (a) (2)] of this title" are omitted as unnecessary, since the provisions of 34 U. S. C. 306 (a) (2) are covered in subsection (f).

In subsection (d) the last sentence of 34 U. S. C. 626-1 (g) is omitted as surplusage. As to officers designated for supply duty it merely repeats the preceding sentence. As to officers designated for limited duty it is meaningless, since officers of that designation may not have the grade of colonel or above and are therefore ineligible to serve on selection boards.

Subsection (e) is added to reflect the effect on this section of § 254 of the Armed Forces Reserve Act of 1952 (50 U. S. C. 1005), which is codified in § 266 of this title.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87-123, § 5(11)(A), redesignated former clauses (2), (3), (4), and (5) as (1), (2), (3), and (4), respectively, and eliminated former clause (1) which permitted convening of a board to recommend colonels designated for supply duty for continuation on the active list.

Subsec. (d). Pub. L. 87-123, § 5(11)(B), redesignated former subsec. (e) as (d), and eliminated former subsec. (d) which authorized appointment of supply officers as alternate members of selection board in cases when officers designated for supply duty are eligible for consideration.

Subsecs. (e) and (f). Pub. L. 87-123, § 5(11)(B) redesignated former subsecs. (e) and (f) as (d) and (e), respectively.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CROSS REFERENCES

Reports—

Submission to President, see section 5710 (b) of this title.

Written report and certification required of board, see section 5708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5710, 6378 of this title.

§ 5704. Navy and Marine Corps; women officers: promotion.

(a) At least once each year and at such time as he directs, the Secretary of the Navy shall convene selection boards to recommend women officers in the line of the Navy for promotion to the grades of captain, commander, lieutenant commander, and lieutenant. The Secretary shall determine the composition of these boards. However, each board shall consist of not less than six or more than nine officers in the line of the Regular Navy on the active list or the retired list.

(b) The Secretary shall convene section boards, for each staff corps in which there are women officers appointed under section 5590 in this title, to recommend women officers for promotion to the grades of captain, commander, lieutenant commander, and lieutenant. The Secretary shall determine the composition of these boards. However, each board shall consist of not less than six or more than nine officers of the Regular Navy in the appropriate staff corps on the active list or the retired list. Each of the boards prescribed by this subsection shall be convened at least once each year as soon as practicable after the report of a corresponding selection board convened under subsection (a) has been approved by the President and at such times as the Secretary directs.

(c) At least once each year and at such times as he directs, the Secretary shall convene selection boards to recommend women officers in the Marine Corps for promotion to the grades of colonel, lieutenant colonel, major, and captain. The Secretary shall determine the composition of these boards. However, each board shall consist of not less than six or more than nine officers of the Regular Marine Corps on the active list or the retired list.

(d) Notwithstanding subsections (a), (b), and (c), the Secretary is not required to convene a board under this section to recommend women officers for promotion to a grade when—

(1) there are no vacancies in the grade concerned and the Secretary estimates that none will occur in the next 12 months; or

(2) all women officers in the next lower grade are ineligible for consideration for promotion to the grade concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 339; Nov. 8, 1967, Pub. L. 90-130, § 1(18)(I)-(K), 81 Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5704	34 U. S. C. 105j; 34 U. S. C. 307 (a), (c); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 215, 62 Stat. 370. June 12, 1948, ch. 449, § 206 (a), (c), 62 Stat. 364. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

The provisions in this section relating to the times when selection boards shall be convened are derived from §§ 105 (c) and 205 (e) of the Officer Personnel Act of 1947 (34 U. S. C. 304a (c) and 305a (e)) which were made applicable to women officers by § 215 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105j).

Subsection (d) is added to make it clear that this section does not require the Secretary to convene a board when the circumstances are such that the board if convened, would be unable to take any action.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130, § 1(18)(I), struck out "on the active list" following "shall convene selection boards to recommend women officers" and added captain to the list of grades to which promotion may be recommended.

Subsec. (b). Pub. L. 90–130, § 1(18)(J), substituted "women officers" for "officers so appointed" following "to recommend" and added captain to the list of grades to which promotion may be recommended.

Subsec. (c). Pub. L. 90–130, § 1(18)(K), struck out "on the active list" following "selection boards to recommend women officers" and added colonel to the list of grades to which promotion may be recommended.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CROSS REFERENCES

Reports—

Submission to President, see section 5710 (b) of this title.

Written report and certification required of board, see section 5708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5710, 5778 of this title.

§ 5705. Oath of members.

Each member of a selection board convened under the preceding sections of this chapter shall swear that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed upon him by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 340.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5705	34 U. S. C. 306a; 34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 105j; 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 306, 61 Stat. 842. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 12, 1948, ch. 449, § 215, 62 Stat. 370. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

The words "or affirm" are omitted as unnecessary under the authority of 1 U. S. C. 1. The words "imposed upon him by law" are substituted for the words "imposed upon him as herein provided".

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CROSS REFERENCES

Report in writing and certification required of board, see section 5708 of this title.

§ 5706. Information furnished to boards.

The Secretary of the Navy shall furnish the appropriate selection board with—

(1) the number of line officers of the Navy not restricted in the performance of duty, the number of officers designated for engineering duty, the number of officers designated for aeronautical engineering duty, the number of officers designated for special duty, and the number of line officers designated for limited duty that the board may recommend for promotion to the next higher grade;

(2) the number of staff corps officers not restricted in the performance of duty and the number of staff corps officers designated for limited duty that the board may recommend for promotion to the next higher grade;

(3) the number of officers of the Marine Corps not restricted in the performance of duty and the number of officers of the Marine Corps designated for limited duty that the board may recommend for promotion to the next higher grade;

(4) the names of all officers eligible for consideration for promotion to each grade to which the board will recommend officers for promotion;

(5) the number of rear admirals not restricted in the performance of duty that the board may recommend for continuation on the active list;

(6) the names of all rear admirals eligible for consideration for continuation on the active list;

(7) the number of captains designated for engineering duty, the number of captains designated for aeronautical engineering duty, and the number of captains designated for special duty that the board may recommend for continuation on the active list;

(8) the number of captains in the staff corps concerned that the board may recommend for continuation on the active list;

(9) the names of all captains in the Navy eligible for consideration for continuation on the active list;

(10) the names of all officers in the promotion zone under consideration; and

(11) the records of all officers whose names are furnished to the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 340; Aug. 3, 1961, Pub. L. 87–123, § 5(12), 75 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5706	34 U. S. C. 306c (a) (1); 34 U. S. C. 306c (b) (1); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 626-1 (s) (as applicable to information to be furnished selection boards); 34 U. S. C. 105j; 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 308 (a) (1), 61 Stat. 844. Aug. 7, 1947, ch. 512, § 308 (b) (1), 61 Stat. 847. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 314 (s) (as applicable to information to be furnished selection boards), 61 Stat. 866; renumbered June 23, 1950, ch. 344, § 1 (p) (less last 10 words), 64 Stat. 253. June 12, 1948, ch. 449, § 215, 62 Stat. 370. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

In clause (11) the word "respective" and the words "in the grade or grades" and "for temporary promotion" are omitted as surplusage.

AMENDMENTS

1961—Pub. L. 87-123 eliminated ", the number of officers of the Marine Corps designated for supply duty," which followed "performance of duty" in clause (3), deleted clause (8), relating to the number of colonels designated for supply duty, renumbered clauses (9) to (12) as (8) to (11), and eliminated "or colonels in the Marine Corps" which followed "in the Navy" in clause (9) as so renumbered.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CROSS REFERENCES

Certification that board has considered cases of names furnished under this section, see section 5708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5707, 5708 of this title.

§ 5707. Officers to be recommended for promotion or continuation.

(a) Of the officers considered for promotion by a selection board convened under this chapter, the board shall recommend for promotion, as appropriate—

(1) those eligible male officers on the active list in the line of the Navy or on the active list of the Marine Corps whom the board considers best fitted for promotion;

(2) those eligible officers on the active list of the Navy, other than women officers appointed under section 5590 of this title, under consideration for—

(A) promotion to any grade in the Supply Corps or the Civil Engineer Corps; or

(B) promotion to the grade of commander or above in any other staff corps;

whom the board considers best fitted for promotion;

(3) those eligible officers other than women officers appointed under section 5590 of this title, on the active list of the Navy in any staff corps not otherwise provided for in this subsection, whom the board considers fitted for promotion;

(4) those eligible women officers, appointed under section 5590 of this title, on the active list of the Navy in the line or a staff corps or on the active list of the Marine Corps under consideration for promotion to the grade of captain (Navy), commander, lieutenant commander, colonel, lieutenant colonel, or major whom the board considers best fitted for promotion;

(5) those eligible women officers, appointed under section 5590 of this title, on the active list of the Navy in the line or a staff corps or on the active list of the Marine Corps under consideration for promotion to the grade of lieutenant in the Navy or captain in the Marine Corps whom the board considers qualified for promotion; or

(6) those eligible officers not on the active list of the Navy or the Marine Corps whom the board considers qualified for continued active duty.

(b) Each selection board convened under the preceding sections of this chapter to recommend officers for continuation on the active list shall recommend those officers under consideration whom it considers best fitted for continued service on the active list.

(c) From among those eligible officers on the active list of the Navy or on the active list of the Marine Corps who are junior in lineal rank to the junior officer in the appropriate promotion zone in any grade below that of captain in the Navy or colonel in the Marine Corps, the board may recommend as best fitted for promotion a number of officers that does not exceed 5 percent of the total number of officers that the board is authorized to recommend for promotion to the grade concerned, unless that number is less than one, in which case it may recommend one such officer.

(d) The recommendation of any selection board with respect to the promotion of officers of the Navy designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or officers of the Marine Corps designated for limited duty shall be based upon their comparative fitness within such categories, for the duties prescribed for them by law.

(e) The recommendation of a selection board with respect to any woman officer on the active list in the line of the Navy or the active list of the Marine Corps shall be based upon her comparative fitness for the duties to which she is assigned in the line of the Navy or in the Marine Corps. The recommendation of a selection board with respect to any woman officer on the active list in any staff corps, appointed under section 5590 of this title, shall be based upon her comparative fitness for the duties to which she is assigned in her staff corps.

(f) Administrative staff duty, duty in aviation, supply duty, or duty in any technical specialty performed by an officer of the Marine Corps shall be

given weight by the selection board in determining his fitness for promotion equal to that given to line duty equally well performed.

(g) The status of having once failed of selection for promotion to a grade shall not prejudice an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection for promotion to that grade by the next succeeding selection board.

(h) The total number of officers that may be recommended for promotion in any grade may not exceed the number furnished the board concerned by the Secretary of the Navy under section 5706 of this title. The number of officers that may be recommended for continuation on the active list by a board convened under this chapter may not exceed the number furnished the board concerned by the Secretary under section 5706 of this title.

(i) No officer may be recommended for promotion or for continuation on the active list unless he receives the recommendation of at least two-thirds of the acting members of the board concerned. However, a board composed of five acting members or less may so recommend an officer upon the concurrence of a majority of its members. (Aug. 10, 1956, ch. 1041, 70A Stat. 341; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (6), 71 Stat. 382; Aug. 3, 1961, Pub. L. 87–123, § 5(13), 75 Stat. 265; Nov. 8, 1967, Pub. L. 90–130, § 1(18) (L), 81 Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5707 (a)	34 U. S. C. 306d (a) (1) (1st 43 words); 34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 306d (b) (1) (1st 92 words); 34 U. S. C. 306d (b) (1) (to 1st proviso less 1st 92 words); 34 U. S. C. 105j; 34 U. S. C. 625h (a); 34 U. S. C. 307 (j) (2d sentence), (k) (1st sentence), (*l*); 34 U. S. C. 306d (a) (1) (to 1st proviso less 1st 43 words); 34 U. S. C. 306d (b) (1) (2d proviso); 34 U. S. C. 21e (less appointing authority and less provisos); 34 U. S. C. 306d (a) (2) (1st 44 words); 34 U. S. C. 306d (a) (3) (1st 50 words).	Aug. 7, 1947, ch. 512, § 309 (a) (1st 43 words), 61 Stat. 849. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 309 (b) (1) (1st 92 words), 61 Stat. 850. Aug. 7, 1947, ch. 512, § 309 (b) (1) (to 1st proviso less 1st 92 words), 61 Stat. 850. June 12, 1948, ch. 449, § 215, 62 Stat. 370. June 12, 1948, ch. 449, § 213 (a) 62 Stat. 369. June 12, 1948, ch. 449, § 206 (j) (2d sentence), (k) (1st sentence), (*l*), 62 Stat. 365.
5707 (b)	34 U. S. C. 306d (b) (2) (1st 36 words); 34 U. S. C. 626–1 (t) (1st 40 words).	Aug. 7, 1947, ch. 512, § 309 (a) (1) (to 1st proviso, less 1st 43 words), 61 Stat. 849. Aug. 7, 1947, ch. 512, § 309 (b) (1) (2d proviso), 61 Stat. 850.
5707 (c)	34 U. S. C. 306d (a) (1) (1st proviso); 34 U. S. C. 306d (b) (1) (1st proviso); 34 U. S. C. 626–1 (a) (1st sentence).	June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.
5707 (d)	34 U. S. C. 306d (a) (4); 34 U. S. C. 306d (b) (3); 34 U. S. C. 625c (2d proviso); 34 U. S. C. 626–1 (o), (p).	Aug. 7, 1947, ch. 512, § 309 (a) (2) (1st 44 words), 61 Stat. 850. Aug. 7, 1947, ch. 512, § 309 (a) (3) (1st 50 words), 61 Stat. 850.
5707 (e)	34 U. S. C. 307 (g), (h); 34 U. S. C. 625h (a).	
5707 (f)	34 U. S. C. 626–1 (f) (4th proviso).	Aug. 7, 1947, ch. 512, § 309 (b) (2) (1st 36 words), 61 Stat. 851.
5707 (g)	34 U. S. C. 306d (a) (1) (6th proviso); 34 U. S. C. 306d (b) (1) (5th proviso).	Aug. 7, 1947, ch. 512, § 314 (t) (1st 40 words), 61 Stat. 866; renumbered June 23, 1950, ch. 344, § 1 (p) (less last 10 words), 64 Stat. 253.
5707 (h)	34 U. S. C. 306d (a) (1) (2d proviso); 34 U. S. C. 306d (b) (1) (3d proviso); 34 U. S. C. 306d (a) (2) (less 1st 44 words); 34 U. S. C. 306d (a) (3) (less 1st 50 words); 34 U. S. C. 306d (b) (2) (less 1st 36 words); 34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 626–1 (t) (less 1st 40 words); 34 U. S. C. 306c (a) (9); 34 U. S. C. 306c (b) (10).	Aug. 7, 1947, ch. 512, § 309 (a) (1) (1st proviso), 61 Stat. 849. Aug. 7, 1947, ch. 512, § 309 (b) (1) (1st proviso), 61 Stat. 850. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5707 (i)	34 U. S. C. 306d (c) (1); 34 U. S. C. 626–1 (f) (1st proviso).	Aug. 7, 1947, ch. 512, § 309 (a) (4), 61 Stat. 849. Aug. 7, 1947, ch. 512, § 309 (b) (3), 61 Stat. 851. July 1, 1947, ch. 189, § 1 (2d proviso), 61 Stat. 235. Aug. 7, 1947, ch. 512, § 314 (*o*), (p), 61 Stat. 865. June 12, 1948, ch. 449, § 206 (g), (h), 62 Stat. 365. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. Aug. 7, 1947, ch. 512, § 314 (f) (4th proviso), 61 Stat. 863; June 30, 1951, ch. 196, § 1 (g), 65 Stat. 109. Aug. 7, 1947, ch. 512, § 309 (a) (1) (6th proviso), 61 Stat. 849. Aug. 7, 1947, ch. 512, § 309 (b) (1) (5th proviso), 61 Stat. 851. Aug. 7, 1947, ch. 512, § 309 (a) (1) (2d proviso), 61 Stat. 849. Aug. 7, 1947, ch. 512, § 309 (b) (1) (3d proviso), 61 Stat. 850. Aug. 7, 1947, ch. 512, § 309 (a) (2) (less 1st 44 words), 61 Stat. 850; June 23, 1950, ch. 344, § 1 (e), 64 Stat. 251. Aug. 7, 1947, ch. 512, § 309 (a) (3) (less 1st 50 words), 61 Stat. 850. Aug. 7, 1947, ch. 512, § 309 (b) (2) (less 1st 36 words), 61 Stat. 851. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 314 (t) (less 1st 40 words), 61 Stat. 866; renumbered June 23, 1950, ch. 344, § 1 (p), 64 Stat. 253. Aug. 7, 1947, ch. 512, § 308 (a) (9), 61 Stat. 846. Aug. 7, 1947, ch. 512, § 308 (b) (10), 61 Stat. 848. Aug. 7, 1947, ch. 512, § 309 (c) (1), 61 Stat. 851. Aug. 7, 1947, ch. 512, § 314 (f) (1st proviso), 61 Stat. 863; June 30, 1951, ch. 196, § 1 (g), 65 Stat. 109.

The words "other than women officers appointed under section 5590 of this title" are inserted in clauses (2) and (4) of subsection (a) to make these clauses inapplicable to women staff corps officers appointed under the Women's Armed Services Integration Act of 1948. The words "appointed under section 5590 of this title" are inserted in clauses (5) and (6) of subsection (a) to make those clauses applicable only to women officers appointed under the Women's Armed Services Integration Act of 1948.

Section 309 (b) (1) of the Officer Personnel Act of 1947 (34 U. S. C. 306d (b) (1)) provides for the promotion of limited duty staff corps officers on a best fitted basis and for the promotion of all officers in the Supply Corps and the Civil Engineer Corps on a similar basis. Since the appointment of officers designated for limited duty in staff corps is limited to the Supply Corps and the Civil Engineer Corps, this rule is stated only once as to all officers in these two corps. Section 309 (b) (1) after providing for the promotion of lieutenants and lieutenants (junior grade) in the Civil Engineer Corps on a best fitted basis also provides for their promotion on a fitted basis. Since § 308 (b) (3) of the Officer Personnel Act of 1947 (34 U. S. C. 306c (b) (3)) provides for a forced attrition among these officers for promotion to the next higher grade, it is obvious that this latter rule is in error.

In subsection (f) the words "under appointment or detail" referring to administrative duty performed by any officer of the Marine Corps are omitted as surplusage.

In subsection (g) the words "to a grade" and "for promotion to that grade" are inserted for clarity. The word "prejudice" is substituted for the words "be considered as prejudicial to."

AMENDMENTS

1967—Subsec. (a)(4). Pub. L. 90–130 added captain (Navy) and colonel to the list of grades whom the board considers best fitted for promotion.

1961—Subsec. (d). Pub. L. 87–123, § 5(13)(A), eliminated provisions which related to Marine Corps officers designated for supply duty.

Subsec. (f). Pub. L. 87–123, § 5(13)(B), inserted "supply duty," before "or duty in any technical specialty."

1957—Subsec. (a). Pub. L. 85–155 renumbered clauses (4)—(7) as clauses (3)—(6). Former clause (3), which related to recommendation for promotion of officers under consideration for promotion to the grade of commander or lieutenant commander in the Nurse Corps, was repealed by Pub. L. 85–155.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

EX. ORD. NO. 11554. SUSPENSION OF CERTAIN PROVISIONS RELATING TO ESTABLISHMENT OF MAXIMUM PERCENTAGE OF NAVY OFFICERS RECOMMENDED FOR PROMOTION

Ex. Ord. No. 11554, Aug. 29, 1970, 35 F.R. 14189, provided:

By virtue of the authority vested in me by section 5711 (b) of title 10 of the United States Code, it is ordered as follows:

The operation of so much of the provisions of section 5707(c) of title 10 of the United States Code as restrict, to a percentage of five percent of the total number of officers that a board is authorized to recommend for promotion, the number of Navy officers below the appropriate promotion zone who may be recommended as best fitted for promotion to the grade concerned, is hereby suspended for a period of two years from the date of this order.

RICHARD NIXON

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5708 of this title.

§ 5708. Reports: certification required.

(a) Each board convened under the preceding sections of this chapter shall submit a report in writing, signed by all the acting members thereof, and shall certify in its report that the board has carefully considered the case of each officer whose name was furnished to it under section 5706 of this title.

(b) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board if the board has more than five acting members, or in the opinion of at least a majority of the acting members if the board has five acting members or less, the officers recommended are, subject to the limitations prescribed in section 5707 (c) of this title, selected as best fitted to assume the duties of the next higher grade:

(1) Male officers on the active list in the line of the Navy.

(2) Male officers on the active list of the Marine Corps.

(3) Male officers on the active list of the Navy in the Supply Corps.

(4) Male officers on the active list of the Navy in the Civil Engineer Corps.

(5) Women officers on the active list of the Navy, appointed under section 5590 of this title, in the grade of lieutenant or above.

(6) Women officers on the active list of the Marine Corps in the grade of captain or above.

(7) Officers on the active list of the Navy in any staff corps in the grade of lieutenant commander or above.

(c) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board, the officers recommended are selected as fitted to assume the duties of the next higher grade:

(1) Officers, other than women officers appointed under section 5590 of this title, in the grade of lieutenant or lieutenant (junior grade) on the active list of the Navy in the Medical Corps, the Judge Advocate General's Corps, Chaplain Corps, Dental Corps, or Medical Service Corps.

(2) Officers on the active list of the Navy in the Nurse Corps in the grade of lieutenant or lieutenant (junior grade).

(d) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board, the officers recommended are selected as qualified for promotion:

(1) Women officers in the grade of lieutenant (junior grade) on the active list of the Navy in the line or in any staff corps appointed under section 5590 of this title.

(2) Women officers on the active list of the Marine Corps in the grade of first lieutenant.

(e) The report of a board convened under this chapter that recommends for promotion officers not on the active list of the Navy or the Marine Corps shall certify in its report that, in the opinion of at least two-thirds of the acting members of the board, the officers recommended are selected as qualified for continued active duty.

(f) As required by section 6384 of this title, each board convened under this chapter to recommend officers for promotion shall report, from among those officers eligible for consideration, the name of each officer with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade and, in the opinion of the board, indicates that he would not satisfactorily perform the duties of a higher grade.

(g) A board convened under this chapter that recommends officers for continuation on the active list shall certify in its report that, in the opinion of at least two-thirds of the acting members if the board has more than five acting members or in the opinion of at least a majority of the acting members if the board has five acting members or less, the officers recommended are selected as best fitted for

continued service on the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 342; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (7), 71 Stat. 382; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5708	34 U. S. C. 306e (a), (b); 34 U. S. C. 306d (c) (2); 34 U. S. C. 626–1 (a) (1st sentence), (o), (p); 34 U. S. C. 21e (less appointing authority and less provisos); 34 U. S. C. 307 (*l*); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 310 (a), (b), 61 Stat. 851. Aug. 7, 1947, ch. 512, § 309 (c) (2), 61 Stat. 851. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), (*o*), (p), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155. June 12, 1948, ch. 449, § 206 (*l*), 62 Stat. 364. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

In subsection (a) the words "Each board convened under the preceding sections of this chapter shall submit a report in writing" are substituted for the words "The report of the board shall be in writing" for clarity. The words "by the Secretary of the Navy" are omitted as surplusage.

The words "appointed under section 5590 of this title" are inserted in subsection (b) (6) and in subsection (d) to restrict their application to women officers appointed under the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105 et seq.), and the words "other than women officers appointed under section 5590 of this title" are inserted in subsection (c) to exclude women officers appointed under that act.

AMENDMENTS

1967—Subsec. (c) (1). Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

1957—Subsec. (b). Pub. L. 85–155, § 201 (7) (A), renumbered clauses (6)—(8) as clauses (5)—(7). Former clause (5), which related to officers on the active list of the Navy in the Nurse Corps in the grade of lieutenant or above, was repealed by such Pub. L. 85–155, § 201 (7) (A).

Subsec. (c) (2). Pub. L. 85–155, § 201 (7) (B), substituted "lieutenant or lieutenant (junior grade)" for "lieutenant (junior grade)".

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

§ 5709. Navy and Marine Corps: retention of rear admirals and major generals on the active list.

(a) Each year the Secretary of the Navy may convene a board to recommend rear admirals in the line of the Navy restricted in the performance of duty and rear admirals in any staff corps for retention on the active list. He shall convene such a board in any year in which he determines that one or more such officers, who would otherwise retire under section 6372 of this title, should be retained on the active list. The board shall be composed of not less than three naval officers.

(b) Each year the Secretary may convene a board to recommend officers serving in the grade of major general for retention on the active list. He shall convene such a board in any year when three or more such officers will be subject to retirement under section 6373 of this title. The board shall be composed of not less than three officers of the Regular Marine Corps or the Regular Navy on the active list or the retired list.

(c) The number of officers that may be recommended for retention by any board convened under this section may not exceed the number furnished it by the Secretary. (Aug. 10, 1956, ch. 1041, 70 A Stat. 344; Aug. 3, 1961, Pub. L. 87–123, § 5(14), 75 Stat. 265.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5709 (a)	34 U. S. C. 410*l* (b) (1) (1st proviso as applicable to composition of board), (2) (1st sentence).	Aug. 7, 1947, ch. 512, § 313 (b) (1) (1st proviso as applicable to composition of board), (2) (1st sentence), 61 Stat. 861; June 23, 1950, ch. 344, § 1 (g), 64 Stat. 251.
5709 (b)	34 U. S. C. 626–1 (*l*) (1) (1st proviso as applicable to composition of board), (m), (1st sentence); 34 U. S. C. 626–1 (k).	Aug. 7, 1947, ch. 512, § 314 (*l*) (1) (1st proviso as applicable to composition of board), (m) (1st sentence), 61 Stat. 865; June 23, 1950, ch. 344, § 1 (j), (k), 64 Stat. 252. Aug. 7, 1947, ch. 512, § 314 (k), 61 Stat. 865.
5709 (c)	34 U. S. C. 626–1 (q) (1) (1st proviso as applicable to composition of board), (r) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (q), (1) (1st proviso as applicable to composition of board), (r) (1st sentence), 61 Stat. 866; June 23, 1950, ch. 344, § 1 (*l*), (m), 64 Stat. 252.
5709 (d)	34 U. S. C. 410*l* (b) (2) (2d sentence, 1st through 30th word); 34 U. S. C. 626–1 (m) (2d sentence); 34 U. S. C. 626–1 (r) (2d sentence).	Aug. 7, 1947, ch. 512, § 313 (b) (2) (2d sentence, 1st through 30th word), 61 Stat. 861; June 23, 1950, ch. 344, § 1 (g), 64 Stat. 251. Aug. 7, 1947, ch. 512, § 314 (m) (2d sentence), 61 Stat. 865; June 23, 1950, ch. 344, § 1 (k), 64 Stat. 252. Aug. 7, 1947, ch. 512, § 314 (r) (2d sentence), 61 Stat. 866; June 23, 1950, ch. 344, § 1 (m) 64 Stat. 252.

AMENDMENTS

1961—Pub. L. 87–123, § 5(14)(A), substituted "and major generals on the active list" for ", major generals, and brigadier generals on the active list" in the section catchline.

Subsec. (c). Pub. L. 87–123, § 5(14)(B), redesignated former subsec. (d) as (c), and eliminated former subsec. (c) which authorized convening a board to recommend retention on the active list for brigadier generals designated for supply duty.

Subsec. (d). Pub. L. 87–123, § 5(14)(B), redesignated former subsec. (d) as (c).

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CROSS REFERENCES

Submission of report of board to Secretary of Navy, see section 5710 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5710, 6372, 6373 of this title.

§ 5710. Reports: submission to President or Secretary of the Navy.

(a) The report of a board convened under section 5709 of this title to recommend officers for retention on the active list shall be submitted to the Secretary of the Navy for his approval or disapproval.

(b) The report of a board convened under section 5701, 5702, 5703, or 5704 of this title shall be submitted to the President for his approval or disapproval. If any officer recommended by such a board is not acceptable to the President, the board shall be informed of the name of that officer and shall, except as provided in subsection (c) of this section, recommend another eligible officer for promotion or for continuation on the active list, as the case may be. If necessary, the board may be reconvened for this purpose.

(c) If any woman officer appointed under section 5590 of this title who is recommended for promotion to the grade of lieutenant in the Navy or captain in the Marine Corps is not acceptable to the President, the board shall be informed, the name of that officer shall be removed from the report of the board, and no additional recommendation may be made. (Aug. 10, 1956, ch. 1041, 70A Stat. 344.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5710 (a)	34 U. S. C. 410*l* (b) (1) (1st proviso as applicable to submission of report of board for approval); 34 U. S. C. 626-1 (*l*) (1), (q) (1) (1st proviso of each as applicable to submission of report of board for approval); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 313 (b) (1) (1st proviso as applicable to submission of report of board for approval), 61 Stat. 861; June 23, 1950, ch. 344, § 1 (g), 64 Stat. 251. Aug. 7, 1947, ch. 512, § 314 (*l*) (1), (q) (1) (1st proviso of each as applicable to submission of report of board for approval), 61 Stat. 865; June 23, 1950, ch. 344, § 1 (j), (*l*), 64 Stat. 252.
5710 (b)	34 U. S. C. 306e (c); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 105j; 34 U. S. C. 625h (a).	June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.
5710 (c)	34 U. S. C. 307 (m).	Aug. 7, 1947, ch. 512, § 310 (c), 61 Stat. 852. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 12, 1948, ch. 449, § 215, 62 Stat. 370. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 12, 1948, ch. 449, § 206 (m), 62 Stat. 366.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

§ 5711. Suspension and exceptions: preceding sections.

(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

(2) he determines that the needs of the service so require.

(b) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends.

(c) Officers in the following categories are ineligible for consideration by a selection board under this chapter and are not counted as officers serving on active duty for the purpose of subsection (a):

(1) Repealed. Pub. L. 90-130, § 1(18) (M), Nov. 8, 1967, 81 Stat. 377.

(2) Retired officers.

(3) Officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training.

(4) Officers of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

(5) Officers of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(Aug. 10, 1956, ch. 1041, 70A Stat. 345; Nov. 8, 1967, Pub. L. 90-130, § 1(18) (M), 81 Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5711 (a)	34 U. S. C. 3d.	Aug. 7, 1947, ch. 512, § 301, 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108.
5711 (b)	34 U. S. C. 3e.	Aug. 7, 1947, ch. 512, § 426 (c); added June 30, 1951, ch. 196, § 1 (h), 65 Stat. 109.
5711 (c)	34 U. S. C. 3c (a) (as applicable to meaning of word "officers"); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 105j, 105k; 34 U. S. C. 625h (a); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 12, 1948, ch. 449, §§ 215, 217, 62 Stat. 370. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.

The word "male" and the words "other than women officers appointed under section 5590 of this title" are inserted in subsection (a) to exclude women officers appointed under the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105 et seq.) from the operation of this subsection.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90-130 struck out clause (1) which read: "Women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title, whether or not on active duty."

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

Chapter 545.—PROMOTIONS

Sec.
5751. Navy, male line officers; Marine Corps, male officers: eligibility for consideration by selection board.
5752. Navy, women line officers; Marine Corps, women officers: eligibility for consideration by selection board
5753. Navy; staff corps officers: eligibility for consideration by selection board.
5754. Eligibility for consideration by selection board: general provisions.
5755. Communication with selection board.
5756. Navy, male line officers not restricted in the performance of duty; Marine Corps, male officers not restricted in the performance of duty: numbers that may be recommended.
5757. Regular Navy, male line officers designated for limited duty; Regular Marine Corps, male officers designated for limited duty: numbers that may be recommended.
5758. Regular Navy; male line officers designated for engineering duty, aeronautical engineering duty, and special duty: numbers that may be recommended.
5760. Regular Navy, women line officers; Regular Marine Corps, women officers: numbers that may be recommended.
5761. Navy; staff corps officers: numbers that may be recommended for promotion to grade of rear admiral.
5762. Navy; staff corps officers: numbers that may be recommended for promotion to grades below rear admiral.
5763. Regular Navy; women staff corps officers appointed under section 5590 of this title: numbers that may be recommended for promotion.
5764. Navy; line officers: promotion zones.
5765. Marine Corps; officers: promotion zones.
5766. Navy; staff corps officers: promotion zones.
5767. Officers qualified for specific duties: promotion to flag or general officer grade.
5768. Navy, male line officers; Marine Corps, male officers: normal terms of service in grade and total commissioned service.
5769. Navy, male line officers; Marine Corps, male officers: eligibility for promotion.
5770. Navy; male line officers not restricted in the performance of duty or designated for limited duty: sea or foreign service required.
5771. Navy, women line officers; Marine Corps, women officers: eligibility for promotion.
5772. Navy; staff corps officers: eligibility for promotion to grade of rear admiral.
5773. Navy; staff corps officers: eligibility for promotion to grades below rear admiral.
5775.[1] Officers promoted under preceding sections: date from which entitled to pay and allowances of grade to which promoted.
5776. Failure of selection.
5777. Removal from promotion list.
5778. Promotions under preceding sections: temporary; permanent.
5779. Temporary promotions: termination.
5780. Regular Navy, male line officers; Regular Marine Corps, male officers, permanent promotion.
5781. Regular Navy; staff corps officers: permanent promotion to grade of rear admiral.
5782. Regular Navy; staff corps officers: permanent promotion to grades below rear admiral.
5783. Naval Reserve and Marine Corps Reserve: permanent promotion.
5784. Navy, ensigns; Marine Corps, second lieutenants: temporary promotion.
5785. Suspension: preceding sections.
5786. Application: preceding sections.
5787. Temporary promotions in time of war or national emergency.
5787a. Navy: lieutenants (junior grade) in Medical and Dental Corps: temporary promotion.
5787b. Navy, women ensigns; Marine Corps, women second lieutenants: temporary promotion.
5787c. Navy and Marine Corps; warrant officers: temporary promotion.
5788. Navy, ensigns; Marine Corps, second lieutenants: eligibility for promotion.
5789. Officers receiving thanks of Congress.
5790. Officers advanced in rank.
5791. Appointing power.
5792. Oath of office not required.
5793. Authorized strengths in grade and promotions of Medical Corps and Dental Corps officers.

AMENDMENTS

1967—Pub. L. 90-228, § 1(3)(B), Dec. 28, 1967, 81 Stat. 745, added item 5793.

Pub. L. 90-130, § 1(19)(A), (J), (O), (T), Nov. 8, 1967, 81 Stat. 378, 379, struck out "Regular" preceding "Navy" and "Marine Corps" in items 5752 and 5771, eliminated "male" preceding "line officers" in item 5764 and preceding "officers" in item 5765, and eliminated item 5774 which read: "Regular Navy; women staff corps officers appointed under section 5590 of this title: eligibility for promotion."

1961—Pub. L. 87-123, § 5(18), Aug. 3, 1961, 75 Stat. 266, deleted item 5759.

1958—Pub. L. 85-861, §§ 1 (128) (B), 33 (a) (30) (B), Sept. 2, 1958, 72 Stat. 1497, 1566, added items 5787a, 5787b and 5787c.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5902 of this title; title 37 section 904.

§ 5751. Navy, male line officers; Marine Corps, male officers: eligibility for consideration by selection board.

(a) Each officer who is serving in the grade of brigadier general in the Marine Corps is eligible for consideration for promotion to the grade of major general by a selection board that is convened under chapter 543 of this title in the fiscal year in which he completes three years of service in the grade of brigadier general.

(b) Each male officer in the line of the Navy and each male officer of the Marine Corps is eligible for consideration for promotion to the next higher grade by a selection board that is convened, under chapter 543 of this title, in the fiscal year in which he completes the following service in the grade in which he is serving:

(1) Three years in the grade of captain in the Navy or colonel in the Marine Corps.

[1] Section 5775 repealed and analysis was not amended to reflect such repeal.

(2) Five years in the grade of commander in the Navy or lieutenant colonel in the Marine Corps.

(3) Four years in the grade of lieutenant commander in the Navy or major in the Marine Corps.

(4) Four years in the grade of lieutenant in the Navy or captain in the Marine Corps.

(5) Two years in the grade of lieutenant (junior grade) in the Navy or first lieutenant in the Marine Corps.

(c) For the purpose of this section, service in a grade includes all service in that grade or a higher grade, under either a temporary or a permanent appointment. However, service under a temporary appointment which, by its own terms, is limited in duration is considered only as service in the grade that the officer concerned would have held if he had not been so appointed. An officer promoted after August 7, 1947, shall be credited with service in the grade to which promoted only from the date of his eligibility for promotion to that grade.

(d) Notwithstanding the provisions of subsections (a), (b), and (c), no officer who has not lost numbers or precedence may become eligible for consideration by a selection board until all officers of his grade senior to him in lineal position are so eligible.

(e) Of the officers in any grade designated for limited duty who would otherwise be eligible for consideration for promotion under this section, only the junior officer in the promotion zone for officers designated for limited duty and officers senior to him in the grade concerned are eligible for consideration. (Aug. 10, 1956, ch. 1041, 70A Stat. 346; Aug. 3, 1961, Pub. L. 87–123, § 5 (16), 75 Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5751 (a)	34 U. S. C. 626–1 (h) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (h) (1st sentence), 61 Stat. 864; June 23, 1950, ch. 344, § 2, 64 Stat. 253.
5751 (b)	34 U. S. C. 306b (a) (3) (1st sentence); 34 U. S. C. 626—1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 307 (a) (3) (1st sentence), 61 Stat. 843.
5751 (c)	34 U. S. C. 306b (a) (3) (2d sentence), and (5); 34 U. S. C. 306q (1st proviso).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5751 (d)	34 U. S. C. 306q (2d proviso).	Aug. 7, 1947, ch. 512, § 307 (a) (3) (2d sentence), and (5), 61 Stat. 843.
5751 (e)	34 U. S. C. 306b (a) (4); 34 U. S. C. 626–1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 421 (1st proviso), 61 Stat. 878. Aug. 7, 1947, ch. 512, § 421 (2d proviso), 61 Stat. 878. Aug. 7, 1947, ch. 512, § 307 (a) (4), 61 Stat. 843. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsections (a) and (b) the words "by a selection board that is convened * * * in the fiscal year in which he completes" are substituted for the words "by a selection board * * * when they will have completed on June 30 of the fiscal year of the convening of the board" for brevity and clarity.

In subsection (c) the words "which, by its own terms, is limited in duration" are substituted for the words "for a period of limited duration only while serving on a specified duty assignment" for uniformity of expression. The words "under temporary appointment" are omitted as surplusage. The words "if he had not been so appointed" are substituted for the words "but for such service in a higher grade" for clarity.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87–123 eliminated "not restricted in the performance of duty" which followed "Each officer."

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

PROMOTION AND ALLOCATION OF REASSIGNED SUPPLY DUTY OFFICERS

Section 3 of Pub. L. 87–123 provided that:

"(a) Each officer serving in the grade of brigadier general or colonel who is reassigned as an officer not restricted in the performance of duty by this Act [amending sections 5001, 5204, 5409, 5443, 5448, 5589, 5703, 5706, 5707, 5709, 5751, 5765, 5769, 5775, 5776, 6374, 6376, 6377, and 6378 of this title, and repealing sections 5205, 5588, 5759, 6020, and 6375 of this title], and who is senior to the senior officer in the first promotion zone established for his grade after the enactment of this Act [Aug. 3, 1961], shall be considered for all purposes to be in that promotion zone.

"(b) Within the number of officers not restricted in the performance of duty that may be recommended for promotion to a grade below brigadier general, as determined under section 5756 of title 10, United States Code, the Secretary of the Navy shall allocate a portion thereof for officers on the active list of the Marine Corps who were formerly designated for supply duty and who were reassigned as officers not restricted in the performance of duty by this Act. The portion allocated shall afford at least the same opportunity for promotion to such officers as is afforded other officers not restricted in the performance of duty. These provisions apply only when there is an eligible officer in the promotion zone. For the purpose of the above provisions, 'eligible officer' means an officer who is serving in a grade below colonel, who has been reassigned as an officer not restricted in the performance of duty by this Act, and who has not previously been in a promotion zone established for any grade after the enactment of this Act [Aug. 3, 1961]. Reassigned officers in a zone of consideration established for the grade of major shall also be allocated a portion of the number of officers who may be recommended for promotion from within that zone, so as to afford them at least the same promotion opportunity as is afforded other officers not restricted in the performance of duty."

EX. ORD. NO. 10616. SUSPENSION OF CERTAIN PROVISIONS RELATING TO MARINE CORPS OFFICERS

Ex. Ord. No. 10616, June 22, 1955, 20 F.R. 4435 provided:

By virtue of the authority vested in me by section 426 (c) of the Officer Personnel Act of 1947, as amended by section 1(h) of the act of June 30, 1951, 65 Stat. 109 [now covered in sections 5234, 5451, 5662, 5711, and 6386 of this title], it is ordered as follows:

1. The operation of those provisions of Title III of the Officer Personnel Act of 1947, as amended [See Tables Volume for distribution of act Aug. 7, 1947, ch. 512, title III, as amended, in the Code] which relate to the service-in-grade requirements of officers of the Marine Corps of the grade of brigadier general for eligibility for consideration by a selection board for temporary promotion to the grade of major general is hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note prec. section 1 of Title 50, Appendix], shall end.

2. This order shall become effective on July 1, 1955.

DWIGHT D. EISENHOWER

EX. ORD. NO. 10725. SUSPENSION OF CERTAIN PROVISIONS RELATING TO MARINE CORPS OFFICERS OF THE GRADE OF CAPTAIN

Ex. Ord. No. 10725, Aug. 16, 1957, 22 F. R. 6641, provided:

1. The operation of the provision of section 5751 (b) of title 10 of the United States Code which relates to the service-in-grade requirement for officers of the Marine Corps of the grade of captain for eligibility for consideration by a selection board for promotion to the next higher grade is hereby suspended until June 30, 1958.

2. This order supersedes Executive Order No. 10546 of July 16, 1954, entitled "Suspension of Certain Provisions of the Officer Personnel Act of 1947, as amended, Which Relate to Officers of the Marine Corps of the Grades of First Lieutenant and Captain."

DWIGHT D. EISENHOWER

EX. ORD. NO. 11437. SUSPENSION OF SERVICE-IN-GRADE REQUIREMENTS FOR OFFICERS OF THE NAVY AND MARINE CORPS

Ex. Ord. No. 11437, Dec. 2, 1968, 33 F.R. 17945, provided:

By virtue of the authority vested in me by section 5785 (b) of title 10 of the United States Code, I hereby suspend the provisions of section 5751(b) of title 10 of the United States Code.

Executive Order No. 11232 of July 8, 1965, Executive Order No. 11352 of May 22, 1967, and Executive Order No. 11361 of July 6, 1967, are hereby revoked.

LYNDON B. JOHNSON

CROSS REFERENCES

Continuation on the active list of certain Navy and Marine Corps officers, see Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 333, set out as a note under section 5701 of this title.

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 904.

§ 5752. Navy, women line officers; Marine Corps, women officers: eligibility for consideration by selection board.

(a) Each woman officer in the line of the Navy and each woman officer of the Marine Corps is eligible for consideration for promotion to the next higher grade by a selection board that is convened under chapter 543 of this title in the fiscal year in which she completes the following service in the grade in which she is serving:

(1) Four years in the grade of commander in the Navy or lieutenant colonel in the Marine Corps.

(2) Four years in the grade of lieutenant commander in the Navy or major in the Marine Corps.

(3) Four years in the grade of lieutenant in the Navy or captain in the Marine Corps.

(4) Such period of service in the grade of lieutenant (junior grade) in the Navy or first lieutenant in the Marine Corps as the Secretary of the Navy prescribes.

(b) For the purpose of this section, an officer's service in a grade is computed from her date of rank in that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 347; Sept. 2, 1958, Pub. L. 85–861, § 1 (126), 72 Stat. 1497; Nov. 8, 1967, Pub. L. 90–130, § 1(19) (A)–(C), 81 Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5752 (a)	34 U. S. C. 307 (d) (1st sentence, less applicability to retention of eligibility); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 206 (d) (1st sentence, less applicability to retention of eligibility), 62 Stat. 364.
5752 (b)	34 U. S. C. 307 (d) (less 1st sentence).	June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 12, 1948, ch. 449, § 206 (d) (less 1st sentence), 62 Stat. 364.

In subsection (a) the words "in the fiscal year in which she completes" are substituted for the words "in the fiscal year on June 30 of which they will have completed" for clarity and uniformity of expression.

In subsection (b) the second sentence of 34 U. S. C. 307 (d) is omitted. That sentence relates to computation of service in grade in the case of women officers transferred from the Naval Reserve to the Regular Navy under the act of April 18, 1946, ch. 141 (34 U. S. C. 15). The authority to make transfers under that act expired on July 1, 1955.

AMENDMENTS

1967—Pub. L. 90–130, § 1(19) (A), struck out "Regular" preceding "Navy" and "Marine Corps" in the section catchline.

Subsec. (a). Pub. L. 90–130, § 1(19) (B), (C), struck out requirement that eligible women officers in the line of the Navy and in the Marine Corps be on the active list in such services, added clause (1), and redesignated former clauses (1)—(3) as clauses (2)—(4) respectively.

1958—Subsec. (a) (3). Pub. L. 85–861 substituted "Such period of service" for "Three years", and inserted "as the Secretary of the Navy prescribes" after "Marine Corps".

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 904.

§ 5753. Navy; staff corps officers: eligibility for consideration by selection board.

(a) Except as provided in subsection (b), staff corps officers are eligible for consideration for promotion to the next higher grade by a selection board convened under chapter 543 of this title when their running mates become eligible for consideration.

(b) Officers in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, the Medical Service Corps, and the Nurse Corps, in the grades of lieutenant and lieutenant (junior grade), except officers in those corps appointed under section 5590 of this title, are eligible for consideration for promotion to the next higher grade by a selection board convened under chapter 543 of this title when they are in the promotion zone or are senior to the officers in the promotion zone in the grade in which they are serving. (Aug. 10, 1956, ch. 1041, 70A Stat. 347; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(8), 71 Stat. 382; Nov. 8, 1967, Pub. L. 90–130, § 1(19) (D), 81 Stat. 378; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5753	34 U. S. C. 306b (b) (2) (1st sentence); 34 U. S. C. 306b (3); 34 U. S. C. 21e (less appointing authority and less provisos); 34 U. S. C. 307 (f); 34 U. S. C. 105k.	Aug. 7, 1947, ch. 512, § 307 (b) (2) (1st sentence), 61 Stat. 843. Aug. 7, 1947, ch. 512, § 307 (b) (3), 61 Stat. 844. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155. June 12, 1948, ch. 449, § 206 (f), 62 Stat. 364. June 12, 1948, ch. 449, § 217, 62 Stat. 370.

In subsection (a) the words "except captains in the Medical Service Corps and commanders in the Nurse Corps" are omitted as surplusage. Chapter 543 does not provide for the convening of selection boards to consider these officers for promotion. The rule set out in 34 U. S. C. 306b (b) (3), relating to staff corps officers designated for limited duty, is omitted since it is covered in subsection (a). Limited duty officers in the line are not eligible for consideration for promotion unless they are in the promotion zone or senior to officers in the zone for officers of their grade and designation. Limited duty staff corps officers have limited duty line officers as running mates. Therefore, to say that a staff corps limited duty officer is eligible for consideration when his running mate is eligible is the same as saying (as the omitted part says) that he is eligible when his running mate is the junior officer, or is senior to the junior officer, in the promotion zone for line officers designated for limited duty.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 struck out reference to subsec. (c) of this section.

Subsec. (b). Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

Subsec. (c). Pub. L. 90–130 struck out subsec. (c) which made women officers on the active list of the Navy in a staff corps appointed under section 5590 of this title eligible for consideration for promotion to the next higher grade under certain conditions.

1957—Subsec. (b). Pub. L. 85–155 included officers in the Nurse Corps in the grade of lieutenant.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Continuation on the active list of certain Navy and Marine Corps officers, see Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 333, set out as a note under section 5701 of this title.

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 904.

§ 5754. Eligibility for consideration by selection boards: general provision.

(a) Each officer who becomes eligible for consideration for promotion under the preceding sections of this chapter remains so eligible while on active duty regardless of failures of selection for promotion.

(b) A selection board convened under chapter 543 of this title may not consider for promotion to the next higher grade any officer whose name is on the promotion list for that grade as a result of his selection by an earlier board convened under that chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 348.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5754 (a)	34 U. S. C. 306b (a) (3) (3d sentence, less proviso); 34 U. S. C. 306b (b) (2) (2d sentence, less proviso); 34 U. S. C. 307 (d) (1st sentence as applicable to retention of eligibility).	Aug. 7, 1947, ch. 512, § 307 (a) (3) (3d sentence, less proviso), 61 Stat. 843. Aug. 7, 1947, ch. 512, § 307 (b) (2) (2d sentence, less proviso), 61 Stat. 843. June 12, 1948, ch. 449, § 206 (d) (1st sentence as applicable to retention of eligibility), 62 Stat. 364.
5754 (b)	34 U. S. C. 306b (a) (3) (proviso of 3d sentence); 34 U. S. C. 306b (b) (2) (proviso of 2d sentence); 34 U. S. C. 307 (a).	Aug. 7, 1947, ch. 512, § 307 (a) (3) (proviso of 3d sentence) 61 Stat. 843. Aug. 7, 1947, ch. 512, § 307 (b) (2) (proviso of 2d sentence), 61 Stat. 844. June 12, 1948, ch. 449, § 206 (a), 62 Stat. 364.

In subsection (a) the words "active duty" are substituted for the words "the active list". The latter term, as defined in this subtitle, relates only to officers holding permanent appointments in grades above chief warrant officer, W–4, in the regular components, whereas in § 307 of the Officer Personnel Act of 1947, as amended (34 U. S. C. 306b), it is used to describe all officers to whom Title III of the act applies, i. e., all who are "officers" as defined in § 302 (34 U. S. C. 3c). This includes temporary officers and reserve officers on active duty as well as regular officers.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 904.

§ 5755. Communications with selection board.

Each officer eligible for consideration for promotion by a selection board convened under chapter 543 of this title has the right to send a communication through official channels at any time not later than ten days after the convening of that board inviting attention to any matter of record in the Department of the Navy concerning himself which he considers important in his case. The communication may not criticize any officer or reflect upon the character, conduct, or motive of any officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 348.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5755	34 U. S. C. 306c (c) (1); 34 U. S. C. 307 (a); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 308 (c), 61 Stat. 849. June 12, 1948, ch. 449, § 206 (a), 62 Stat. 364. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

The words "for promotion" are inserted, since the rule stated in 34 U. S. C. 306c (c) is stated here only as it applies to boards for the selection of officers for promotion. The same rule as it applies to boards considering officers for continuation on the active list is set out in § 6407 of this title. The words "written" and "the consideration of" are omitted as surplusage.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Suspension of provisions of this section, see section 5785 of this title.

§ 5756. Navy, male line officers not restricted in the performance of duty; Marine Corps, male officers not restricted in the performance of duty: numbers that may be recommended.

The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the line of the Navy not restricted in the performance of duty or male officers of the Marine Corps not restricted in the performance of duty that may be recommended for promotion to the next higher grade. This number, determined by the Secretary as of the date the board is convened, is equal to the number of vacancies existing among such officers in the higher grade, plus the number of additional vacancies estimated for the next 12 months, minus the number of officers on the promotion list for that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 348.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5736	34 U. S. C. 306c (a) (2); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 308 (a) (2), 61 Stat. 844. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICERS FORMERLY DESIGNATED FOR SUPPLY DUTY

Allocation of portion of numbers recommended for promotion to officers formerly designated for supply duty, see section 3(b) of Pub. L. 87-123, Aug. 3, 1961, 75 Stat. 264, set out as a note under section 5751 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title.

§ 5757. Regular Navy, male line officers designated for limited duty; Regular Marine Corps, male officers designated for limited duty; numbers that may be recommended.

The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the line of the Navy designated for limited duty or male officers of the Marine Corps designated for limited duty that may be recommended for promotion to the next higher grade. This number, determined by the Secretary as of the date the board is convened, is equal to the number of vacancies existing among such officers in the higher grade, plus the number of additional vacancies estimated for the next 12 months, minus the number of such officers on the promotion list for that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 348.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5757	34 U. S. C. 306c (a) (3); 34 U. S. C. 626-1 (o).	Aug. 7, 1947, ch. 512, § 308 (a) (3), 61 Stat. 844. Aug. 7, 1947, ch. 512, § 314 (o), 61 Stat. 865.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title.

§ 5758. Regular Navy; male line officers designated for engineering duty, aeronautical engineering duty, and special duty: numbers that may be recommended.

(a) The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the numbers of officers of the Navy designated for engineering duty, aeronautical engineering duty, and special duty that may be recommended for promotion to the grade of rear

admiral. He shall determine these numbers as of the date the selection board is convened. The total of these numbers is equal to the number of vacancies existing in the grade of rear admiral for officers restricted in the performance of duty, plus the number of additional vacancies estimated for the next 12 months, minus the number of such officers on the promotion list. Within the total the Secretary may allocate such numbers to any of the named categories as he considers necessary to meet the needs of the service.

(b) The Secretary shall furnish the appropriate selection board, convened under chapter 543 of this title to recommend officers for promotion to a grade below rear admiral, with the numbers of—

(1) male officers designated for engineering duty;

(2) male officers designated for aeronautical engineering duty; and

(3) male officers designated for special duty;

that may be recommended for promotion to the grade concerned. He shall determine these numbers, based upon the needs of the service, as of the date the selection board is convened. The number for each designation—

(1) may not exceed the total number of male officers of that designation in the promotion zone; and

(2) may not be less than the product of the number of officers of that designation in the promotion zone and a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, in the same grade, that may be recommended for promotion in that fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone for the grade concerned in that year.

(Aug. 10, 1956, ch. 1041, 70A Stat. 349.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5758 (a)	34 U. S. C. 306c (a) (4).	Aug. 7, 1947, ch. 512, § 308 (a) (4), 61 Stat. 844.
5758 (b)	34 U. S. C. 306c (a) (5), (6), (7)	Aug. 7, 1947, ch. 512, § 308 (a) (5), (6), (7), 61 Stat. 845.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title.

§ 5759. Repealed. Pub. L. 87-123, § 5(17), Aug. 3, 1961, 75 Stat. 266.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 349, required the Secretary to furnish selection boards with the number of Marine Corps officers designated for supply duty that could be recommended for promotion.

§ 5760. Regular Navy, women line officers; Regular Marine Corps, women officers: numbers that may be recommended.

(a) The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of women officers in the line of the Navy that may be recommended for promotion to the grade of captain, commander, or lieutenant commander or the number of women officers of the Marine Corps that may be recommended for promotion to the grade of colonel, lieutenant colonel, or major. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of vacancies existing in the grade concerned plus the number of additional vacancies estimated for the next 12 months, minus the number of officers on the promotion list for that grade.

(b) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of women officers in the line of the Navy that may be recommended for promotion to the grade of lieutenant or the number of women officers of the Marine Corps that may be recommended for promotion to the grade of captain. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of women officers in the next lower grade who are eligible for consideration by the board concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 350; Nov. 8, 1967, Pub. L. 90-130, § 1(19) (E), (F), 81 Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5760 (a)	34 U. S. C. 307 (i); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 206 (i), 62 Stat. 365. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.
5760 (b)	34 U. S. C. 307 (j) (less 2d and 3d sentences); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 206 (j) (less 2d and 3d sentences), 62 Stat. 365. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130, § 1(19) (E), removed requirement that the women officers be on the active list the Marine Corps and in the line of the Navy and added captain to enumeration of listed grades of Navy officers and colonel to the enumeration of listed grades of Marine Corps officers.

Subsec. (b). Pub. L. 90-130, § 1(19) (F), struck out requirement that the eligible women officers in the Marine Corps and in the line of the Navy be on the active list of such services.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title; title 37 section 904.

§ 5761. Navy; staff corps officers: numbers that may be recommended for promotion to grade of rear admiral.

The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers in any staff corps that may be recommended for promotion to the grade of rear admiral. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of vacancies existing in the grade of rear admiral in the corps concerned, plus the number of additional vacancies estimated for the next 12 months, minus the number of captains in the corps concerned on the promotion list. (Aug. 10, 1956, ch. 1041, 70A Stat. 350.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5761	34 U. S. C. 306c (b) (9).	Aug. 7, 1947, ch. 512, § 308 (b) (9), 61 Stat. 848.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title; title 37 section 904.

§ 5762. Navy; staff corps officers: numbers that may be recommended for promotion to grades below rear admiral.

(a) The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers, not restricted in the performance of duty, other than women officers appointed under section 5590 of this title, that may be recommended for promotion to the grade of captain or commander in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, Dental Corps, the Medical Service Corps, or the Nurse Corps. This number, determined by the Secretary as of the date the selection board is convened is the product of—

(1) the number of staff corps officers, not restricted in the performance of duty, in the promotion zone for the grade and corps concerned; and

(2) a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, who are placed on the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone considered by that board.

(b) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the Supply Corps or the Civil Engineer Corps, not restricted in the performance of duty, that may be recommended for promotion to the grade of lieutenant commander or lieutenant. This number, determined by the Secretary as of the date the selection board is convened, is the product of—

(1) the number of male staff corps officers, not restricted in the performance of duty, in the promotion zone for the grade and corps concerned; and

(2) a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone considered by that board.

(c) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of male officers in the Supply Corps or the Civil Engineer Corps designated for limited duty that may be recommended for promotion to the next higher grade. This number, determined by the Secretary as of the date the selection board is convened, is the product of—

(1) the number of male staff corps officers, designated for limited duty, in the promotion zone for the grade and corps concerned; and

(2) a fraction, of which the numerator is the number of male line officers, designated for limited duty, placed on the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, designated for limited duty, in the promotion zone considered by that board.

(d) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers in the Medical Corps, Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, the Medical Service Corps, or the Nurse Corps, other than women officers appointed under section 5590 of this title, that may be recommended for promotion to the grade of lieutenant commander or lieutenant. This number, determined by the Secretary as of the date the selection board is convened, is equal to the number of officers in the promotion zone for the grade and corps concerned.

(e) Repealed. Pub. L. 90–130, § 1(19)(H), Nov. 8, 1967, 81 Stat. 378.

(f) The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers that may be recommended for promotion to the grade of captain or commander in the Judge Advocate General's Corps.

This number, determined by the Secretary as of the date the selection board is convened—

(1) may not exceed the total number of officers of the Judge Advocate General's Corps in the promotion zone for the grade concerned; and

(2) may not be less than the product of the number of officers of the Judge Advocate General's Corps in the promotion zone and a fraction, of which the numerator is the number of male line officers, not restricted in the performance of duty, placed upon the promotion list pursuant to the report of the comparable board for the selection of line officers convened in the same fiscal year, and the denominator is the number of male line officers, not restricted in the performance of duty, in the promotion zone considered by that board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 351; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(9), 71 Stat. 383; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(G), (H), 81 Stat. 378; Dec. 8, 1967, Pub. L. 90–179, § 6, 81 Stat. 548.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5762 (a)	34 U. S. C. 306c (b) (2); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 308 (b) (2), 61 Stat. 847. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.
5762 (b)		
5762 (c)		
5762 (d)		
5762 (e)	34 U. S. C. 306c (b) (6); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 308 (b) (6), 61 Stat. 848. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.
5762 (f)		
5762 (g)	34 U. S. C. 306c (b) (4).	Aug. 7, 1947, ch. 512, § 308 (b) (4), 61 Stat. 847.
	34 U. S. C. 306c (b) (3).	Aug. 7, 1947, ch. 512, § 308 (b) (3), 61 Stat. 847.
	34 U. S. C. 306c (b) (5); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 308 (b) (5), 61 Stat. 848. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.
	34 U. S. C. 306c (b) (7).	Aug. 7, 1947, ch. 512, § 308 (b) (7), 61 Stat. 848.
	34 U. S. C. 306c (b) (8).	Aug. 7, 1947, ch. 512, § 308 (b) (8), 61 Stat. 848.

In subsection (b) the words "number of vacancies existing in the grade of captain in the Medical Service Corps, plus the number of additional vacancies estimated for the next 12 months" are substituted for the words "difference between the allowed number of officers in that grade and the actual number therein plus the number of officers estimated to be separated from that grade during the ensuing twelve-month period" for uniformity of expression. No change in meaning is effected. A similar substitution is made in subsection (f).

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130, § 1(19)(G), added Nurse Corps following Medical Service Corps in the material preceding par. (1).

Subsec. (d). Pub. L. 90–179, § 6(1), inserted the reference to the Judge Advocate General's Corps.

Subsec. (e). Pub. L. 90–130, § 1(19)(H), struck out subsec. (e) which directed the Secretary to furnish to appropriate selection boards the numbers of officers in the Nurse Corps that may be recommended for promotion to the grade of captain or commander.

Subsec. (f). Pub. L. 90–179, § 6(2), added subsec. (f).

1957—Subsec. (a). Pub. L. 85–155, § 201 (9)(A), substituted "Dental Corps, or the Medical Service Corps" for "or the Dental Corps, or the grade of commander in the Medical Service Corps".

Subsec. (b). Pub. L. 85–155, § 201 (9) (B), redesignated former subsec. (c) as (b). Former subsec. (b), which related to recommendation of officers in the Medical Service Corps for promotion to captain, was repealed by such Pub. L. 85–155, § 201 (9) (B).

Subsec. (c). Pub. L. 85–155, § 201 (9) (B), redesignated former subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 85–155, § 201 (9) (B), redesignated former subsec. (e) as (d), and Pub. L. 85–155, § 201 (9) (C), included officers in the Nurse Corps. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 85–155, § 201 (9) (B), redesignated former subsec. (f) as (e), and Pub. L. 85–155, § 201 (9) (D), substituted "captain or commander" for "commander or lieutenant commander". Former subsec. (e) redesignated (d).

Subsec. (g). Pub. L. 85–155, § 201 (9) (E), repealed subsec. (g), which related to recommendation of officers in the Nurse Corps for promotion to the grade of lieutenant.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EX. ORD. NO. 10780. SUSPENSION OF CERTAIN PROVISIONS RELATING TO PROMOTION OF OFFICERS OF SUPPLY CORPS, CHAPLAIN CORPS, CIVIL ENGINEER CORPS AND MEDICAL SERVICE CORPS OF NAVY

Ex. Ord. No. 10780, Sept. 2, 1958, 23 F.R. 6851, provided:

By virtue of the authority vested in me by section 5785 (b) of title 10 of the United States Code, it is ordered as follows:

Except as to the provision which, as amended by section 201 (9) (A) of the act of August 21, 1957, 71 Stat. 383 [subsection (a) of this section], reads,

The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers, not restricted in the performance of duty, other than women officers appointed under section 5590 of this title, that may be recommended for promotion to the grade of captain or commander in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, Dental Corps, or the Medical Service Corps,

the provisions of section 5762 (a) of title 10 of the United States Code, to the extent that such provisions are applicable to promotions to the grade of commander in the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, and the Medical Service Corps, are hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note preceding section 1 of Appendix to Title 50], shall end.

EX. ORD. NO. 10861. SUSPENSION OF CERTAIN PROVISIONS RELATING TO THE PROMOTION OF OFFICERS OF THE SUPPLY CORPS, CHAPLAIN CORPS, CIVIL ENGINEER CORPS, AND MEDICAL SERVICE CORPS OF THE NAVY

Ex. Ord. No. 10861, Feb. 11, 1960, 25 F.R. 1301, provided:

By virtue of the authority vested in me by section 5785(b) of title 10 of the United States Code, it is ordered as follows:

SECTION 1. Except as to the provision which reads

The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of officers, not restricted in the performance of duty, other than women officers appointed under section 5590 of this title, that may be recommended for promotion to the grade of captain or commander in the Medical Corps, the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, Dental Corps, or the Medical Service Corps * * *,

the provisions of section 5762(a) of title 10 of the United States Code [subsec. (a) of this section], to the extent that such provisions are applicable to promotions to the grade of captain in the Supply Corps, the Chaplain Corps, the Civil Engineer Corps, and the Medical Service Corps, are hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950 [set out as a note preceding section 1 of Title 50, Appendix, War and National Defense], shall end.

SEC. 2. Except as to provision which reads

The Secretary shall furnish the appropriate selection board convened under chapter 543 of this title with the

number of male officers in the Supply or the Civil Engineer Corps, not restricted in the performance of duty, that may be recommended for promotion to the grade of lieutenant commander or lieutenant * * *,

the provisions of section 5762(b) of title 10 of the United States Code [subsection (b) of this section], are hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, shall end.

DWIGHT D. EISENHOWER.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of this section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title; title 37 section 904.

§ 5763. Regular Navy; women staff corps officers appointed under section 5590 of this title: number that may be recommended for promotion.[1]

The Secretary of the Navy shall furnish the appropriate selection board convened under chapter 543 of this title with the number of women officers of the Navy in a staff corps, other than officers of the Nurse Corps and women officers appointed under section 5574, 5578, 5579, or 5581 of this title, that may be recommended for promotion to the grade of captain, commander, or lieutenant commander. This number is the product of—

(1) the number of such women staff corps officers in the promotion zone for the grade and corps concerned; and

(2) a fraction, of which the numerator is the number of women line officers who are placed on the promotion list pursuant to the report of the comparable board for the selection of women line officers convened in the same fiscal year, and the denominator is the number of women line officers in the promotion zone considered by that board.

If the number so determined is a mixed number and the fraction is one-half or greater, the number that shall be furnished the board is the next higher whole number; if the number so determined is less than one, the number that shall be furnished the board is one. If the computation produces an indeterminate or inequitable number, the Secretary shall furnish the board with a number that is equitable. (Aug. 10, 1956, ch. 1041, 70A Stat. 352; Sept. 2, 1958, Pub. L. 85–861, § 1(127), 72 Stat. 1497; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(I), 81 Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5763	34 U. S. C. 307 (k) (less 1st sentence); 34 U. S. C. 105k.	June 12, 1948, ch. 449, § 206 (k) (less 1st sentence), 62 Stat. 365. June 12, 1948, ch. 449, § 217, 62 Stat. 370.

[1] Reference to section 5590 of this title stricken from section without concurrent removal of reference from section catchline.

AMENDMENTS

1967—Pub. L. 90–130 struck out requirement that eligible women officers be limited to those on the active list, substituted officers other than officers of the Nurse Corps and women officers appointed under section 5574, 5578, 5579, or 5581 of this title for officers appointed under section 5590 of this title as the qualifying condition limiting the eligibility of women Navy officers in a staff corps, added captain to the enumeration of grades for which recommendations for promotion may be made, and, in the formula for determining the number of officers, substituted the number of such women officers in the promotion zone of the grade and corps concerned for the number of such women officers on the active list in the next lower grade in the corps concerned who in the current fiscal year first became eligible for consideration for promotion to the grade concerned as the first factor in the equation and, in the second factor, altered both the numerator and denominator to reflect removal of active list requirements and insertion of promotion zone considerations.

1958—Pub. L. 85–861 required the Secretary to furnish the board with a number that is equitable if the computation produces an indeterminate or inequitable number.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title; title 37 section 904.

§ 5764. Navy; line officers: promotion zones.

(a) The Secretary of the Navy shall establish a promotion zone in each grade for male officers in the line of the Navy not restricted in the performance of duty when he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in each of the next five years, the number of officers who will be eligible for selection in each of those years, and the terms of service that those officers will have completed.

(b) The promotion zones in any grade below captain for male officers designated for engineering duty, for male officers designated for aeronautical engineering duty, and for male officers designated for special duty are each composed of all male officers of one such designation who have not previously failed of selection for promotion to the next

higher grade and who are senior to the junior officer in the corresponding promotion zone for male line officers of the Navy not restricted in the performance of duty.

(c) The Secretary shall establish a promotion zone in each grade for male officers in the line of the Navy designated for limited duty at the time he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in each of the next five years, the number of officers who will be eligible for selection in each of those years, and the terms of service that those officers will have completed.

(d) The Secretary shall establish a promotion zone in each grade for women officers in the line of the Navy in the manner prescribed in this section for the establishment of promotion zones for male line officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 353; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(J), (K), 81 Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5764 (a)	34 U. S. C. 306c (a) (10).	Aug. 7, 1947, ch. 512, § 308 (a) (10), 61 Stat. 846.
5764 (b)	34 U. S. C. 306c (a) (11).	Aug. 7, 1947, ch. 512, § 308 (a) (11), 61 Stat. 846.
5764 (c)	34 U. S. C. 306c (a) (12).	Aug. 7, 1947, ch. 512, § 308 (a) (12), 61 Stat. 846.

AMENDMENTS

1967—Pub. L. 90–130, § 1(19)(J), eliminated "male" preceding "line officers" in the section catchline.

Subsec. (d). Pub. L. 90–130, § 1(19)(K), added subsec. (d).

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EX. ORD. NO. 10781. SUSPENSION OF CERTAIN PROVISIONS RELATING TO ESTABLISHMENT OF ZONES FOR PROMOTION OF MALE OFFICERS OF THE NAVY

Ex. Ord. No. 10781, Sept. 2, 1958, 23 F.R. 6851, provided:

By virtue of the authority vested in me by section 5785 (b) of title 10 of the United States Code, it is ordered as follows:

Except as to the provisions which read,

The Secretary of the Navy shall establish a promotion zone in each grade for male officers in the line of the Navy not restricted in the performance of duty when he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion,

the provisions of section 5764 (a) of title 10 of the United States Code are hereby suspended until June 30 of the fiscal year following that in which the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, shall end.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Failure of selection, see section 5776 of this title.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5776, 5899 of this title; title 37 section 904.

§ 5765. Marine Corps; officers: promotion zones.

(a) The Secretary of the Navy shall establish the promotion zone for officers of the Marine Corps serving in the grade of brigadier general at the time he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the grade of major general. The promotion zone shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotion consistent with the needs of the service and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the grade of major general in each of the next five years and the number of officers who will be eligible for selection to that grade in each of those years.

(b) The Secretary shall establish a promotion zone in each grade below brigadier general for male officers of the Marine Corps not restricted in the performance of duty at the time he convenes a selection board under chapter 543 of this title to consider officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered

as having failed of such selection, in order to maintain a flow of promotion consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in the next five years, the number of officers eligible for selection in each of those years, and the terms of service which those officers will have completed.

(c) The Secretary shall establish a promotion zone in each grade for male officers of the Marine Corps designated for limited duty at the time he convenes a selection board under chapter 543 of this title to consider such officers in that grade for recommendation for promotion to the next higher grade. The promotion zone in each grade shall be composed of that number of the most senior such officers under consideration, who are eligible for selection for promotion to the next higher grade and who have not previously failed of such selection, that must either be selected for promotion by the particular board or be considered as having failed of such selection, in order to maintain a flow of promotions consistent with the terms of service set out in section 5768 of this title and in order best to assure to individuals in succeeding years equality of opportunity for promotion. The Secretary shall determine the number in the zone on the basis of a consideration of the number of vacancies estimated for the next higher grade in each of the next five years, the number of officers who will be eligible for selection in each of those years, and the terms of service which those officers will have completed.

(d) The Secretary shall establish a promotion zone in each grade for women officers of the Marine Corps in the manner prescribed in this section for the establishment of promotion zones for male officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 354; Aug. 3, 1961, Pub. L. 87–123, § 5(19), 75 Stat. 266; Nov. 8, 1967, Pub. L. 90–130, § 1(19) (J), (L), 81 Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5765 (a)	34 U. S. C. 626–1 (i).	Aug. 7, 1947, ch. 512, § 314 (i), 61 Stat. 864.
5765 (b)	34 U. S. C. 306c (a) (10); 34 U. S. C. 626–1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 308 (a) (10), 61 Stat. 846.
5765 (c)	34 U. S. C. 306c (a) (11); 34 U. S. C. 626–1 (p).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5765 (d)	34 U. S. C. 306c (a) (12); 34 U. S. C. 626–1 (o).	Aug. 7, 1947, ch. 512, § 308 (a) (11), 61 Stat. 846. Aug. 7, 1947, ch. 512, § 314 (p), 61 Stat. 865. Aug. 7, 1947, ch. 512, § 308 (a) (12), 61 Stat. 846. Aug. 7, 1947, ch. 512, § 314 (o), 61 Stat. 865.

AMENDMENTS

1967—Pub. L. 90–130, § 1(19)(J), eliminated "male" preceding "officers" in the section catch line.

Subsec. (d). Pub. L. 90–130, § 1(19)(L), added subsec. (d).

1961—Subsec. (a). Pub. L. 87–123, § 5(19)(A), eliminated "not restricted in the performance of duty" which preceded "at the time he convenes."

Subsec. (c). Pub. L. 87–123, § 5(19)(B), redesignated former subsec. (d) as (c), and deleted former subsec. (c) which specified the promotion zone for Marine Corps male officers below colonel designated for supply duty.

Subsec. (d). Pub. L. 87–123, § 5(19)(B), redesignated former subsec. (d) as (c).

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Establishment of zones of consideration for majors until Dec. 31, 1964, see section 4 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 336, set out as a note under section 5701 of this title.

Failure of selection, see section 5776 of this title.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5776, 5899 of this title; title 37 section 904.

§ 5766. Navy; staff corps officers: promotion zones.

(a) Officers in any staff corps not restricted in the performance of duty who have not failed of selection for promotion to the next higher grade are in the promotion zone for officers of their grade and corps when their running mates are in the promotion zone for male line officers not restricted in the performance of duty or for women line officers, as the case may be.

(b) Male officers in any staff corps designated for limited duty who have not failed of selection for promotion to the next higher grade are in the promotion zone for officers of their grade, corps, and designation, when their running mates are in the promotion zone for male line officers designated for limited duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 355; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(M), 81 Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5766	34 U. S. C. 306c (b) (11), (12); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 308 (b) (11), (12), 61 Stat. 848. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 eliminated exception for women officers appointed under section 5590 of this title in reference to officers in any staff corps not restricted in the performance of duty and added reference to women line officers in provisions covering running mates.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Failure of selection, see section 5776 of this title.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5776 of this title; title 37 section 904.

§ 5767. Officers qualified for specific duties: promotion to flag or general officer grade.

(a) Whenever the Secretary of the Navy determines that there are not enough officers to meet the needs of the service in the grade of rear admiral in the Navy or in the grade of major general or brigadier general in the Marine Corps, who are specially qualified for a type of duty required of officers of the grade concerned, he may direct that, of the total number of officers that a selection board may recommend for promotion to that grade, a specified number shall be officers who are specially qualified for the required type of duty. If, solely as a result of this section, the selection board selects an officer who is junior to the junior officer in the promotion zone, the board shall so certify in its report.

(b) Each officer who is promoted solely by operation of subsection (a) and who is junior to the junior officer in the promotion zone shall, when one or more officers junior to the junior officer in that promotion zone are promoted pursuant to the report of the next selection board convened after the board which selected him, have his rank adjusted in the grade for which selected according to his relative rank with such other officers in the grade from which they were promoted, unless at the time of his selection there was another officer junior to him selected under provisions other than those of subsection (a). If an officer's rank is to be adjusted under this subsection, the President, when all officers concerned are promoted to the grade for which selected, shall assign to him a later date of rank that will insure the order of rank as provided in this subsection, and the officer shall take rank from the later date. If he is a staff corps officer, he shall have a new running mate assigned to him in accordance with his adjusted rank.

(c) Whenever the Secretary determines that there is a position of sufficient importance and responsibility to require an incumbent in the grade of rear admiral or brigadier general, and that there is a woman officer of the Navy or the Marine Corps who is best qualified to perform the duties of the position, he may designate that woman officer to hold that position. A woman officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of rear admiral or brigadier general. Such an appointment is effective on the date the officer reports for the designated duty and terminates on the date she is detached. (Aug. 10, 1956, ch. 1041, 70A Stat. 355; Nov. 8, 1967, Pub. L. 90–130, § 1(19) (N), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5767	34 U. S. C. 306s.	Aug. 7, 1947, ch. 512, § 423, 61 Stat. 879.

In subsection (a) the words "in the line or in any staff corps" are omitted as surplusage.

In subsection (b) the word "rank" is substituted for the word "precedence" for uniformity of expression.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90–130 added subsec. (c).

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

SPECIFICATIONS BY SECRETARY OF QUALIFICATIONS FOR SELECTION TO FLAG RANK; PRECEDENCE

Section 423 of act Aug. 7, 1947, ch. 512, title IV, 61 Stat. 879, as amended by act Aug. 10, 1956, ch. 1041, § 48 (d), 70A Stat. 640, provided:

"(a) Notwithstanding any other provision of titles I and II of this Act, whenever in the opinion of the Secretary of the Navy there is an inadequate number of officers to meet the needs of the service in the grade of rear admiral in the line or in any staff corps of the Navy, or in the grade of brigadier general or major general in the Marine Corps, who are specially qualified for a type of duty required of officers of that grade, the Secretary of the Navy may direct that, of the total number of officers which a selection board may recommend for promotion to such a grade, such number, as determined by him to be necessary to meet the needs of the service; shall be officers who are specially qualified for the required type of duty: *Provided,* That if an officer of any grade who is junior in lineal rank to the junior officer in the promotion zone of the same grade be selected for promotion solely by reason of the foregoing, the selection board shall so certify in its report.

"(b) An officer of any grade junior in lineal rank to the junior officer in the promotion zone of the same grade who may be promoted by virtue of selection for promotion solely by operation of subsection (a) of this section shall, when one or more officers junior in lineal rank to the junior officer in such promotion zone are promoted pursuant to selection by the board convened next following that which selected the first-mentioned officer, have precedence in the grade for which selected according to his relative precedence with such other officer or officers in the grade from which promoted if at the time of his selection another officer junior to him in lineal rank was not selected other than pursuant to subsection (a) of this section and, if all the officers concerned be of a given staff corps of the Navy, the first-mentioned officer, when all others concerned are promoted, shall be reassigned a running mate as if he were selected when the other officers concerned were selected. When all the officers concerned shall have been promoted to the grade for which selected, the President shall assign the first-mentioned officer such later date of rank in his grade that will insure the order of precedence herein prescribed and such officer thereafter shall take rank for all purposes from such later date."

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Major general, date of rank, see section 5769 (d) of this title.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 202, 904.

§ 5768. Navy, male line officers; Marine Corps, male officers: normal terms of service in grade and total commissioned service.

(a) The normal terms of service for male officers in the line of the Navy, other than officers designated for limited duty, and for male officers of the Marine Corps, other than officers designated for limited duty, are:

Grade		Service in grade	Total commissioned service
Navy	Marine Corps		
Captain	Colonel	5 years	30 years.
Commander	Lieutenant Colonel	7 years	25 years.
Lieutenant Commander	Major	6 years	18 years.
Lieutenant	Captain	6 years	12 years.
Lieutenant (junior grade)	First Lieutenant	3 years	6 years.

(b) The normal terms of service in grade for male officers in the line of the Navy designated for limited duty and for male officers of the Marine Corps designated for limited duty are:

Grade		Service in grade
Navy	Marine Corps	
Lieutenant Commander	Major	6 years.
Lieutenant	Captain	6 years.
Lieutenant (junior grade)	First Lieutenant	3 years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 356.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5768	34 U. S. C. 306c (a) (13), (14); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 308 (a) (13), (14), 61 Stat. 846. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Promotions consistent with terms of service set out in this section—

Marine male officers, see section 5765 of this title.

Navy male line officers, see section 5764 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5764, 5765 of this title; title 37 section 904.

§ 5769. Navy, male line officers; Marine Corps, male officers: eligibility for promotion.

(a) Male officers in the line of the Navy, and male officers of the Marine Corps, who are recommended for promotion in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon the approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade for which selected in the order of their rank at the time of the approval of the report, following the names of any male officers recommended for promotion to the same grade in an earlier approved report who have not yet been promoted.

(b) Male officers in the line of the Navy and male officers of the Marine Corps may be promoted when they become eligible for promotion under one of the following clauses:

(1) Officers not restricted in the performance of duty whose names appear on the promotion list are, in the order in which their names appear, eligible for promotion to the next higher grade as vacancies occur in that grade among officers not restricted in the performance of duty.

(2) Officers designated for limited duty whose names appear on the promotion list are, in the order in which their names appear, eligible for promotion to the next higher grade as vacancies occur in that grade among officers designated for limited duty.

(3) Captains in the Navy designated for engineering duty, aeronautical engineering duty, or special duty whose names appear on the promotion list are, in the order in which their names appear, eligible for promotion to the grade of rear admiral as vacancies occur in that grade among officers restricted in the performance of duty.

(4) An officer in the grade of commander or below designated for engineering duty, aeronautical engineering duty, or special duty whose name appears on the promotion list is eligible for promotion to the next higher grade when the line officer not restricted in the performance of duty whose name appears next below his on the promotion list becomes eligible for promotion.

However, an officer in the grade of lieutenant in the Navy designated for engineering duty, aeronautical engineering duty, or special duty is not eligible for promotion to the grade of lieutenant commander until there is a vacancy for him among officers of his designation in the combined grades of captain, commander, and lieutenant commander.

(c) Each male officer in the line of the Navy and each male officer of the Marine Corps, when promoted to a higher grade, shall be assigned the date of rank and registered number that will give him rank in the order in which his name appeared on the promotion list for that grade. (Aug. 10, 1956, ch.

1041, 70A Stat. 356; Aug. 3, 1961, Pub. L. 87–123, § 5(20), 75 Stat. 266; Oct. 22, 1970, Pub. L. 91–491, § 1, 84 Stat. 1089.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5769 (a) and (b).	34 U. S. C. 306f (a) (1); 34 U. S. C. 626–1 (a), (o), (p).	Aug. 7, 1947, ch. 512, § 311 (a) (1), 61 Stat. 852. Aug. 7, 1947, ch. 512, § 314 (a), (o), (p), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5769 (c)	34 U. S. C. 306f (a) (2) (less applicability to pay and allowances); 34 U. S. C. 626–1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 311 (a) (2) (less applicability to pay and allowances), 61 Stat. 852. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5769 (d)	34 U. S. C. 626–1 (h) (2d sentence, less 2d proviso).	Aug. 7, 1947, ch. 512, § 314 (h) (2d sentence, less 2d proviso), 61 Stat. 864.

In subsection (a) the words "who have not yet been promoted" are added for clarity.

In subsection (a) the word "rank" is substituted for the word "seniority", and in subsection (c) the words "give him rank" are substituted for the words "assure him precedence," for uniformity of expression.

In subsection (b) the last sentence is substituted for the words "subject to the provisions of subsection (c)—(e) of section 5a of this title", appearing in 34 U. S. C. 306f (a) (1).

AMENDMENTS

1970—Subsec. (c). Pub. L. 91–491, § 1(1), substituted "Each" for "Except as provided in subsection (d), each".

Subsec. (d). Pub. L. 91–491, § 1(2), repealed subsec. (d), which provided that each officer promoted to the grade of major general under this section be assigned the date of rank held by him in the grade of brigadier general, but that, except as provided in sections 5767 and 5777 of this title, the date of rank could not be earlier than that of the junior officer then in the grade of major general.

1961—Subsec. (b). Pub. L. 87–123 redesignated former clause (5) as (4), eliminated former clauses (4) and (6) specifying the eligibility for promotion of colonels and lower grade officers designated for supply duty, and provisions that captains designated for supply duty were not eligible for promotion until there was a vacancy among officers of their designation in the combined grades of colonel, lieutenant colonel, and major.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91–491 provided that: "The amendments made by this Act [amending this section] are effective on January 1, 1959."

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5770 of this title; title 37 section 904.

§ 5770. Regular Navy; male line officers not restricted to the performance of duty or designated for limited duty: sea or foreign service required.[1]

(a) A male officer on the active list in the line of the Navy who is not restricted in the performance of duty or who is designated for limited duty may not be promoted to the grade of lieutenant commander or above under section 5769 of this title, although otherwise eligible for promotion, until he has had at least two years of sea or foreign service after his name was placed on the promotion list for promotion to the grade in which he is serving.

(b) The Secretary of the Navy shall determine the types of duty that may be considered sea or foreign service for the purpose of this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 357.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5770	34 U. S. C. 306f (a) (3); 34 U. S. C. 626–1 (e); 34 U. S. C. 307 (q).	Aug. 7, 1947, ch. 512, § 311 (a) (3), 61 Stat. 852. Aug. 7, 1947, ch. 512, § 314 (e), 61 Stat. 863. June 12, 1948, ch. 449, § 206 (q), 62 Stat. 366.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EX. ORD. NO. 11151. SUSPENSION OF PROVISIONS REQUIRING SEA OR FOREIGN SERVICE FOR PROMOTION

Ex. Ord. No. 11151, Apr. 8, 1964, 29 F.R. 4989, provided:

By virtue of the authority vested in me by Section 5785(b) of Title 10 of the United States Code, I hereby suspend the provisions of Section 5770 of Title 10 of the United States Code [this section] which requires certain male officers on the active list in the line of the Navy to have had specified sea or foreign service before they may be promoted.

LYNDON B. JOHNSON

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6914 of this title; title 37 section 904.

§ 5771. Navy, women line officers; Marine Corps, women officers: eligibility for promotion.

(a) Women officers in the line of the Navy and women officers of the Marine Corps who are recommended for promotion in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon approval of the report by the President. The names of these officers shall be placed on the promotion list for

[1] Section catchline does not conform to analysis.

the grade for which selected in the order of their rank at the time of the approval of the report, following the names of any women officers recommended for promotion to the same grade in an earlier approved report who have not yet been promoted.

(b) Women officers in the line of the Navy and women officers of the Marine Corps who are on a promotion list for any grade above lieutenant (junior grade) in the Navy or first lieutenant in the Marine Corps are, in the order in which their names appear, eligible for promotion to the grade concerned as vacancies occur in that grade.

(c) When promoted to a higher grade, each woman line officer of the Navy and each woman officer of the Marine Corps shall be assigned the date of rank and registered number that will give her rank in the order in which her name appeared on the promotion list for that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 358; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(O), (P), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5771 (a) and (b).	34 U. S. C. 304g (a), 34 U. S. C. 305g (a) (1); 34 U. S. C. 307 (a); 34 U. S. C. 625h (a); 34 U. S. C. 307 (j) (3d sentence, less applicability to pay and allowances).	Aug. 7, 1947, ch. 512, §§ 111 (a), 211 (a) (1), 61 Stat. 806 822. June 12, 1948, ch. 449, § 206 (a), 62 Stat. 364. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.
5771 (c)	34 U. S. C. 307 (a); 34 U. S. C. 306 (a) (2) (less applicability to pay and allowances).	June 12, 1948, ch. 449, § 206 (j) (3d sentence, less applicability to pay and allowances), 62 Stat. 365. June 12, 1948, ch. 449, § 206 (a), 62 Stat. 364. Aug. 7, 1947, ch. 512, § 111 (b), 61 Stat. 807.

AMENDMENTS

1967—Pub. L. 90–130, § 1(19)(O), eliminated "Regular" preceding "Navy" and "Marine Corps" in the section catchline.

Subsec. (a). Pub. L. 90–130, § 1(19)(P), struck out requirement that eligible women officers be on the active list of the Navy or Marine Corps.

Subsec. (b). Pub. L. 90–130, § 1(19)(P), struck out requirement that eligible women officers be on the active list of the Navy or Marine Corps and eliminated provision postponing eligibility for promotion in the case of lieutenants of the Navy and captain of the Marine Corps until the July 1st following the date of approval of the report of the selection board.

Subsec. (c). Pub. L. 90–130, § 1(19)(P), struck out requirement that eligible women officers be on the active list of the Navy or Marine Corps.

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 904.

§ 5772. Navy; staff corps officers: eligibility for promotion to grade of rear admiral.

Officers in any staff corps recommended for promotion to the grade of rear admiral in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade of rear admiral in the corps concerned. Each such officer may be promoted when a vacancy occurs in the grade of rear admiral in his corps. When promoted, each staff corps officer shall have the same date of rank as the running mate assigned to him in the grade of rear admiral. However, if the staff corps officer is promoted to the grade of rear admiral before the line officer who is to be his running mate in that grade is so promoted, the staff corps officer shall have, as his interim date of rank, the date of the occurrence of the vacancy that he was promoted to fill. When his running mate is promoted to the grade of rear admiral, the staff corps officer shall have the same date of rank as that assigned to his running mate. (Aug. 10, 1956, ch. 1041, 70A Stat. 358.)

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5444 of this title; title 37 section 904.

§ 5773. Navy; staff corps officers: eligibility for promotion to grades below rear admiral.

(a) Officers in any staff corps recommended for promotion to a grade below rear admiral in the report of a selection board convened under chapter 543 of this title are considered as selected for promotion upon the approval of the report by the President. The names of these officers shall be placed on the promotion list for the grade and corps concerned.

(b) Each staff corps officer whose name is placed on a promotion list under subsection (a) is eligible for promotion to the grade for which selected when the line officer who is to be his running mate in the higher grade becomes eligible for promotion to that grade. When promoted, each such staff corps officer shall be assigned the same date of rank as that of his running mate in the higher grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 359; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(10), 71 Stat. 383; Sept. 30, 1966, Pub. L. 89–609, § 1(11), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(Q)—(S), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5773	34 U. S. C. 306f (b) (1), (2) (less applicability to pay and allowances); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 311 (b) (1), (2) (less applicability to pay and allowances), 61 Stat. 853. June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130, § 1(19)(Q), eliminated the category of women officers appointed under section 5590 of this title which had been excepted from the effect of the provision under which recommendations

for promotion are considered as selections for promotion upon the approval of the report by the President.

Subsec. (b). Pub. L. 90–130, § 1(19)(R), eliminated exception for persons affected under subsec. (c) of this section.

Subsec. (c). Pub. L. 90–130, § 1(19)(S), struck out subsec. (c) which provided that each commander and lieutenant commander in the Nurse Corps whose name was placed on a promotion list under subsec. (a), could be promoted to the grade for which selected when a vacancy occurred for her in that grade, and that, when promoted, each such officer should be assigned the same date of rank as that of his running mate in the higher grade.

1966—Subsec. (c). Pub. L. 89–609 substituted "the person" for "her" in the first sentence.

1957—Subsec. (c) Pub. L. 85–155 substituted "Each commander and lieutenant commander in the Nurse Corps" for "Each commander in the Medical Service, and each lieutenant commander and lieutenant in the Nurse Corps" and "her" for "him".

CROSS REFERENCES

Date of entitlement to pay and allowances of grade to which promoted, see section 904 of Title 37, Pay and Allowances of the Uniformed Services.

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

Temporary or permanent promotion, determination, see section 5778 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 904.

§ 5774. Repealed. Pub. L. 90–130, § 1(19)(T), Nov. 8, 1967, 81 Stat. 379.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 359, made women officers on the active list of the Navy in staff corps, appointed under section 5590 of this title, who were recommended for promotion to a grade above lieutenant (junior grade) in the approved report of a selection board convened under chapter 543 of this title eligible for promotion when the line officer who was to be her running mate in the higher grade became eligible for promotion to that grade.

§ 5775. Repealed. Pub. L. 87–649, § 14c(293), Sept. 7, 1962, 76 Stat. 501.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 350; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(11), 71 Stat. 383; Aug. 3, 1961, Pub. L. 87–123, § 5(21), 75 Stat. 266, related to the date of entitlement to pay and allowances of the grade to which an officer is promoted, and is now covered by section 904 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5776. Failure of selection.

(a) Subject to subsection (b), an officer in the line of the Navy, or an officer of the Marine Corps, who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title and is not selected for promotion is considered as having failed of selection for promotion if he is, or is senior to, the junior officer of his category in the promotion zone established in his grade under section 5764 or section 5765 of this title. Such an officer is not considered as having failed of selection if he is junior to the junior officer of his category in the promotion zone in his grade.

(b) A male officer in the line of the Navy restricted in the performance of duty serving in the grade of captain who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title and who is not selected for promotion is not considered as having failed of selection. There are no promotion zones for such officers for promotion to the grade of rear admiral.

(c) An officer in a staff corps of the Navy who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title and is not selected for promotion is considered as having failed of selection for promotion if he is, or is senior to, the junior officer of his category in the promotion zone established in his grade and corps under section 5766 of this title. Such an officer is not considered as having failed of selection if he is junior to the junior officer of his category in the promotion zone in his grade and corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 361; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(12), 71 Stat. 383; Aug. 3, 1961, Pub. L. 87–123, § 5(22), 75 Stat. 266; Sept. 30, 1966, Pub. L. 89–609, § 1(12), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(U)—(W), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5776 (a)	34 U. S. C. 306d (a) (1) (3d proviso).	Aug. 7, 1947, ch. 512, § 309 (a) (1) (3d proviso), 61 Stat. 849.
5776 (b)	34 U. S. C. 306d (a) (1) (4th proviso, less first 107 words).	Aug. 7, 1947, ch. 512, § 309 (a) (1) (4th proviso, less first 107 words), 61 Stat. 849.
5776 (c) and (d).	34 U. S. C. 306d (b) (1) (4th proviso); 34 U. S. C. 21e (less appointing authority and less provisos).	Aug. 7, 1947, ch. 512, § 309 (b) (1) (4th proviso), 61 Stat. 850.
5776 (e)	34 U. S. C. 410r (a).	June 24, 1952, ch. 457 (less appointing authority and less provisos), 66 Stat. 155. June 12, 1948, ch. 449, § 207 (a), 62 Stat. 366.

The words "failed of selection" are words of art. As this section shows, they do not describe all officers who have in fact been considered for promotion and have not been selected. On the other hand, they may also be used to describe officers who have not actually failed of selection. (See § 5777 and § 5865 of this title.) The fiction is employed, as indicated in §§ 5764 and 5765 of this title, to control the rate of attrition. The provisions of the Officer Personnel Act of 1947 relating to the retirement and discharge of officers who have twice "failed of selection" are codified in chapter 573 of this title.

In subsection (b), the second sentence is added in the interest of completeness and clarity.

The fourth proviso in 34 U. S. C. 306d (b) (1), source for subsections (c) and (d), excepts lieutenant commanders and lieutenants in the Nurse Corps from its provisions. It does not indicate when, if ever, these officers are considered as having failed of selection. The fact that they are never so considered is apparent, however, since the Officer Personnel Act of 1947 does not provide for their involuntary retirement or discharge for having failed. Subsection (d) is worded accordingly.

Subsection (e) is added in the interest of completeness and clarity. Section 207 (a) of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 410r (a)) makes the provisions of the Officer Personnel Act of 1947 relating to the retirement and discharge of officers for failure of selection inapplicable to women officers appointed under the 1948 act. While it does not specifically state that there are no promotion zones for women officers and that they are never considered as having failed of selection, it has that effect because the zones and the concept of "having failed of selection" have no meaning apart from the provisions relating to forced attrition. The Women's Armed Services Integration Act of 1948 contains provisions relating to retirement and discharge, but these have nothing to do with failure of selection as defined in the Officer Personnel Act of 1947.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130, § 1(19)(U), eliminated limitation restricting the subsec. to male officers.

Subsec. (c). Pub. L. 90–130, § 1(19)(V), struck out reference to subsecs. (d) and (e) of this section.

Subsec. (d). Pub. L. 90–130, § 1(19)(W), struck out subsec. (d) which provided that officers in the Nurse Corps eligible for promotion by a selection board convened under chapter 543 of this title and not selected for promotion should not be considered as having failed of selection for promotion.

Subsec. (e). Pub. L. 90–130, § 1(19)(W), struck out subsec. (e) which provided that women officers appointed under section 5590 of this title who were eligible for promotion by a selection board convened under chapter 543 of this title and not selected for promotion were not considered as having failed of selection for promotion.

1966—Subsec. (d). Pub. L. 89–609 substituted "the person" for "her" in the first sentence.

1961—Subsec. (b). Pub. L. 87–123 deleted ", or a male officer of the Marine Corps restricted in the performance of duty serving in the grade of colonel," which followed "grade of captain", and "or brigadier general" which followed "grade of rear admiral."

1957—Subsec. (d). Pub. L. 85–155 eliminated "in the grade of lieutenant commander or lieutenant" which preceded "in the Nurse Corps".

CROSS REFERENCES

Suspension of provisions of section, see section 5785 of this title.

§ 5777. Removal from promotion list.

(a) The President may remove the name of any officer from a promotion list.

(b) If the Senate rejects an officer's appointment to the grade for which he has been recommended, the officer's name shall be removed from the promotion list.

(c) An officer whose name is removed from a promotion list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board, and the report of the board is approved by the President, his name shall be placed on the promotion list without prejudice and, if he is promoted, he shall have the same lineal position and date of rank that he would have had if his name had not been removed. However, if the officer is not recommended for promotion in the approved report of the next selection board, or if he is so recommended but the President removes his name from the promotion list or the Senate rejects his appointment, he is considered for all purposes as having twice failed of selection for promotion. (Aug. 10, 1956, ch. 1041, 70A Stat. 361.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5777	34 U. S. C. 306f (c) (1); 34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 105e (less proviso); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 311 (c) (1), 61 Stat. 853. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 12, 1948, ch. 449, § 208 (less proviso), 62 Stat. 368. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

This section is applicable to women officers because titles I and II of the Officer Personnel Act of 1947 contain, in §§ 111 (c) and 211 (c), identical provisions. Failure of selection has no consequences in the case of women officers appointed under the Women's Armed Services Integration Act of 1948 or in the case of lieutenant commanders and lieutenants in the Nurse Corps, so that the last sentence of subsection (c) is meaningless as to them. There is no doubt, however, that they are entitled to the benefits of the remainder of the section.

In subsection (a), the words "of the line or of a staff corps" are omitted as surplusage and to avoid the necessity of adding "or an officer of the Marine Corps".

Subsection (b) is added for clarity. It is implicit in the law; otherwise, it would be impossible for an officer whose appointment to a grade was rejected by the Senate to be reconsidered for promotion to that grade. Section 307 (a) (3) of the Officer Personnel Act of 1947 provides that an officer whose name is on a promotion list for a grade on the date a board is convened to consider officers for promotion to that grade may not be considered by that board.

CROSS REFERENCES

Suspension of provisions of section, see section 5785 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6376, 6377, 6379, 6380, 6396 of this title.

§ 5778. Promotions under preceding sections: temporary; permanent.

Promotions under the preceding sections of this chapter of women officers selected by boards convened under section 5704 of this title shall be made by permanent appointments. Promotions of all other officers under the preceding sections of this chapter shall be made by—

(1) temporary appointments when sections 5442, 5443, and 5444 of this title are applicable; and

(2) permanent appointments when sections 5442, 5443, and 5444 of this title are inapplicable. (Aug. 10, 1956, ch. 1041, 70A Stat. 362; Nov. 8, 1967, Pub. L. 90–130, § 1(19)(X), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

The first sentence of this section covers the promotion, under the Women's Armed Services Integration Act of 1948, of women officers appointed under that act. The act contains no provision for temporary promotions; all promotions under it are permanent. Title III of the Officer Personnel Act of 1947, as amended, which authorizes temporary promotions, was made inapplicable to women appointed under the Women's Armed Services Integration Act of 1948 by § 215 of the latter act (34 U. S. C. 105i).

The second sentence of this section relates to the promotion of officers other than women officers appointed under the Women's Armed Services Integration Act of 1948. Except for these women officers and a few others not on a lineal list, all officers on active duty in the Navy and the Marine Corps, are, unless the Officer Personnel Act of 1947 is suspended, promoted under that act. Both temporary and permanent promotions may be made under it.

Title III of the Officer Personnel Act of 1947, as amended, is operative whenever the number of male line officers on active duty in the Navy exceeds the number of male line officers on the active list of the Navy, i. e., whenever there are any reserve or temporary line officers on active duty. The distribution-in-grade provisions of title III, codified in §§ 5442, 5443, and 5444 of this title, are, by § 5446 of this title, made applicable under these same conditions. The provisions of titles I and II of the Officer Personnel Act of 1947 relating to the distribution of regular officers in permanent grades are codified in §§ 5447, 5448, and 5449 of this title. These provisions unlike the other provisions of titles I and II, are applicable at all times.

When title III of the Officer Personnel Act of 1947 is operative, an officer who is selected for promotion may be promoted either by means of a temporary appointment in the next higher grade or by means of a permanent appointment in that grade, depending on certain

other factors. For example, a male line officer on the active list, not restricted in the performance of duty, receives a permanent promotion if there occurs, while he is on the promotion list, a vacancy for him in the next higher grade as determined by computations under title I. If there is no such vacancy but there is a vacancy as determined by computations under title III, he receives a temporary promotion. When title III is inoperative, there are, of course, no computations under that title, and all promotions are permanent. (The unrestricted, active-list, male line officer is used as an example because his eligibility for promotion largely determines the eligibility of most other officers.)

Clause (1) of the second sentence of this section covers the situation in which "Title III conditions" prevail and officers, for whom no vacancies exist as determined by computations under title I, are temporarily promoted to fill vacancies as determined by computations under title III. The permanent promotion of officers who are on a promotion list or have been temporarily promoted while title III is operative is covered in later sections of this chapter. Clause (2) of the second sentence of this section covers the permanent promotion of selected officers at times when title III is inoperative.

AMENDMENTS

1967—Pub. L. 90–130 substituted "selected by boards convened under section 5704" for "appointed under section 5590".

CROSS REFERENCES

Suspension of provisions of section, see section 5785 of this title.

§ 5779. Temporary promotions: termination.

The President may terminate any temporary appointment made under the preceding sections of this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 362.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5779	34 U. S. C. 306h (less applicability to temporary appointments under 34 U. S. C. 3c (c)).	Aug. 7, 1947, ch. 512, § 316 (d) (less applicability to temporary appointments under § 302 (c)), 61 Stat. 867.

The words "Notwithstanding any other provision of this title" are omitted as surplusage. The words "made under the preceding sections of this chapter" are substituted for the words "effected pursuant to authority of Titles I through IV of this Act." Termination of temporary appointments, other than those effecting temporary promotions under the preceding sections, is covered in the chapters relating to such other appointments.

CROSS REFERENCES

Suspension of provisions of section, see section 5785 of this title.

§ 5780. Regular Navy, male line officers; Regular Marine Corps, male officers: permanent promotion.

(a) The President may fill vacancies in any grade in the line of the Regular Navy, as determined by computations under section 5447 of this title, by making permanent appointments in that grade from officers on the active list in the line of the Navy who—

(1) have been temporarily promoted to that grade under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to that grade under the preceding sections of this chapter.

(b) The President may fill vacancies in any grade in the Regular Marine Corps, as determined by computations under section 5448 of this title, by making permanent appointments in that grade from officers on the active list of the Marine Corps who—

(1) have been temporarily promoted to that grade under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to that grade under the preceding sections of this chapter.

(c) An officer may not be permanently appointed under this section in the grade of captain in the Navy or colonel in the Marine Corps before the fiscal year in which he and all officers senior to him on the lineal list will have completed 18 years of total commissioned service as computed under section 6387 of this title.

(d) Officers shall be permanently appointed under this section in the order of their lineal position or, if they have not been temporarily appointed in the grade concerned, in the order in which their names appear on the promotion list for that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 362.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5780	34 U. S. C. 306f (c) (2) (less 3d proviso); 34 U. S. C. 211a (q); 34 U. S. C. 626–1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 311 (c) (2) (less 3d proviso), 61 Stat. 854. Aug. 7, 1947, ch. 512, § 304 (q), 61 Stat. 841. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsections (a) and (b) the words "and regularly commissioning therein" are omitted as surplusage.

CROSS REFERENCES

Officers ineligible for promotion, see section 5786 of this title.

Staff corps officers, permanent promotion, see section 5782 of this title.

Suspension of provisions of section, see section 5785 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5447, 5448, 5782 of this title.

§ 5781. Regular Navy; staff corps officers: permanent promotion to grade of rear admiral.

(a) The President may fill vacancies in the grade of rear admiral in any staff corps of the Regular Navy, as determined by computations under section 5449 of this title, by making permanent appointments in that grade from officers on the active list in the corps concerned who—

(1) have been temporarily promoted to the grade of rear admiral under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to the grade of rear admiral under the preceding sections of this chapter.

(b) Officers shall be permanently appointed under this section in the order of their lineal position or, if they have not been temporarily appointed in the grade of rear admiral, in the order in which their names appear on the promotion list for promotion to that grade.

(c) Each officer permanently appointed in the grade of rear admiral under this section shall be

given the same date of rank as his running mate if his running mate has been permanently appointed in that grade. If his running mate has not been permanently appointed in the grade of rear admiral, the staff corps officer shall be given, as his interim date of rank, the date of rank stated in his temporary commission. When his running mate is permanently appointed in the grade of rear admiral, the staff corps officer shall be given the same date of rank as that given to his running mate. (Aug. 10, 1956, ch. 1041, 70A Stat. 363.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5781	34 U. S. C. 306f (c) (3) (less 5th proviso); 34 U. S. C. 211a (q).	Aug. 7, 1947, ch. 512, § 311 (c) (3) (less 5th proviso), 61 Stat. 854. Aug. 7, 1947, ch. 512, § 304 (q), 61 Stat. 841.

In subsection (a) the words "and regularly commissioning therein" are omitted as surplusage.

In subsection (c) the words "shall be given a new commission" are omitted as surplusage.

CROSS REFERENCES

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5444 of this title.

§ 5782. Regular Navy; staff corps officers: permanent promotion to grades below rear admiral.

(a) Permanent appointments may be made in any grade below rear admiral in any staff corps of the Regular Navy from officers on the active list in the corps concerned who—

(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to that grade under the preceding sections of this chapter.

(b) A staff corps officer whose running mate is on the active list of the Navy may be permanently appointed in a grade under this section when his running mate is permanently appointed in that grade under section 5780 of this title. A staff corps officer so appointed is considered as appointed simultaneously with his running mate and he shall be given the same date of rank as his running mate. A staff corps officer whose running mate is not on the active list of the Navy may be permanently appointed in a grade under this section when the most senior of those male line officers on the active list who are junior to his running mate is permanently appointed in that grade under section 5780 of this title. A staff corps officer so appointed is considered as appointed simultaneously with that line officer and he shall be given the same date of rank as that line officer.

(c) If a staff corps officer is on a promotion list for promotion under the preceding sections of this chapter and his running mate in the grade in which he is serving is not on such a promotion list, the line officer who is to be the running mate of the staff corps officer in the next higher grade is considered to be his running mate for the purpose of subsection (b). (Aug. 10, 1956, ch. 1041, 70A Stat. 363; Aug. 21, 1957, Pub. L. 85-155, title II, § 201(13), 71 Stat. 383; Sept. 30, 1966, Pub. L. 90-609, § 1(13), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90-130, § 1(19)(Y), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5782	34 U. S. C. 306f (c) (4) (less 5th proviso); 34 U. S. C. 211a (q).	Aug. 7, 1947, ch. 512, § 311 (c) (4) (less 5th proviso), 61 Stat. 854. Aug. 7, 1947, ch. 512, § 304 (q), 61 Stat. 841.

In subsection (a) the words "and regularly commission therein" are omitted as surplusage.

In subsection (b) the words "shall be given the same date of rank as his running mate" are substituted for the words "their commissions shall bear date of rank accordingly" for clarity.

The source for subsection (c) states that when a staff corps officer is on a promotion list and his running mate is not on such a list the staff corps officer "shall be appointed to the grade for which selected and be assigned a running mate and date of rank therein, in the manner prescribed in this section for a temporary promotion." "This section" is § 311 of the Officer Personnel Act of 1947 (34 U. S. C. 306f). Section 311 (b) (1) (34 U. S. C. 306f (b) (1)) provides that a staff corps officer is eligible for temporary promotion when the line officer who is to be his running mate in the higher grade becomes eligible for temporary promotion, and § 311 (d) (8) (34 U. S. C. 306f (d) (8)) describes the procedure for determining who that running mate will be. The source text was required to make reference to these provisions in order to make applicable to permanent promotions two provisions that are stated in terms of temporary promotions. In subsection (c), however, the reference to § 311 (b) (1) of the act is executed and the reference to § 311 (d) (8) is unnecessary because the word "temporary" is omitted from the codification of that subsection in § 5657 of this title. The source text does not clearly cover the case in which the line officer who is to be the running mate of the staff corps officer in the higher grade is not on the active list, but the intent appears to be that the rule stated in subsection (b) is to be applied. Subsection (c) is worded so as to make this plain.

The source for subsection (d) states that "nothing contained in this subsection shall operate to increase the allowed number of captains in the Medical Service Corps or the allowed number of commanders or lieutenant commanders in the Nurse Corps * * *". In effect this provision prohibits appointments in the grades and corps concerned when there are no vacancies. Subsection (d) states this meaning positively instead of by indirection.

AMENDMENTS

1967—Subsec. (d). Pub. L. 90-130 struck out subsec. (d) which prohibited the appointment of officers to the grade of captain or commander in the Nurse Corps unless there was a vacancy for the person in the grade in that corps as determined by computations made under section 5449 of this title.

1966—Subsec. (d). Pub. L. 89-609 substituted "the person" for "her".

1957—Subsec. (d). Pub. L. 85-155 substituted "in grade of captain or commander in the Nurse Corps unless there is a vacancy for her in the grade in that corps" for "in the grade of captain in the Medical Service Corps or in the grade of commander or lieutenant commander in the Nurse Corps unless there is a vacancy for him in the grade and corps concerned", and "section 5449" for section 5449 (c) and (d)".

CROSS REFERENCES

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

§ 5783. Naval Reserve and Marine Corps Reserve: permanent promotion.

(a) Permanent appointments may be made in any grade in the line of the Naval Reserve from officers holding permanent appointments in the grade of ensign or above in the line of the Naval Reserve who are on active duty and who—

(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to the grade concerned under the preceding sections of this chapter.

An officer in the line of the Naval Reserve may be permanently appointed in a grade in the Naval Reserve under this subsection when the most junior of those male line officers on the active list who are senior to him is permanently appointed in that grade in the Regular Navy. The reserve officer is considered for all purposes to have been appointed simultaneously with the regular officer and he shall be given the same date of rank as the regular officer.

(b) Permanent appointments may be made in any grade in the Marine Corps Reserve from officers holding permanent appointments in the grade of second lieutenant or above in the Marine Corps Reserve who are on active duty and who—

(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to the grade concerned under the preceding sections of this chapter.

An officer of the Marine Corps Reserve may be permanently appointed in a grade in the Marine Corps Reserve under this subsection when the most junior of the male officers on the active list of the Marine Corps who are senior to him is permanently appointed in that grade in the Regular Marine Corps. The reserve officer is considered for all purposes to have been appointed simultaneously with the regular officer and he shall be given the same date of rank as the regular officer.

(c) Permanent appointments may be made in any grade in the Naval Reserve in any staff corps from officers holding permanent appointments in the grade of ensign or above in the Naval Reserve in the corps concerned who are on active duty and who—

(1) have been temporarily promoted to the grade concerned under the preceding sections of this chapter; or

(2) are on the promotion list for promotion to the grade concerned under the preceding sections of this chapter.

A reserve staff corps officer whose running mate is on the active list of the Navy may be permanently appointed in a grade in the Naval Reserve under this subsection when his running mate is permanently appointed in that grade in the Regular Navy. A reserve staff corps officer whose running mate is not on the active list of the Navy may be permanently appointed in a grade in the Naval Reserve under this subsection when the most senior of those male line officers on the active list of the Navy who are junior to his running mate is permanently appointed in that grade in the Regular Navy. If a reserve staff corps officer is on a promotion list for promotion under the preceding sections of this chapter and his running mate in the grade in which he is serving is not on such a promotion list, the line officer who is to be the running mate of the staff corps officer in the next higher grade is considered to be his running mate for the purpose of this subsection. A reserve staff corps officer permanently appointed in a grade under this subsection is considered as appointed simultaneously with the line officer upon whom his eligibility for permanent appointment depends, and he shall be given the same date of rank as that line officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 364.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5783 (a) and (b).	34 U. S. C. 306f (c) (5); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 311 (c) (5), 61 Stat. 855.
5783 (c)----	34 U. S. C. 306f (c) (6).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 311 (c) (6), 61 Stat. 855.

This section is worded to conform as nearly as possible to the language used in §§ 5780 and 5782.

The source for subsection (c) lacks specific provisions for the permanent promotion of staff corps officers of the Naval Reserve who are on a promotion list for temporary promotion. Administratively the source is interpreted as authorizing the promotion of these officers in the manner provided in § 5782 for staff corps officers in the Regular Navy. Subsection (c) is worded accordingly.

CROSS REFERENCES

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

§ 5784. Navy, ensigns; Marine Corps, second lieutenants: temporary promotion.

(a) Promotions may be made under this section only when the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy.

(b) Officers serving on active duty in the grade of ensign in the Navy may be promoted to the grade of lieutenant (junior grade) and officers serving on active duty in the grade of second lieutenant in the Marine Corps may be promoted to the grade of first lieutenant.

(c) Promotions under this section shall be made by temporary appointments.

(d) The President may terminate any temporary appointment made under this section.

(e) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotion or appointment, or abridge their rights or benefits. A member who receives a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(f) Women officers appointed under section 5590 of this title may not be promoted under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 365.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5784 (a), (b), and (c).	34 U. S. C. 3d; 34 U. S. C. 3c (d); 34 U. S. C. 3c (h) (less 14th through 53d words).	Aug. 7, 1947, ch. 512, § 301, 61 stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108.
5784 (d)	34 U. S. C. 306h (as applicable to temporary appointments under 34 U. S. C. 3c (c)).	Aug. 7, 1947, ch. 512, § 302 (d), 61 Stat. 830.
		Aug. 7, 1947, ch. 512, § 302 (h) (less 14th through 53d words), 61 Stat. 830.
5784 (e)	34 U. S. C. 3c (e).	Aug. 7, 1947, ch. 512, § 316 (d) (as applicable to temporary appointments under § 302 (c)), 61 Stat. 867.
5784 (f)	34 U. S. C. 105j; 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 302 (e), 61 Stat. 830.
		June 12, 1948, ch. 449, § 215, 62 Stat. 370.
		June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

Section 304 (p) of the Officer Personnel Act of 1947 (34 U. S. C. 211a (p)) provides that all temporary promotions to grades above lieutenant (junior grade) shall be only upon the recommendation of selection boards as prescribed in title III of that act. Hence the temporary promotion authority contained in § 302 (d) of the act (34 U. S. C. 3c (d)) is restricted to the promotion of ensigns to the grade of lieutenant (junior grade) and the promotion of second lieutenants to the grade of first lieutenant.

In subsection (e) the words "do not change the * * * status" are substituted for the words "appointments * * * shall not be vacated". The word "advancement", the words "in accordance with laws relating to the Regular Navy or Marine Corps", and the words "privileges and gratuities" are omitted as surplusage. The first proviso in 34 U. S. C. 3c (e) is omitted as unnecessary in view of the Career Compensation Act of 1949.

Women officers appointed under the Women's Armed Services Integration Act of 1948 are excluded by § 215 of that act (34 U. S. C. 105j), from promotions under title III of the Officer Personnel Act of 1947. Subsection (f) of this section reflects that exclusion of regular officers. Other categories of officers that must be excluded pursuant to the Women's Armed Services Integration Act of 1948 and § 302 (a) of the Officer Personnel Act of 1947 (34 U. S. C. 3c (a)) are excluded by § 5786 of this title.

CROSS REFERENCES

Officers ineligible for promotion, see section 5786 of this title.

Suspension of provisions of section, see section 5785 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5786 of this title.

§ 5785. Suspension: preceding sections.

(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

(2) he determines that the needs of the service so require.

(b) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter relating to officers of the Navy and the Marine Corps, other than women officers appointed under section 5590 of this title. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 365; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (29), 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5785 (a)	34 U. S. C. 3d; 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 301, 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108.
5785 (b)	34 U. S. C. 3e; 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
		Aug. 7, 1947, ch. 512, § 426 (c); added June 30, 1951, ch. 196, § 1 (h), 65 Stat. 109.
		Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

AMENDMENTS

1958—Pub. L. 85-861 inserted a colon following "Suspension" in the catchline.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

PROMOTION TO CAPTAIN IN CIVIL ENGINEER CORPS

Suspension of method of determining number of officers that may be recommended for promotion to captain, see Ex. Ord. No. 10861, set out as a note under section 5762 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5786 of this title.

§ 5786. Application: preceding sections.

(a) Officers in the following categories are ineligible for promotion under the preceding sections of this chapter:

(1) Repealed. Pub. L. 90-130, § 1(19)(Z), Nov. 8, 1967, 81 Stat. 379.

(2) Retired officers.

(3) Officers of the Naval Reserve and the Marine Corps Reserve on inactive duty.

(4) Officers of the Naval Reserve and the Marine Corps Reserve assigned to active duty for training.

(5) Officers of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

(6) Officers of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(7) Temporary officers serving in grades above chief warrant officer, W–4, whose only appointment to any such grade was made under section 5597 of this title.

(b) Officers listed in subsection (a) are not counted as officers serving on active duty for the purpose of sections 5784 and 5785 of this title.

(c) For the purpose of the preceding sections of this chapter, an officer serving in a grade to which he was appointed for a period of limited duration or in a grade to which he was temporarily promoted under section 5787 of this title is considered as serving in the grade he would hold if he had not received any such appointment or promotion. (Aug. 10, 1956, ch. 1041, 70A Stat. 366; Nov. 8, 1967, Pub. L. 90–130, § 1(19) (Z), 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5786 (a) and (b).	34 U. S. C. 3c (a) (as applicable to meaning of word "officers"); 34 U. S. C. 211a (o) (1st sentence); 34 U. S. C. 211a (a) (proviso of 1st sentence); 34 U. S. C. 3c (h); 34 U. S. C. 626–1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 304 (o) (1st sentence), 61 Stat. 840; Aug. 5, 1949, ch. 402, § 1 (a), 63 Stat. 567.
5786 (c)	34 U. S. C. 3c (b) (proviso).	Aug. 7, 1947, ch. 512, § 304 (a) (proviso of 1st sentence), 61 Stat. 833. Aug. 7, 1947, ch. 512, § 302 (h), 61 Stat. 830. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 302 (b) (proviso), 61 Stat. 830.

Subsection (a) (7) excludes from promotions under the provisions of the preceding sections of this chapter a group of officers not specifically excluded by §§ 302 (a) and 304 (a) of the Officer Personnel Act of 1947 (34 U. S. C. 3c (a) and 211a (a)), namely, persons (1) who do not have a permanent appointment in a grade above chief warrant officer, W–4; (2) who have at least one temporary appointment, other than an appointment for a period of limited duration, in a grade above chief warrant officer, W–4; and (3) whose temporary appointments in such grade or grades have all been made under the act of July 24, 1941, ch. 320, as amended (34 U. S. C. 350 et seq.), *subsequent* to the establishment of the lineal lists under title III of the Officer Personnel Act. Officers in this category were not mentioned in the cited sections of the Officer Personnel Act because, when that act was under consideration, it was not expected that the temporary promotion system provided in Title III and the temporary promotion system authorized by the 1941 act would ever be simultaneously in operation. Title III as first enacted was temporary law, to become inoperative by January 1, 1957, at the latest, and § 304 (n) (34 U. S. C. 211a (n)) prohibited further use of the 1941 act until the occurrence of a new war or emergency. A new emergency occurred, however, and title III was amended by the act of June 30, 1951, ch. 196, 65 Stat. 108, so that it is permanent law, effective whenever any reserve or temporary line officers are on active duty. Section 304 (n) was also amended by the same law so as to authorize the President to suspend the prohibition against the use of the 1941 act. The President made the authorized suspension. Section 9 of the 1941 act (34 U. S. C. 350h) provides that temporary officers appointed under that act "shall not be counted in any computation to determine the authorized number of officers in any grade." The language of this section is broad enough to exclude such temporary officers from computations under title III of the Officer Personnel Act of 1947. That Congress intended it to be so understood is indicated by the fact that the section was not amended when, in 1951, the authority to make appointments under the 1941 act was revived.

In subsection (c) the words "or in a grade to which he was temporarily promoted under section 5787 of this title" are inserted for reasons similar to those stated above.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 struck out clause (1) which listed women reserve officers, other than reserve officers in the Nurse Corps and other than reserve officers appointed under section 5581 of this title as ineligible for promotion under the preceding sections of this chapter.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

§ 5787. Temporary promotions in time of war or national emergency.

(a) Promotions may be made under this section only in time of war or during a national emergency declared by the President.

(b) The President may promote to a higher grade any member of the naval service serving on active duty in the Navy in the grade of ensign or above or serving on active duty in the Marine Corps in the grade of second lieutenant or above. Such promotions shall be made under such regulations as the President prescribes and in such numbers as he determines the needs of the service require.

(c) The Secretary of the Navy, under such regulations as he prescribes, may promote to the next higher warrant officer grade any member of the naval service serving on active duty in a warrant officer grade below chief warrant officer, W–4.

(d) The grade of commodore in the Navy is established for the purposes of this section.

(e) Promotions under this section shall be made by temporary appointments. Each such appointment to the grade of commodore or above in the Navy or to the grade of brigadier general or above in the Marine Corps shall be made by the President, by and with the advice and consent of the Senate. Each such appointment to a warrant officer grade shall be made by the Secretary, by commission. All other temporary appointments under this section shall be made by the President alone.

(f) Temporary promotions under this section to the grade of lieutenant or above in the Navy or to the grade of captain or above in the Marine Corps may be made only upon the recommendation of a board of officers convened for that purpose. In addition to recommending officers for promotion, a board so convened shall make the report required by section 6395 of this title.

(g) Each temporary appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date made.

(h) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to other promotion or appointment, or abridge their rights or benefits.

(i) Temporary appointments under this section are effective for such periods as the President determines. However, no such appointment may be effective later than—

(1) six months after the end of the war or national emergency; or

(2) the date the appointee is released from active duty;

whichever is earlier.

(j) When his temporary appointment under this section is terminated or expires, each member of the naval service on active duty shall have the grade he would hold if he had not received any such appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 366; Sept. 7, 1962, Pub. L. 87-649, §§ 5(b), 14c(30), 76 Stat. 493, 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5787 (a)	34 U. S. C. 350 (less applicability to appointments); 34 U. S. C. 211 (n).	July 24, 1941, ch. 320, § 1 (less applicability to appointments), 55 Stat. 603.
5787 (b) and (c).	34 U. S. C. 350b; 34 U. S. C. 350c (a) (1st sentence); 34 U. S. C. 350d (a) (less applicability to appointments); 34 U. S. C. 350a (a); 34 U. S. C. 350j (a) (less proviso); 34 U. S. C. 135c (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 330 (last sentence as applicable to temporary appointments).	Aug. 7, 1947, ch. 512, § 304 (n), 61 Stat. 840; June 30, 1951, ch. 196, § 1 (e), 65 Stat. 108. July 24, 1941, ch. 320, § 3, 55 Stat. 603. July 24, 1941, ch. 320, § 4 (a) (1st sentence), 55 Stat. 603. July 24, 1941, ch. 320, § 5 (a) (less applicability to appointments), 55 Stat. 604; June 30, 1951, ch. 196, § 2 (a), 65 Stat. 109.
5787 (d)	34 U. S. C. 350e (1st sentence).	July 24, 1941, ch. 320, § 2 (a), 55 Stat. 603.
5787 (e)	34 U. S. C. 350e (less 1st sentence); 34 U. S. C. 135a (a) (last sentence as applicable to temporary appointments); 34 U. S. C. 135c (a) (last sentence as applicable to temporary appointments).	July 24, 1941, ch. 320, § 11 (a) (less proviso), 55 Stat. 605; added June 29, 1945, ch. 194, § 2, 59 Stat. 262. May 29, 1954, ch. 249, § 5 (a) (last sentence as applicable to temporary appointments), 68 Stat. 159.
5787 (f)	34 U. S. C. 350d (a) (proviso).	May 29, 1954, ch. 249, § 7 (last sentence as applicable to temporary appointments), 68 Stat. 159.
5787 (g)	34 U. S. C. 350k (less applicability to appointments).	July 24, 1941, ch. 320, § 6 (1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531 (b) (28), 63 Stat. 839.
5787 (h)	34 U. S. C. 350f (a) (less 1st, 3d, and 4th provisos).	July 24, 1941, ch. 320, § 6 (less 1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531 (b) (28), 63 Stat. 839.
5787 (i)	34 U. S. C. 350i (a) (1st sentence, less applicability to appointments).	July 24, 1941, ch. 320, § 6 (less 1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531 (b) (28), 63 Stat. 839.
5787 (j)	34 U. S. C. 350i (a) (1st 25 words of 2d sentence).	July 24, 1941, ch. 320, § 10 (a) (1st sentence, less applicability to appointments), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28. July 24, 1941, ch. 320, § 10 (a) (1st 25 words of 2d sentence), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28.

The act of July 24, 1941, ch. 320, as amended (34 U. S. C. 350 et seq.), is codified in this section only to the extent that it authorizes temporary promotions. The authority to make original temporary appointments under this Act is covered in § 5597 of this title in the chapter on appointments.

In subsection (a) the provisions of 34 U. S. C. 211a (n) are omitted for the reasons stated in the revision note on § 5597 of this title. See that note also for other departures from the source.

In subsection (g) the words "or oath of office" are omitted as unnecessary inasmuch as the act of May 22, 1950, ch. 193, § 2 (34 U. S. C. 593a) provides that officers are not required to subscribe to the oath of office on promotion to a higher grade.

AMENDMENTS

1962—Subsec. (g). Pub. L. 87-649, § 5(b), eliminated provisions which related to pay and allowances of members receiving temporary appointments. See section 905(h) of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (h). Pub. L. 87-649, § 14c(30), repealed last sentence which prohibited a member who receives a temporary appointment under this section from suffering any reduction in the pay and allowances to which he was entitled at the time of his appointment. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Lineal list, permanent grade on, see section 5504 (d) of this title.

Pay and allowances of members appointed under this section, see section 905(h) of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5442, 5443, 5444, 5501, 5504, 5786, 5791, 5862, 6325, 6385, 6395, 6488 of this title; title 37 section 905.

§ 5787a. Navy; lieutenants (junior grade) in Medical and Dental Corps: temporary promotion.

(a) Notwithstanding any other provision of law, an officer in the Medical Corps or the Dental Corps may be temporarily promoted to the grade of lieutenant at any time after the first anniversary of the date upon which he graduated from medical, osteopathic, or dental school, as the case may be.

(b) The Secretary of the Navy may prescribe regulations for the administration of this section. (Added Pub. L. 85-861, § 1 (128) (A), Sept. 2, 1958, 72 Stat. 1497.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5787a (a)	34 App.: 21c (e). 34 App.: 51b (e).	Apr. 30, 1956, ch. 223, § 1 (5th and last pars.), 70 Stat. 120, 121; July 24, 1956, ch. 675, § 1 (b) (less applicability to service credit), 70 Stat. 608.
5787a (b)	34 App.: 21d. 34 App.: 51c.	

In subsection (a), the words "including those relating to selection for promotion" are omitted as covered by the words "Notwithstanding any other provision of law". The words "who is appointed under this section or any other provision of law" are omitted as surplusage. The words "from the first anniversary of the date upon which he graduated from" are substituted for the words "one year after completion of".

§ 5787b. Navy, women ensigns; Marine Corps, women second lieutenants: temporary promotion.

(a) A woman officer serving on active duty in the grade of ensign in the Navy or second lieutenant in the Marine Corps may be temporarily promoted to the next higher grade under regulations prescribed by the President.

(b) The permanent appointment of a woman officer who is temporarily promoted under subsection (a) is not vacated by that temporary promotion. (Added Pub. L. 85-861, § 1(128)(A), Sept. 2, 1958, 72 Stat. 1497, and amended Pub. L. 87-649, § 14c(31), Sept. 7, 1962, 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5787b	34 App.: 307 (b). 34 App.: 625h (a).	June 15, 1956, ch. 393, § 1 (2), 70 Stat. 285.

The first sentence of 34 App.: 307 (b) is omitted as covered by section 5788 (a) of this title. The word "Navy" is substituted for the words "Regular Navy or the Naval Reserve" inasmuch as the Navy includes both of these components. The words "promoted" and "promotion" are substituted for the words "appointed" and "appointment".

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-649 repealed subsec. (c) which provided that a woman officer temporarily promoted under this section is entitled to the pay and allowances of the higher grade from the date of her eligibility for that temporary promotion. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 905.

§ 5787c. Navy and Marine Corps, warrant officers: temporary promotion.

Warrant officers may be temporarily promoted to higher warrant officer grades under such regulations as the Secretary of the Navy may prescribe. (Added Pub. L. 85-861, § 33 (a) (30) (A), Sept. 2, 1958, 72 Stat. 1566.)

§ 5788. Navy, ensigns; Marine Corps, second lieutenants: eligibility for promotion.

(a) Each officer, other than a retired officer, serving on active duty in the Navy or the Marine Corps who holds a permanent appointment in the grade of ensign or second lieutenant may be permanently promoted to the next higher grade on the third anniversary of his date of rank as ensign or second lieutenant.

(b) Each officer holding a temporary appointment in the grade of ensign or second lieutenant, unless he is promoted earlier, may be temporarily promoted to the next higher grade on the third anniversary of his date of rank as ensign or second lieutenant. (Aug. 10, 1958, ch. 1041, 70A Stat. 367; Sept. 7, 1962, Pub. L. 87-649, § 14c(32), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5788 (a)	34 U. S. C. 314; 34 U. S. C. 306o· 34 U. S. C. 307 (b); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 625h (a); 34 U. S. C. 850h.	Mar. 3, 1899, ch. 413, § 7, 30 Stat. 1005. Aug. 7, 1947, ch. 512, § 410, 61 Stat. 873. June 12, 1948, ch. 449, § 206 (b), 62 Stat. 364.
5788 (b)	34 U. S. C. 314; 34 U. S. C. 3c (d); 34 U. S. C. 3c (h); 34 U. S. C. 306g.	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
5788 (c)	34 U. S. C. 870; 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. Aug. 4, 1942, ch. 547, § 9, 56 Stat. 738. Mar. 3, 1899, ch. 413, § 7, 30 Stat. 1005. Aug. 7, 1947, ch. 512, § 302 (d), 61 Stat. 830. Aug. 7, 1947, ch. 512, § 302 (h), 61 Stat. 830. Aug. 7, 1947, ch. 512, § 316 (c), 61 Stat. 867. Mar. 4, 1913, ch. 148, 37 Stat. 892 (3d par.). Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

In subsections (a) and (b) the phraseology of the Officer Personnel Act of 1947 and the Women's Armed Services Integration Act of 1948 is used instead of the somewhat ambiguous language of the Act of March 3, 1899.

In subsection (a) the words "after passing the examinations required by law" are omitted as surplusage. Examinations for promotion are covered in chapter 547 of this title.

In subsection (a) the words "who holds a permanent appointment in the grade of ensign" are substituted for "of the grade of ensign" and the word "permanent" is inserted before "promotion". In subsection (b) the words "holding a temporary appointment in the grade of ensign" are substituted for "of the grade of ensign" and the word "temporarily" is inserted before "promotion". These changes are made to preserve the effect of § 316 (c) of the Officer Personnel Act of 1947 (34 U. S. C. 306g) which provides in effect that temporary officers shall not receive permanent appointments as a result of promotions authorized by title III of that act.

The words "Marine Corps" and "second lieutenant" are inserted to make clear the application of these subsections to second lieutenants of the Marine Corps.

In subsection (c) the words "unless he is entitled to them from an earlier date under another provision of law" are added to preclude an interpretation that an officer, upon his permanent promotion under subsection (a), might be required to refund part of the pay he received pursuant to a prior temporary promotion.

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-649 repealed subsec. (c) which provided that each officer promoted under this section is entitled to the pay and allowances of the higher grade from his date of rank in that grade unless he is entitled to them from an earlier date under another provision of law. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Appointing power of President, see section 5791 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 905.

§ 5789. Officers receiving thanks of Congress.

(a) An officer in the line of the Navy or an officer of the Marine Corps may be advanced one grade if, upon recommendation of the President by name, he receives the thanks of Congress for highly distinguished conduct in conflict with the enemy or for extraordinary heroism in the line of his profession.

(b) An officer may be promoted under this section even though there are no vacancies in the higher grade. He shall be carried as an additional number in that grade until the actual number of officers in that grade falls below the prescribed number. (Aug. 10, 1956, ch. 1041, 70A Stat. 367.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5789	34 U. S. C. 345; 34 U. S. C. 346; 34 U. S. C. 347; 34 U. S. C. 672.	R. S. 1508. R. S. 1509. R. S. 1510. R. S. 1607.

The section is reworded to conform to the language used in § 5441 of this title.

CROSS REFERENCES

Reassignment of running mate because of advancement under this section, see section 5660 of this title.

§ 5790. Officers advanced in rank.

(a) An officer of the Navy or of the Marine Corps may be advanced, by and with the advice and consent of the Senate, not more than 30 numbers on the lineal list for eminent and conspicuous conduct in battle or for extraordinary heroism.

(b) An officer who as a result of an advancement under this section becomes senior to any officer in the next higher grade may be appointed by the President, by and with the advice and consent of the Senate, to the higher grade even though there are no vacancies in that grade.

(c) An officer promoted after an advancement under this section is an additional number in each grade in which he serves. (Aug. 10, 1956, ch. 1041, 70A Stat. 368.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5790	34 U. S. C. 341; 34 U. S. C. 670; 34 U. S. C. 671; 34 U. S. C. 342; 34 U. S. C. 343.	R. S. 1506; June 17, 1878, ch. 260, 20 Stat. 143. R. S. 1605. R. S. 1606. R. S. 1507. June 16, 1906, ch. 3338, 34 Stat. 296.

In subsection (a) the words "on the lineal list" are substituted for the words "in rank" for clarity.

In subsection (b) the words "even though there are no vacancies in that grade" are substituted for the words "notwithstanding the number of said grade may be full" to modernize the terminology. The provision of R. S. 1507 prohibiting further promotions to the grade concerned is omitted as having been impliedly repealed by the act of June 16, 1906, ch. 3338 (34 U. S. C. 343).

CROSS REFERENCES

Appointing power of President, see section 5791 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5791 of this title.

§ 5791. Appointing power.

(a) Except as provided in section 5787 of this title, permanent and temporary appointments under this chapter in the Regular Navy and in the Regular Marine Corps shall be made by the President, by and with the advice and consent of the Senate.

(b) Permanent and temporary appointments under this chapter in the grade of rear admiral in the Naval Reserve and in the grades of major general and brigadier general in the Marine Corps Reserve shall be made by the President, by and with the advice and consent of the Senate. Except as provided in sections 5787 and 5790 of this title, all other permanent and temporary appointments under this chapter in the Naval Reserve and in the Marine Corps Reserve shall be made by the President alone. (Aug. 10, 1956, ch. 1041, 70A Stat. 368.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5791	34 U. S. C. 306f (c) (2) (3d proviso); 34 U. S. C. 306f (c) (3) (5th proviso); 34 U. S. C. 306f (c) (4) (5th proviso); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 311 (c) (2) (3d proviso), 61 Stat. 854. Aug. 7, 1947, ch. 512, § 311 (c) (3) (5th proviso), 61 Stat. 854. Aug. 7, 1947, ch. 512, § 311 (c) (4) (5th proviso), 61 Stat. 854. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

Each grade in the Navy and in the Marine Corps is an office and officers of the naval service are "Officers of the United States" in the constitutional sense. (See 30 Op. Atty. Gen. 177, re Army.) Under Art. II, Sec. 2, Clause 2, of the Constitution promotions to higher grades in the armed services, as well as original appointments, must be made by the President, by and with the advice and consent of the Senate, unless Congress specifically authorizes them to be made in some other manner. Since title III of the Officer Personnel Act of 1947 is silent as to how temporary promotions under that title are to be effected, the presumption is that they must be effected by temporary appointments made by the President and confirmed by the Senate. The presumption is strengthened by § 311 (c) (1) of the act (34 U. S. C. 306f (c) (1)), which states the effect of the rejection of an appointment by the Senate. So far as regular officers (including temporary officers of the regular components) are concerned there is nothing to refute the presumption, but a consideration of title III as a whole raises a doubt as to its validity in the case of reserve officers.

Title III of the Officer Personnel Act of 1947, in the sections cited as source, specifically requires confirmation by the Senate of the permanent appointments of officers of the Regular Navy and the Regular Marine Corps, probably to avoid any doubt as to the necessity of Senate confirmation in the case of officers who, when nominated for permanent appointment in a given grade, are already serving in that grade under a temporary appointment confirmed by the Senate. The fact that there is no similar requirement as to the permanent appointments of reserve officers gives rise to the inference that confirmation of their permanent appointments is not required, and that inference in turn casts doubt on the necessity for the confirmation of their temporary appointments.

The uncertainties in the Officer Personnel Act of 1947 are resolved by the Armed Forces Reserve Act of 1952. Sections 218 and 219 of the latter act (50 U. S. C. 942, 943), requiring Senate confirmation of reserve appointments only when the appointments are to flag or general officer grades, govern temporary and permanent promotions of reserve officers under title III of the Officer Personnel Act as well as original appointments in reserve components.

The exception as to § 5790 of this title is inserted in subsection (b) to preserve the positive requirement that the advice and consent of the Senate must be obtained

before an officer advanced in numbers may be promoted. Prior to the establishment of the lineal lists under the Officer Personnel Act of 1947 an advancement in numbers could have little meaning to a reserve officer, but it could benefit him now, and there is no reason to believe that Congress intended to exclude reserve officers from the benefits of the provision codified in § 5790. On the other hand, if reserve officers are to be advanced in numbers and promoted under that section, the peculiar conditions attached to this extraordinary type of promotion must presumably be applied, notwithstanding the provisions of the Armed Forces Reserve Act of 1952.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

§ 5792. Oath of office not required.

An officer of the naval service who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon his promotion to a higher grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 368; Nov. 2, 1966, Pub. L. 89–718, § 4, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5792	34 U. S. C. 593a.	May 22, 1950, ch. 193, § 2, 64 Stat. 187.

AMENDMENTS

1966—Pub. L. 89–718 substituted "3331" for "16".

§ 5793. Authorized strengths in grade and promotions of Medical Corps and Dental Corps officers.

Notwithstanding any other provisions of this title, the authorized strengths of officers of the Medical Corps and Dental Corps in grades below rear admiral, and the selection and promotion of those officers to such grades, shall be based on the needs of the Navy, as determined by the Secretary under regulations to be prescribed by the Secretary of Defense. (Added Pub. L. 90–228, § 1(3)(A), Dec. 8, 1967, 81 Stat. 745.)

Chapter 547.—EXAMINATIONS FOR PROMOTION

Sec.
5861. Regular Navy and Regular Marine Corps: physical examination.
5862. Navy and Marine Corps: mental, moral, and professional examinations; examining board; board members; procedure.
5864. Discharge of officer not morally qualified.
5865. Effect of failure to qualify professionally.
5867. Naval Reserve and Marine Corps Reserve officers: moral, professional, and physical examinations.[1]

AMENDMENTS

1958—Pub. L. 85–861, § 1 (130), (132) (B)—(D), Sept. 2, 1958, 72 Stat. 1498, 1499, in item 5861, inserted "Regular Navy and Regular Marine Corps:", in item 5862 inserted "Navy and Marine Corps:" and "procedure", and substituted "examinations" for "examination" and "examining board" for "examining boards", struck out items 5863 and 5866, and added item 5867.

[1] Section catchline in analysis does not conform to catchline of section 5867.

§ 5861. Regular Navy and Regular Marine Corps: physical examination.

Before an officer of the Regular Navy or the Regular Marine Corps may be promoted to a grade above ensign in the Navy or second lieutenant in the Marine Corps, he must qualify for promotion by passing such physical examination as the Secretary of the Navy may prescribe. However, such an officer may not be excluded from a promotion to which he would otherwise be entitled if in his case the Secretary, or the Chief of the Bureau of Medicine and Surgery when authorized by the Secretary, determines that—

(1) his physical disqualification was caused by wounds received in the line of duty; and

(2) these wounds do not incapacitate him for the performance of useful service in the higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 368; Sept. 2, 1958, Pub. L. 85–861, § 1 (129), 72 Stat. 1497.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5861	34 U. S. C. 271; 34 U. S. C. 272; 34 U. S. C. 665, 34 U. S. C. 666; 34 U. S. C. 306p (as applicable to physical examinations).	R. S. 1493. R. S. 1494. Aug. 29, 1916, ch. 417, 39 Stat. 611 (last sentence of 3d par.); May 29, 1934, ch. 367, § 9, 48 Stat. 812. Aug. 7, 1947, ch. 512, § 411 (a) (as applicable to physical examinations), 61 Stat. 873.

R. S. 1493 is interpreted as applying only to the permanent promotions of officers in the Regular Navy and Regular Marine Corps (opinion of the Judge Advocate General of the Navy, File 28687–22, June 14, 1917, citing *Taylor* v. *U. S.*, 38 Ct. Cls. 155). This section is drafted to reflect this interpretation and also to reflect the fact that, as to warrant officers, R. S. 1493 and R. S. 1494 are superseded by the Warrant Officer Act of 1954. The words "or before an officer of the Navy or the Marine Corps may be temporarily promoted under section 5769, 5772, 5773, or 5784 of this title" are substituted for 34 U. S. C. 306p as that section applies to physical examinations for temporary promotion. 34 U. S. C. 306p has no application to 34 U. S. C. 211d or to 34 U. S. C. 623b, since those latter sections apply to appointments to grades as distinguished from promotions to grades. The second sentence of subsection (a) is substituted for the words "naval surgeons" to conform to the current statutory designation of these officers. The word "certified" is substituted for the word "pronounced". The words "subject to the provisions of section 284 of this title" were inserted in 34 U. S. C. 271 to preserve an exception to the rule in the case of certain staff corps officers. Section 411 (c) of the Officer Personnel Act of 1947 amended the law on which 34 U. S. C. 284 was based, so that it now provides that all laws relating to the examination of officers of the Navy for promotion shall apply to staff corps officers on the active list of the Navy; therefore the inserted words are no longer applicable and have been omitted.

AMENDMENTS

1958—Pub. L. 85–861 inserted "Regular Navy and Regular Marine Corps:" in the catchline, and substituted provisions requiring the Secretary of the Navy to prescribe the type of physical examination for provisions which required an examination and certification by a board of officers composed of officers of the Medical Corps or Dental Corps.

§ 5862. Navy and Marine Corps: mental, moral, and professional examination; examining board; board members; procedure.

(a) Before an officer on the active list of the Navy or the Marine Corps may be promoted permanently to the grade of lieutenant (junior grade)

or first lieutenant, he must demonstrate to the satisfaction of an examining board such mental, moral, and professional qualifications as the Secretary of the Navy may prescribe.

(b) Before an officer serving on active duty in a grade above ensign and below captain in the Navy or in a grade above second lieutenant and below colonel in the Marine Corps may be promoted to the next higher grade, he must demonstrate to the satisfaction of an examining board such professional qualifications as the Secretary may prescribe.

(c) Examining boards for the examination of officers under this section shall be convened from time to time by the Secretary or, when authorized by the Secretary, by the senior officer present, or other commanding officer, on a foreign station. A board convened by a senior officer present, or other commanding officer, on a foreign station may examine only officers who are under the command of the convening authority and who are directed to appear before the board.

(d) Each examining board convened under this section shall be composed of commissioned officers of the naval service. At least three members must act in each case. A member may not act in the case of an officer senior to him.

(e) The Secretary shall prescribe regulations governing the procedures to be followed by examining boards, including regulations to insure a full and fair hearing to officers whose cases come before the boards and who demand a hearing.

(f) The Secretary may suspend the operation of any part of this section in connection with the promotion of officers under section 5787 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 369; Sept. 2, 1958, Pub. L. 85–861, § 1 (131), 72 Stat. 1498.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5862	34 U. S. C. 274; 34 U. S. C. 284; 34 U. S. C. 626–1 (a) (1st sentence); 34 U. S. C. 306*l*; 34 U. S. C. 306p (less applicability to physical examining boards); 34 U. S. C. 275; 34 U. S. C. 233.	R. S. 1496. May 22, 1917, ch. 20, § 20 (less proviso), 40 Stat. 89; Aug 7, 1947, ch. 512, § 411 (c), 61 Stat. 874. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 316 (k), 61 Stat. 868. Aug. 7, 1947, ch. 512, § 411 (a) (less applicability to physical examining boards), 61 Stat. 873. R. S. 1498. Mar. 4, 1917, ch. 180, 39 Stat. 1171 (4th par.).

R. S. 1496 is interpreted as applying only to the permanent promotion of officers of the Regular Navy and Regular Marine Corps (opinion of the Judge Advocate General of the Navy, File 28687–22, June 14, 1917, citing *Taylor* v. *U. S.*, 38 Ct. Cls. 155). Subsection (a) is drafted to reflect this interpretation and to exclude warrant officers from the application of the subsection. Provisions relating to promotion examinations for warrant officers, based on the Warrant Officer Act of 1954, are codified in subtitle A of this title.

The words "subject to the provisions of section 284" are omitted because staff corps officers of the Navy on the active list are subject to the same examination requirements as line officers under § 411 (c) of the Officer Personnel Act of 1947 (34 U. S. C. 284). 34 U. S. C. 274 does not carry the words "below the grade of commodore", which appear in R. S. 1496. The purpose of the Revised Statute section was to require examination for promotion to all grades that are in the regular line of promotion. The subsection is reworded, therefore, to cover promotions in the Navy to grades through rear admiral and in the Marine Corps through major general.

In subsection (d) so much of 34 U. S. C. 233 as authorized the Secretary of the Navy to delegate the authority to convene boards of medical examiners and retiring boards to the senior officer present, and other commanding officers, on foreign stations is omitted. There is no statutory requirement for boards of medical examiners to be convened by the Secretary. Therefore, these boards are convened by regulation under the general administrative authority of the Secretary. Statutory authority to delegate power to convene such boards is unnecessary. In the case of retiring boards, section 413 of the Career Compensation Act of 1949 (37 U. S. C. 283) provides that the Secretary shall prescribe regulations for the administration of the physical disability retirement of officers of the Navy and the Marine Corps as set out in that act, which includes all the work of the old retiring boards. This section of the Career Compensation Act of 1949, therefore, repeals by implication the authority contained in 34 U. S. C. 233 to delegate his authority to convene retiring boards.

AMENDMENTS

1958—Pub. L. 85–861 inserted "Navy and Marine Corps:" and "procedure", and substituted "examining board" for "examining boards", in the catchline.

Subsec. (a). Pub. L. 85–861 restricted application of subsection to promotions to the grade of lieutenant (junior grade) in the Navy or to lieutenant in the Marine Corps, and substituted provisions requiring the officer to demonstrate to the satisfaction of an examining board such mental, moral, and professional qualifications as the Secretary of the Navy may prescribe, for provisions which required an examination and certification by an examining board.

Subsec. (b). Pub. L. 85–861 substituted provisions requiring officers below captain in the Navy and below colonel in the Marine Corps before promotion to the next higher grade to demonstrate to the satisfaction of an examining board such professional qualifications as the Secretary may prescribe, for provisions which related to temporary promotion of officers below the grade of rear admiral in the Navy and below the grade of major general in the Marine Corps.

Subsec. (c). Pub. L. 85–861 redesignated former subsec. (d) as (c), and eliminated provisions which required the boards to be convened by the President. Former subsec. (c), which prohibited reexamination of officers for permanent appointment to a grade who successfully passed the examination for temporary promotion to that grade, was omitted by Pub. L. 85–861.

Subsec. (e). Pub. L. 85–861 redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 85–861 added subsec. (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 85–861 added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5864, 5865 of this title.

§ 5863. Repealed. Pub. L. 85–861, § 36B (14), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 369, related to procedure before examining boards.

§ 5864. Discharge of officer not morally qualified.

An officer who is found by an examining board convened under section 5862 of this title to be, from any cause arising from his own misconduct, not morally qualified to perform the duties of the grade for which he is being examined shall, if the finding is approved by the President, be discharged from the naval service with not more than one year's pay. (Aug. 10, 1956, ch. 1041, 70A Stat. 370.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5864	34 U. S. C. 3.86	Aug. 5, 1882, ch. 391, § 1 (proviso of 3d sentence of 4th par. on p. 286), 22 Stat. 286.

Before the enactment of the source statute, the law provided, as it still provides, that no officer of the Navy should be promoted until an examining board found him to be mentally, morally, and professionally qualified and a board of naval surgeons found him to be physically qualified to perform his duties in the next higher grade. There were also specific statutory provisions prescribing the action to be taken when an officer was found to be not mentally or professionally qualified or not physically qualified. There was, however, no law providing for the disposition of officers found not morally qualified. They could not be promoted nor could they be dismissed, yet their retention on the active list in the grades they then held not only blocked promotions all down the line but was also undesirable in all other respects. The Navy therefore adopted the procedure of retiring officers who failed of promotion because of moral disqualification.

R. S. 1456 provides that no officer may be retired because of misconduct, but that he shall be tried by court-martial for that misconduct. This provision has been held to mean that an officer who commits an offense for which he could be tried may not be permitted to escape trial by retiring. (See the revision note on § 6329 of this title.) It was not construed to prohibit the retirement of officers who were found by an examining board to be morally disqualified. Such a finding was usually based on the misconduct of the officer but not on any specific act for which he could be tried by court-martial. Ordinarily moral disqualification was the result of a series of matters, each perhaps trivial in itself, but which, taken together, evidenced a habit sufficiently serious to disqualify the officer for promotion. No officer could be tried for a "habit". On the contrary the Articles for the Government of the Navy not only provided a two-year statute of limitations for most offenses but also specifically prohibited the accumulation of offenses for the purpose of collecting enough to warrant trial.

Retirement, in the state of the law before 1882, was thus not only legal, but was the only method of removing from the active list officers who were found by an examining board to be not morally qualified. It was not a desirable method, however, since the retired list was not intended to be a refuge for officers who had destroyed their usefulness to the Navy through their own bad habits. Accordingly a bill "to promote the efficiency of the Navy" was introduced in Congress to enable the Navy to discharge morally disqualified officers. Later, by unanimous consent, the bill was attached to the naval appropriation bill which was enacted as the Act of August 5, 1882.

The cases collected in Melling, Laws Relating to the Navy, Annotated, 1921 ed., pp. 623—631, indicate that the most common grounds for findings of moral disqualification for promotion have been (1) habitual intemperance and (2) financial irresponsibility. Other grounds mentioned are gambling, improper use of drugs, and "transactions" described by the Secretary of the Navy as "disgraceful" and "scandalous". In an opinion dated June 29, 1911 (File 26260–1392), the Judge Advocate General of the Navy stated that a specific definition of what constitutes moral unfitness should not be attempted, but that the question should be determined in each case by a "board of experienced, intelligent, impartial military experts [i. e. by the examining board] * * * in the exercise of a sound discretion."

When an examining board finds that an officer is mentally and professionally but not morally qualified for promotion, it reports that he "has the mental and professional, but not the moral, qualifications, by reason of * * * to perform efficiently all the duties, both at sea and on shore, of the grade to which he is to be promoted, and [we] do not recommend him for promotion". The reason for the finding of moral disqualification is included in this sentence if it can be briefly stated; otherwise reference is made to the paragraph or page where the reason is set out.

When the source statute was enacted it was clear that (1) the inquiries to which this provision referred were the examinations conducted by examining boards under R. S. 1496; (2) the situation in which the provision was to operate was that in which an examining board found that an officer lacked the moral qualifications for promotion; (3) when an officer was not qualified to perform his duties at sea, the board must necessarily find that he was not qualified to perform "all the duties, both at sea and on shore" of the next higher grade; (4) the "place" to which it was proposed to promote the officer was the next higher grade; (5) the reference to a hearing on the "charges" was an acknowledgment of R. S. 1500, which gives officers the right to appear before examining boards, and R. S. 1503, which provides that a board may not recommend that an officer not be promoted without first conducting a public examination of the officer in person, unless he wilfully fails to appear; and (6) the prohibition against the retirement of morally disqualified officers was included to emphasize the fact that the source statute was intended to provide the sole means of disposing of these officers and was not to be construed as merely authorizing an alternative to the method previously used.

The intent and meaning of the source statute and its connection with examining board procedure have been obscured by the passage of time and the enactment of later laws relating to the promotion, discharge, and retirement of officers. For example, selection boards now make inquiries pursuant to law concerning officers' fitness for promotion, but their inquiries are not the ones to which the source statute refers, since there were no selection boards in 1882. In order to make the meaning of the source statute clear in the context of other currently effective law, the following changes are made in this section: The words "An officer who is found, by an examining board convened under section 5862 of this title" are substituted for the words "Whenever on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer" in order to identify the body that makes the inquiry and draws conclusions from the information obtained. The words "not morally qualified" are substituted for the word "unfit" to make clear the relation between this section and § 5862 of this title. The words "to perform the duties of the grade for which he is being examined" are substituted for the words "to perform at sea the duties of the place to which it is proposed to promote him" to conform to the wording of § 5863 (d) of this title. The words "and having been informed of and heard upon the charges against him" are omitted, since they are unnecessary and misleading. An officer's right to be heard is covered in § 5863 (c) of this title; no additional hearing was intended. Further, an examining board is not a court and the source statute is not penal, so that the use of the word "charges" is inappropriate. The words "he shall not be placed on the retired list of the Navy" are omitted as surplusage, since, when the conditions described in this section are met, discharge is mandatory and no other action is possible.

The words "by reason of drunkenness" are omitted as included within the words "from any cause arising from his own misconduct".

§ 5865. Effect of failure to qualify professionally.

(a) An officer who is certified as not professionally qualified by an examining board convened under section 5862 of this title shall be suspended from promotion for six months from the date of approval of that certification. At the expiration of that period he shall be reexamined. If he is found professionally qualified and if he is otherwise qualified, he shall be promoted and assigned the date of rank in the higher grade and the lineal position to which he would have been entitled if he had not been suspended, and he is entitled to the pay and allowances of the higher grade from the date he first became eligible for promotion to that grade.

(b) An officer of the Navy in the grade of lieutenant (junior grade) or above or an officer of the Marine Corps in the grade of first lieutenant or above who is found not professionally qualified upon his reexamination is considered as having twice failed of selection for promotion.

(c) An officer of the Navy in the grade of ensign or an officer of the Marine Corps in the grade of second lieutenant who is found not professionally qualified upon his reexamination shall be honorably discharged with severance pay computed on the basis of two months' basic pay at the time of discharge multiplied by the number of years of his active commissioned service in the naval service, exclusive of training duty, but the payment may not be more than one year's basic pay. (Aug. 10, 1956, ch. 1041, 70A Stat. 370.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5865 (a)	34 U. S. C. 283 (less 3d sentence); 34 U. S. C. 626-1 (a).	R. S. 1505; Mar. 11, 1912, ch. 55, 37 Stat. 73; Aug. 7, 1947, ch. 512, § 411 (b) (less 3d sentence), 61 Stat. 874; May 29, 1954, ch. 249, § 19 (a), 68 Stat. 165.
5865 (b)	34 U. S. C. 410f (i); 34 U. S. C. 410h (i); 34 U. S. C. 410j (j); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (a), 61 Stat. 863.
5865 (c)	34 U. S. C. 283 (3d sentence).	Aug. 7, 1947, ch. 512, §§ 112 (i), 212 (i), 312 (j), 61 Stat. 810, 827, 860. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. R. S. 1505; Mar. 11, 1912, ch. 55, 37 Stat. 73; Aug. 7, 1947, ch. 512, § 411 (b) (3d sentence), 61 Stat. 874; May 29, 1954, ch. 249, § 19 (a), 68 Stat. 165.

In subsection (a) the words "of the Navy of the grade of ensign or above on the active list" are omitted as unnecessary in view of the reference to § 5862 of this title.

In subsection (c) the words "basic pay" are substituted for the words "active duty pay" to conform to the terminology used in the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

§ 5866. Repealed. Pub. L. 85-861, § 36B (15), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 371, related to delegation of power by the President to the Secretary of the Navy.

§ 5867. Naval Reserve and Marine Corps Reserve; officers: moral, professional, and physical examinations.

(a) Before an officer of the Naval Reserve or the Marine Corps Reserve may be promoted to the next higher grade he must—

(1) qualify for promotion by passing such moral, professional, and physical examinations as the Secretary of the Navy prescribes: and

(2) attain the minimum number of points, credited under section 1332 of this title, prescribed by the Secretary of the Navy with the approval of the Secretary of Defense.

(b) The physical standards for the promotion of reserve officers prescribed by the Secretary of the Navy under this section shall be the same as those prescribed by him for the retention of officers in the Naval Reserve and the Marine Corps Reserve.

(c) This section does not exclude from the promotion to which he would otherwise be entitled any reserve officer in whose case a medical board reports that—

(1) his physical disqualification for duty at sea or in the field was caused by wounds received in the line of duty; and

(2) these wounds do not incapacitate him for other duties in the grade to which he is to be promoted.

(Added Pub. L. 85-861, § 1 (132) (A), Sept. 2, 1958, 72 Stat. 1498.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5867	50: 1181 (4). 50: 1308.	Sept. 3, 1954, ch. 1257, §§ 102 (4), 408, 68 Stat. 1149, 1169.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title; title 37 section 905.

Chapter 549.—RESERVE PROMOTIONS

Sec.
5891. Officers who may be promoted under this chapter.
5892. Numbers that may be promoted.
5893. Selection boards: composition.
5894. Selection boards: oath of members.
5895. Selection boards: information furnished to boards.
5896. Selection boards: officers to be recommended for promotion.
5897. Selection boards: reports; certification required.
5898. Selection boards: reports; submission to President.
5899. Eligibility for consideration by selection board: promotion zones.
5900. Communication with selection board.
5901. Numbers that may be recommended for promotion.
5902. Promotion lists; eligibility for promotion; date of rank.
5903. Failure of selection.
5904. Effect of erroneous omission of name from list furnished to selection board.
5905. Removal from promotion list.
5906. Effect of transfer to inactive status list.
5907.[1] Pay and allowances.
5908. Ensigns; second lieutenants.
5909. Sea or foreign service not required.
5910. Promotions under regulations prescribed by Secretary.
5911. Promotions: temporary; permanent.
5912. Appointing power.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (133), Sept. 2, 1958, 72 Stat. 1499, added chapter and section analysis.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 133 of this title.

§ 5891. Officers who may be promoted under this chapter.

(a) To be eligible for consideration for promotion by a selection board convened under this chapter, or for promotion under this chapter, an officer must be in an active status in the Naval Reserve or the Marine Corps Reserve.

(b) Except as provided in subsections (c), (d), and (e), a reserve officer who is on a lineal list maintained under section 5504 of this title is ineligible for promotion under this chapter and for

[1] Section 5907 repealed and analysis was not amended to reflect such repeal.

consideration by a selection board convened under this chapter.

(c) A reserve officer who was eligible for consideration for promotion by a selection board convened under chapter 543 of this title, but whose name was not furnished to that board, may be considered by the corresponding selection board convened under this chapter to consider officers of his grade for promotion to the next higher grade and may be promoted under this chapter even though he is on a lineal list at the time of his selection and promotion.

(d) A reserve officer who has been recommended for promotion in the approved report of a selection board convened under this chapter, and who is placed on a lineal list before he is promoted, may be promoted under this chapter, notwithstanding the fact that he is on a lineal list at the time of promotion.

(e) A reserve officer who has been recommended for promotion in the approved report of a selection board convened under chapter 543 of this title and who is removed from the lineal list before he is promoted may be promoted under this chapter, notwithstanding the fact that he was on a lineal list when selected for promotion.

(f) A reserve officer whose name was furnished to a selection board convened under chapter 543 of this title, and who is removed from the lineal list before the corresponding selection board is convened under this chapter to consider officers of his grade for promotion to the next higher grade, is ineligible for consideration by the latter board.

(g) For the purpose of this section, a woman officer who is eligible for consideration for promotion by a selection board convened under chapter 543 of this title shall be considered to be on a lineal list. (Added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1499, and amended Pub. L. 90–130, § 1(20)(A), Nov. 8, 1967, 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5891	50: 1192 (a). 50: 1301 (a). 50: 1307.	Sept 3, 1954, ch. 1257, §§ 202 (a), 401 (a), 407, 68 Stat. 1150, 1166, 1169.

Senate and House of Representatives reports on the Reserve Officer Personnel Act of 1954 state, with reference to section 407 of the Act:

"Promotions under this title would include Reserve officers not on active duty but in an active status in the Reserve and Reserve officers on continuous active duty under the Reserve program, but Reserve officers on active duty and on the lineal list would be promoted under other law, as they are at the present time. Officers of the Naval and Marine Corps Reserve selected for promotion under any provision of law would not be penalized by virtue of a change in status with respect to active duty prior to their promotion." (Senate Report No. 2010, July 29, 1954, 83d Congress, 2d Session; House Report No. 1026, July 29, 1953, 83d Congress, 1st Session; both to accompany H. R. 6573).

For clarity, the general rule that this chapter does not cover the promotion of lineal list officers is set out in subsection (b), and the exceptions, to protect officers going on or coming off the lineal list shortly before they are due for consideration for promotion or for promotion. are covered in subsections (c), (d), and (e).

It should be noted that women officers of the Naval and Marine Corps Reserve (other than women reserve officers in the Nurse Corps and women reserve officers appointed under section 5581 of this title) may not be placed on lineal lists, considered for promotion, or promoted under title III of the Officer Personnel Act of 1947 because section 215 of the Women's Armed Services Integration Act of 1948 made title III of the Officer Personnel Act inapplicable to them. These women officers, therefore, whether or not they are on active duty, are considered for promotion and promoted under the provisions of the Reserve Officer Personnel Act of 1954, codified in this chapter. Women officers in these categories may also be promoted (but only if they are on active duty) under the act of July 24, 1941, ch. 320 (55 Stat. 603, as amended; 34 U. S. C. 350—350k) (codified in section 5787 of this title). The latter act authorizes temporary promotions during war or emergency of regular and reserve officers on active duty.

AMENDMENTS

1967—Subsec. (g). Pub. L. 90–130 added subsec. (g).

PROMOTION OF OFFICERS OF THE NAVAL RESERVE AND MARINE CORPS RESERVE SELECTED FOR PROMOTION BEFORE JULY 1, 1955

Section 25 of Pub. L. 85–861 provided that: "Officers of the Naval Reserve and the Marine Corps Reserve who were selected for promotion before July 1, 1955, under regulations promulgated under section 216 (a) of the Armed Forces Reserve Act of 1952 may be promoted under chapter 549 of title 10 [this chapter], United States Code, with the date of rank and entitlement to pay and allowances prescribed by that chapter."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5892. Numbers that may be promoted.

Each year the Secretary of the Navy shall prescribe the number of officers in each grade in the Naval Reserve and the Marine Corps Reserve that may be promoted in that year to the next higher grade under this chapter. He shall prescribe for each grade the number that he determines to be necessary to provide—

(1) equitable opportunity for promotion among succeeding groups of reserve officers; and

(2) an adequate continuing strength of reserve officers in an active status.

However, the Secretary may not prescribe numbers that will cause the number of reserve officers in an active status holding permanent appointments in any grade to exceed the number authorized for that grade in section 5457 or section 5458 of this title. With respect to the numbers of reserve officers in the staff corps that may be promoted, the Secretary shall prescribe numbers that will cause the relationship between line and staff corps officers in an active status in the Naval Reserve to conform to that prescribed for line and staff corps officers on the active list of the Navy. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1500.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5892	50: 1181 (3). 50: 1301 (b) (2). 50: 1302 (d). 50: 1303 (2d sentence).	Sept. 3, 1954, ch. 1257, §§ 102 (3), 401 (b) (2), 402 (d), 403 (2d sentence), 68 Stat. 1149, 1166, 1167.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123, 5901 of this title.

§ 5893. Selection boards: composition.

(a) The Secretary of the Navy, or such other authority as he directs, shall appoint and convene selection boards, each consisting of at least five officers, to consider for promotion to the next higher grade—

(1) officers of the Naval Reserve in each grade above ensign and below rear admiral; and

(2) officers of the Marine Corps Reserve in each grade above second lieutenant and below major general.

(b) At least half the members of each selection board convened under this section must be reserve officers so far as practicable. All members of each board must be serving in a grade above the grade in which the officers that are to be considered by the board are serving. An officer may not serve on two consecutive boards to consider officers for promotion to the same grade if the second of the two is to consider any officer who was considered and not recommended for promotion to that grade by the first board. Selection boards convened under this section may serve for as long as the Secretary prescribes, but not longer than one year.

(c) Regardless of the number of officers appointed to a board under this section, five officers constitute a quorum. However, at least a majority of the total membership of the board must concur in each recommendation made by the board. (Added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1500, and amended Pub. L. 91–199, § 2, Feb. 26, 1970, 84 Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5893	50: 1193 (a), (b), (c), (d) (less 2d sentence). 50: 1301. 50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 203 (a), (b), (c), (d), (less 2d sentence), 68 Stat. 1150. Sept. 3, 1954, ch. 1257, §§ 401, 403 (1st sentence), 68 Stat. 1166, 1167.

Section 403 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1303) provides that the laws relating to the selection for promotion of officers in the regular components apply to Reserves, except as otherwise provided. Laws governing the promotion of ensigns and second lieutenants and officers in the grade of rear admiral or major general in the regular components do not provide for consideration of these officers by selection boards. Officers in these grades in the reserve components are therefore excepted from the groups to be considered by boards convened under subsection (a).

In subsection (a), the words "and other boards of officers appointed under this chapter", in 50: 1193 (a), are omitted as without application to the Navy or the Marine Corps. Boards to consider reserve officers for involuntary separation from an active status are the only other boards appointed under the Reserve Officer Personnel Act of 1954, and the convening of these boards is specifically provided for in section 411 (f) of that act. (See sections 6389, 6397, and 6403 of this title.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–199 substituted provision that all members of each board be serving in a grade above the grade in which the officers that are to be considered by the board are serving, for provision that such members be senior in both permanent and temporary grade to all officers that are to be considered by the board.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5894. Selection boards: oath of members.

Each member of a selection board convened under this chapter shall swear that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the naval service, perform the duties imposed on him as a member of the board. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5894	50: 1193 (d) (2d sentence).	Sept. 3, 1954, ch. 1257, § 203 (d) (2d sentence), 68 Stat. 1151.

The words "or affirm" are omitted as unnecessary under the authority of 1 U. S. C. 1.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5895. Selection boards: information furnished to boards.

The Secretary of the Navy shall furnish each board convened under this chapter with—

(1) the number of officers that the board may recommend for promotion, as prescribed or determined by him under section 5901 of this title; and

(2) the names and records of all officers who are eligible for consideration for promotion by the board.

(Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5895	50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 403 (1st sentence), 68 Stat. 1167.

Section 403 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1303) makes applicable to non-lineal list reserve officers provisions of law relating to the selection for promotion of regular officers. The House and Senate reports cited in the revision note on section 5891 of this title contain a detailed explanation of the effect of this section. Among other things, the reports state that the section prescribes "the information which shall be furnished selection boards, viz:

(1) The names and records of all officers eligible for consideration.

(2) The number of officers that may be recommended for promotion * * * ".

The provisions of law relating to regular officers incorporated by this section are codified in section 5706 of this title.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 5897 of this title.

§ 5896. Selection boards: officers to be recommended for promotion.

(a) Of the officers considered for promotion by a selection board convened under this chapter, the board shall recommend for promotion, as appropriate—

(1) those eligible male officers in the line of the Naval Reserve or eligible male officers of the Marine Corps Reserve whom the board considers best fitted for promotion;

(2) those eligible male officers of the Naval Reserve in the Supply Corps or the Civil Engineer Corps whom the board considers best fitted for promotion;

(3) those eligible male officers of the Naval Reserve and eligible women officers appointed under section 5581 of this title, under consideration for promotion to the grade of commander or above in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, or the Medical Service Corps whom the board considers best fitted for promotion.

(4) those eligible male officers of the Naval Reserve and women officers appointed under section 5581 of this title, under consideration for promotion to the grade of lieutenant commander or below in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, or the Medical Service Corps whom the board considers fitted for promotion.

(5) those eligible officers of the Naval Reserve under consideration for promotion to the grade of captain or commander in the Nurse Corps whom the board considers best fitted for promotion;

(6) those eligible officers of the Naval Reserve under consideration for promotion to the grade of lieutenant commander or lieutenant in the Nurse Corps whom the board considers fitted for promotion;

(7) those eligible women officers of the Naval Reserve, other than officers in the Nurse Corps and officers appointed under section 5581 of this title, under consideration for promotion to the grade of captain, commander, or lieutenant commander, and those eligible women officers of the Marine Corps Reserve under consideration for promotion to the grade of colonel, lieutenant colonel, or major, whom the board considers best fitted for promotion; and

(8) those eligible women officers of the Naval Reserve, other than officers in the Nurse Corps and officers appointed under section 5581 of this title, under consideration for promotion to the grade of lieutenant, and those eligible women officers of the Marine Corps Reserve under consideration for promotion to the grade of captain, whom the board considers qualified for promotion.

(b) The recommendation of a selection board with respect to any woman line officer of the Naval Reserve or any woman officer of the Marine Corps Reserve shall be based on her comparative fitness for the duties to which women officers are normally assigned in the line of the Navy or in the Marine Corps. The recommendation of a selection board with respect to any woman officer of the Naval Reserve in a staff corps, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title, shall be based on her comparative fitness for the duties to which women officers are normally assigned in her staff corps.

(c) Administrative staff duty, duty in aviation, or duty in any technical specialty performed by an officer of the Marine Corps Reserve shall be given weight by the selection board in determining his fitness for promotion equal to that given line duty equally well performed.

(d) The status of having once failed of selection for promotion to a grade does not prejudice an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection for promotion to that grade by the next succeeding selection board.

(e) The total number of officers that may be recommended for promotion to any grade may not exceed the number furnished the board concerned by the Secretary of the Navy.

(f) An officer may not be recommended for promotion unless he receives the recommendation of a majority of the total membership of the board concerned. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1501, and amended Pub. L. 90–130, § 1(20)(B), Nov. 8, 1967, 81 Stat. 379; Pub. L. 90–179, § 12, Dec. 8, 1967, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5896	50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 403 (1st sentence), 68 Stat. 1167.

The House and Senate reports cited in the revision note on section 5891 of this title state that section 403 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1303), "by making applicable to Naval and Marine Corps Reserve officers those provisions of law * * * which relate to the selection for promotion of officers of the Regular components, would * * * prescribe the duties of selection boards, viz.:" within the numbers furnished it, to select officers in certain specified categories as best fitted, those in certain other categories as fitted, and those in two other categories as qualified for promotion. The provisions of law relating to regular officers incorporated by this section are codified in section 5707 of this title.

Subsection (f) of this section differs from subsection (i) of section 5707 because section 203 (d) of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1193 (d)) requires that a majority of the total membership of a board concur in each recommendation, whereas section 309 (c) (1) of the Officer Personnel Act of 1947 (34 U. S. C. 306d (c) (1)) requires concurrence of two-thirds of the acting members, or of a majority if there are five or less acting members.

AMENDMENTS

1967—Subsec. (a)(3), (4). Pub. L. 90–179 inserted the references to the Judge Advocate General's Corps.

Subsec. (a)(7). Pub. L. 90–130 added captain to the enumeration of grades to which eligible women officers of the Naval Reserve are being considered for promotion and colonel to the enumeration of grades to which eligible women officers of the Marine Corps Reserve are being considered for promotion.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5897. Selection boards: reports; certification required.

(a) Each board convened under this chapter shall submit a report in writing, signed by all the acting members thereof, and shall certify in its report that the board has carefully considered the case of each officer whose name was furnished to it under section 5895 of this title.

(b) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as best fitted to assume the duties of the next higher grade:

(1) Male officers in the line of the Naval Reserve.

(2) Male officers of the Marine Corps Reserve.

(3) Male officers of the Naval Reserve in the Supply Corps.

(4) Male officers of the Naval Reserve in the Civil Engineer Corps.

(5) Officers of the Naval Reserve in the Nurse Corps in the grade of lieutenant commander or above;

(6) Women officers in the line or staff corps of the Naval Reserve in the grade of lieutenant or above, other than officers in the Nurse Corps and officers appointed under section 5581 of this title.

(7) Women officers of the Marine Corps Reserve in the grade of captain or above.

(8) Officers of the Naval Reserve in any staff corps in the grade of lieutenant commander or above.

(c) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as fitted to assume the duties of the next higher grade:

(1) Male officers of the Naval Reserve, and women officers appointed under section 5581 of this title, in the grade of lieutenant or lieutenant (junior grade) in the Medical Corps, the Judge Advocate General's Corps, the Chaplain Corps, the Dental Corps, or the Medical Service Corps.

(2) Officers of the Naval Reserve in the grade of lieutenant or lieutenant (junior grade) in the Nurse Corps.

(d) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as qualified for promotion:

(1) Women officers in the line and staff corps of the Naval Reserve in the grade of lieutenant (junior grade), other than officers in the Nurse Corps and officers appointed under section 5581 of this title.

(2) Women officers of the Marine Corps Reserve in the grade of first lieutenant.

(Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1502, and amended Pub. L. 90–179, § 12, Dec. 8, 1967, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5897	50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 403 (1st sentence), 68 Stat. 1167.

The House and Senate reports cited in the revision note on section 5891 of this title state that section 403 of the Reserve Officer Personnel Act of 1945 (50 U. S. C. 1303), "by making applicable to Naval and Marine Corps Reserve officers those provisions of law * * * which relate to the selection for promotion of officers of the Regular components, would * * * prescribe the reports of selection boards". The provisions of law relating to regular officers incorporated by this section are codified in section 5708 of this title.

AMENDMENTS

1967—Subsec. (c)(1). Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5898. Selection boards: reports; submission to President.

(a) The report of a board convened under this chapter shall be submitted to the President for his approval or disapproval. If any officer recommended by the board is not acceptable to the President, the board shall be informed of the name of that officer and shall, except as provided in subsection (b) of this section, recommend another eligible officer for promotion.

(b) If any woman officer, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title, who is recommended for promotion to the grade of lieutenant in the Naval Reserve or to the grade of captain in the Marine Corps Reserve, is not acceptable to the President, the board shall be informed, the name of that officer shall be removed from the report of the board, and no additional recommendation may be made. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1503.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5898	50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 403 (1st sentence), 68 Stat. 1167.

The House and Senate reports cited in the revision note on section 5891 of this title state that section 403 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1303), "by making applicable to Naval and Marine Corps

Reserve officers those provisions of law * * * which relate to the selection for promotion of officers of the Regular components, would * * * prescribe the reports of selection boards". Submission of the reports to the President is not specifically mentioned. However, this is an integral part of the law relating to the reports of boards convened to consider regular officers for promotion and it was presumably the intent of Congress that reports of reserve boards should be handled in the same way. The Judge Advocate General of the Navy has so held in a letter to the Chief of Naval Personnel, JAG II: 1: CPV:mac, August 20, 1955.

The provisions of law relating to regular officers incorporated by this section are codified in section 5710 (b) and (c) of this title.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5899. Eligibility for consideration by selection board: promotion zones.

(a) A male officer of the Naval Reserve, or a woman officer appointed under section 5581 of this title, is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when his running mate is in or above the promotion zone established for his grade under section 5764 of this title. However, an officer in the grade of captain is eligible for consideration for promotion when his running mate is eligible for consideration for promotion. When more than one officer in the grade of captain is to be selected for promotion from among line officers or from among officers in any one staff corps, at least one-half of the officers selected in the category concerned must be officers who are in the promotion zone or senior to such officers.

(b) A male officer of the Marine Corps Reserve is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when any male officer of the Marine Corps Reserve on the lineal list who is junior to him is in or above the promotion zone established for his grade under section 5765 of this title or when his running mate is in or above that zone. However, an officer in the grade of colonel is eligible for consideration for promotion when his running mate is elible for consideration for promotion. When more than one officer in the grade of colonel is to be selected for promotion, at least one-half of the officers selected must be officers who are in the promotion zone or senior to such officers.

(c) A woman officer of the Naval Reserve, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title, is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when any woman officer of the Naval Reserve who is junior to her is in or above the promotion zone established for her grade under section 5764 of this title or when her running mate is in or above that zone.

(d) A woman officer of the Marine Corps Reserve is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when any woman officer of the Marine Corps Reserve who is junior to her is in or above the promotion zone established for her grade under section 5765 of this title or when her running mate is in or above that zone.

(e) An officer of the Naval Reserve in the Nurse Corps is eligible for consideration for promotion to the next higher grade by a selection board convened under this chapter when the person is senior to the junior officer on the lineal list of the Nurse Corps who has been selected for promotion to that grade by a selection board convened under section 5702 of this title.

(f) An officer who becomes eligible for consideration for promotion under this section remains so eligible while he is in an active status, regardless of failures of selection for promotion. However, a selection board convened under this chapter may not consider for promotion to the next higher grade an officer whose name is on the promotion list for that grade as a result of his selection by an earlier board convened under this chapter or by a board convened under chapter 543 of this title.

(g) The Secretary of the Navy may withhold from consideration by a selection board the name of an officer who is otherwise eligible for consideration for promotion under this section but who has failed to meet the requirements for eligibility prescribed by the Secretary.

(h) Notwithstanding any other provision of this title, a reserve commissioned officer in a permanent grade above chief warrant officer, W-4, who has been in an inactive status may not be considered for promotion until at least one year after the date he is returned to an active status. (Added Pub. L. 85-861, § 1(133), Sept. 2, 1958, 72 Stat. 1503, and amended Pub. L. 86-559, § 1(42), June 30, 1960, 74 Stat. 274; Pub. L. 89-275; §§ 1, 2, Oct. 20, 1965, 79 Stat. 1010; Pub. L. 89-609, § 1(14), Sept. 30, 1966, 80 Stat. 853; Pub. L. 90-130, § 1(20)(C), Nov. 8, 1967, 81 Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5899	50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 403 (1st sentence), 60 Stat. 1167,
	50: 1305 (a), (b), (d) (1st sentence, less applicability to (c)).	Sept. 3, 1954, ch. 1257, § 405 (a), (b), (d) (1st sentence. less applicability to (c)), 68 Stat. 1168; June 30, 1955' ch. 247, § 3 (c), (d), 69 Stat, 218.
	50: 1307 (a) (less 1st sentence).	Sept. 3, 1954, ch. 1257, § 407 (a) (less 1st sentence), 68 Stat. 1169.

Women officers "appointed under section 5581 of this title" are included in subsection (a) and excluded from subsection (c) for the reasons stated in the revision note on section 5665 of this title.

Reference to grades above ensign and second lieutenant is omitted as unnecessary. Section 5893 of this title provides for selection boards to be convened only for officers in higher grades. Also, reserve officers do not have running mates until they attain a grade higher than ensign or second lieutenant, so that this section could not apply to them while they remain in those grades.

In subsection (d), the words "or any woman Reserve officer junior to that woman Reserve officer", in 50: 1305 (b), are omitted as surplusage. Similar language is needed with respect to male officers of the Marine Corps Reserve because there are male reserve officers on the lineal list. Women officers of the Marine Corps Reserve cannot be placed on the lineal list because the Women's Armed Services Integration Act of 1948 made title III of the Officer Personnel Act of 1947 inapplicable to them.

The provision relating to the continuation of a woman officer's eligibility for consideration for promotion is omitted from subsection (c) and is stated in subsection (f) as applicable to all officers. The corresponding provision relating to regular officers and other officers on the lineal lists is codified in section 5754 of this title. It is considered that section 403 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1303), by making laws relating to regular officers applicable to reserve officers, provides for the continuation of reserve officers' eligibility for consideration for promotion as stated in subsection (f).

AMENDMENTS

1967—Subsec. (c). Pub. L. 90-130 inserted reference to a promotion zone and substituted the point at which a junior woman officer of the Naval Reserve is in or above the promotion zone established for a grade under section 5764 of this title or when a running mate is in or above that zone for the point when a running mate is eligible for consideration for promotion under section 5752 of this title as the point at which women officers of the Naval Reserve are eligible for consideration for promotion to the next higher grade.

Subsec. (d). Pub. L. 90-130 inserted reference to a promotion zone and substituted the point at which a junior woman officer of the Marine Corps Reserve is in or above the promotion zone established for her grade under section 5765 of this title or when a running mate is in or above that zone for the point when a running mate is eligible for consideration for promotion under section 5752 of this title as the point at which women officers of the Marine Corps Reserve are eligible for consideration for promotion to the next higher grade.

1966—Subsec. (e). Pub. L. 89-609 substituted "the person" for "she".

1965—Subsec. (a). Pub. L. 89-275, § 1, deleted "until July 1, 1961" following "However", and added sentence requiring at least one-half of the officers selected in the category concerned to be officers who are in the promotion zone or senior to those officers when more than one officer in the grade of captain is to be selected for promotion from among line officers or from among officers in any one staff corps.

Subsec. (b). Pub. L. 89-275, § 2, added sentences making an officer in the grade of colonel eligible for consideration for promotion when his running mate is eligible for consideration for promotion, and requiring at least one-half of the officers selected to be officers who are in the promotion zone or senior to those officers when more than one officer in the grade of colonel is to be selected for promotion.

1960—Subsec. (a). Pub. L. 86-559, § 1(42)(A), inserted sentence making an officer in the grade of captain eligible, until July 1, 1961, for consideration for promotion when his running mate is eligible for consideration for promotion.

Subsec. (h). Pub. L. 86-559, § 1(42)(B), added subsec. (h).

EFFECTIVE DATE OF 1965 AMENDMENT

Section 3 of Pub. L. 89-275 provided that: "The last sentence of section 5899(a) and the last sentence of section 5899(b) of title 10, United States Code, added by this Act become effective July 1, 1967."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 5903 of this title.

§ 5900. Communication with selection board.

An officer who is eligible for consideration for promotion by a selection board convened under this chapter has the right to send a communication through official channels, inviting attention to any matter of record in the armed forces concerning himself that he considers important in his case. The communication may not criticize any officer or reflect upon the character, conduct, or motive of any officer. A communication sent under this section must arrive by the time the board convenes. (Added Pub. L. 85-861, § 1 (133), Sept. 2, 1958, 72 Stat. 1504.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5900	50: 1193 (e).	Sept. 3, 1954, ch. 1257, § 203 (e), 68 Stat. 1151.

The words "convened under this chapter" are inserted for clarity and accuracy. A corresponding but slightly different provision relating to regular officers and lineal-list Reserves is codified in section 5755 of this title. The word "written" is omitted as surplusage. The words "considers important in his case" are substituted for the words "deems important to his consideration" for clarity.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5901. Numbers that may be recommended for promotion.

(a) The Secretary of the Navy shall prescribe, subject to section 5892 of this title, and shall furnish to the appropriate selection board convened under this chapter, the number of officers in each category that the Board may recommend for promotion.

(b) Within the number to be recommended that the Secretary furnishes to a selection board considering line officers of the Naval Reserve for promotion to any grade, the Secretary may specify numbers of officers of stated qualifications and experience that are required to meet mobilization needs in that grade.

(c) The numbers furnished to selection boards under this section shall be determined by the Secretary in accordance with the procedures prescribed in sections 5756—5763 of this title, except as may be necessary, in the discretion of the Secretary, to adapt those procedures to the reserve components. (Added Pub. L. 85-861, § 1 (133), Sept. 2, 1958, 72 Stat. 1504.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5901	50: 1303.	Sept. 3, 1954, ch. 1257, § 403, 68 Stat. 1167; June 30, 1955, ch. 247, § 3 (b), 69 Stat. 218.

REFERENCES IN TEXT

Section 5759, included within the reference to sections 5756-5763 of this title in subsec. (c) was repealed by Pub. L. 87-123, § 5(17), Aug. 3, 1961, 75 Stat. 266.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 5895 of this title.

§ 5902. Promotion lists; eligibility for promotion; date of rank.

(a) Officers of the Naval Reserve and the Marine Corps Reserve who are recommended for promotion in the report of a selection board convened under this chapter are considered as selected for promotion upon approval of the report by the President. The names of these officers shall be placed on the promotion list for officers of their grade.

(b) An officer of the Naval Reserve whose name is on a promotion list established under this section is eligible for promotion to the grade for which selected when the officer who is to be his running mate in the higher grade becomes eligible for promotion under chapter 545 of this title. When promoted, he shall be given the same date of rank as that given to his running mate in the grade to which promoted.

(c) An officer of the Marine Corps Reserve whose name is on a promotion list established under this chapter is eligible for promotion to the grade for which selected when the officer who is to be his running mate in the higher grade becomes eligible for promotion under chapter 545 of this title. When promoted, he shall be given the same date of rank as that given to his running mate in the grade to which promoted.

(d) The promotion of an officer of the Naval Reserve or the Marine Corps Reserve who is under investigation or against whom proceedings of a court-martial or a board of officers are pending may be delayed by the Secretary of the Navy until the investigation or proceedings are completed. However, the promotion of an officer may not be delayed under this subsection for more than one year after the date he is selected for promotion unless the Secretary determines that a further delay is necessary in the public interest. (Added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1504, and amended Pub. L. 86–559, § 1(43), June 30, 1960, 74 Stat. 274; Pub. L. 89–731, §§ 3—5, Nov. 2, 1966, 80 Stat. 1160.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5902	50: 1306 (less applicability to pay and allowances).	Sept. 3, 1954, ch. 1257, § 406 (less applicability to pay and allowances), 68 Stat. 1168.

Section 406 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1306) makes applicable to reserve officers on a promotion list the laws relating to promotion and eligibility for promotion of regular officers on a promotion list, except that non-lineal-list officers in the line of the Naval Reserve and non-lineal-list officers of the Marine Corps Reserve, instead of being promoted to fill vacancies in the higher grade, are promoted when their lineal-list contemporaries are promoted. Staff corps officers, both in the Regular Navy and in the Naval Reserve, are promoted with their running mates. Provisions relating to the eligibility for promotion of regular and lineal-list staff corps officers are codified in sections 5773 and 5774 of this title.

Officers of the Marine Corps Reserve not on a lineal list have regular officers as running mates. It is possible for a number of lineal-list reserve officers to rank below a non-lineal-list Reserve and above his running mate. In such a case, the non-lineal-list Reserve's eligibility for consideration for promotion and for promotion is made to depend not on his running mate, but on the lineal-list Reserve next junior to him (sections 405 and 406 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1305, 1306)). The result is the same as that produced in the Navy by assigning lineal-list officers as running mates of non-lineal-list Reserves, but differences in phraseology are required to describe the process.

Women officers of the Naval Reserve and the Marine Corps Reserve (except officers in the Nurse Corps and officers appointed under section 5581 of this title) have women regular officers as running mates. However, there are no women line officers of the Naval Reserve and no women officers of the Marine Corps Reserve on the lineal lists, since section 215 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105j) made Title III of the Officer Personnel Act of 1947 inapplicable to such women officers. The problem of tying a woman reserve officer's eligibility for promotion to someone other than her running mate does not, therefore, exist either in the Navy or in the Marine Corps.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–731, § 3, substituted provision incorporating the substance of former subsec. (d) as adapted for application to both male and female officers of the Marine Corps Reserve for provisions establishing seperate procedures for male officers based upon placement of the officer's running mate or selected officer on the lineal list junior to his running mate in or above the promotional zone.

Subsec. (d). Pub. L. 89–731, §§ 4, 5 redesignated former subsec. (e) as (d) and repealed former subsec. (d), which, as adapted for application to both male and female officers of the Marine Corps Reserve, is now found in subsec. (c).

Subsec. (e). Pub. L. 89–731, § 5, redesignated former subsec. (e) as subsec. (d).

1960—Subsec. (e). Pub. L. 86–559 added subsec. (e).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5903. Failure of selection.

(a) An officer of the Naval Reserve or the Marine Corps Reserve is considered as having failed of selection for promotion if—

(1) he is in a promotion zone established under this chapter;

(2) his name is furnished to the appropriate selection board; and

(3) he is not selected for promotion.

(b) An officer of the Naval Reserve or the Marine Corps Reserve whose name is withheld by the Secretary of the Navy, under section 5899(g) of this title, from consideration by two selection boards for promotion to the same higher grade is considered as having twice failed of selection for promotion to that grade. (Added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1505, and amended Pub. L. 90–130, § 1(20)(D), Nov. 8, 1967, 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5903 (a)	50: 1303 (1st sentence).	Sept. 3, 1954, ch. 1257, § 403 (1st sentence), 68 Stat. 1167.
5903 (b)	50: 1305 (d) (2d sentence).	Sept. 3, 1954, ch. 1257, § 405 (d) (2d sentence); added June 30, 1955, ch. 247, § 3 (d), 69 Stat. 219.

The House and Senate reports cited in the revision note on section 5891 of this title state that section 403 of the Reserve Officer Personnel Act of 1954 (50 U. S. C. 1303), "by making applicable to Naval and Marine Corps Reserve officers those provisions of law * * * which relate to the selection for promotion of officers of the Regular components, would * * * provide a definition of failure of selection". The definition of "failure of selection" for regular officers and lineal-list Reserves is codified in section 5776 of this title. Differences between that section and this section are due to differences between the Officer Personnel Act of 1947 and the Reserve Officer Personnel Act of 1954. (1) Under the former Act, officers who are eligible for consideration for promotion include officers above the promotion zone, in the zone, and below the zone, whereas under the latter Act, the zone of eligibility and the promotion zone are identical, because no one is above the zone and no one below the zone is eligible for consideration. (2) There are no reserve officers who are restricted in the performance of duty. Therefore, this section has no counterpart for section 5776 (b). (3) In section 5776, subsection (a) covers male line officers, subsection (c) covers staff corps officers except certain officers in the Nurse Corps and women officers appointed under section 5590 of this title, and subsections (d) and (e) cover the officers excepted from subsection (c). This breakdown is not necessary in the present section. The Reserve Officer Personnel Act of 1954 provides for promotion zones for male line and staff corps officers of the Naval Reserve and male officers of the Marine Corps Reserve, but none for "women officers" or officers in the Nurse Corps Reserve. The latter two classes cannot be considered as having failed of selection, since promotion zones are essential to that concept. The others can, and the rule is the same as to all of them.

The source for subsection (b) has no counterpart in the laws relating to regular and lineal-list reserve officers.

The words "a woman officer appointed under section 5581 of this title" are inserted in this section as required by the act of June 24, 1952, ch. 457, 66 Stat. 155 (34 U. S. C. 21e). These officers are not "women officers" within the meaning of the Reserve Officer Personnel Act of 1954, but are required to be promoted and retired as if they were men. See the revision note on section 5665 of this title.

AMENDMENTS

1967—Pub. L. 90–130 eliminated provisions which had excepted women officers of the Naval Reserve and Marine Corps Reserve other than women officers appointed under section 5581 of this title from the effect of this section.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5904. Effect of erroneous omission of name from list furnished to selection board.

An officer of the Naval Reserve or the Marine Corps Reserve who has met the requirements for eligibility for consideration for promotion but whose name is omitted by administrative error from the list of officers furnished a selection board is not considered as having failed of selection for promotion by that board. If he is selected for promotion by the next selection board to consider officers of the same grade, he is entitled to the same date of rank and to the pay and allowances of the higher grade for duty performed from the same date as if he had been selected by the board from which his name was erroneously withheld. (Added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5904	50: 1305 (d) (last sentence).	Sept. 3, 1954, ch. 1257, § 405 (d) (last sentence); added June 30, 1955, ch. 247, § 3 (d), 69 Stat. 219.

Although officers in categories for which promotion zones are established are the only ones that may be considered as "having failed of selection", this section is not limited to officers in these categories. The source was clearly intended, not only to protect those officers from the consequences of failure of selection but also to protect them and all other reserve officers, including "women officers" and officers in the Nurse Corps, from loss of precedence, pay, and allowances through administrative error.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5905. Removal from promotion list.

(a) The President may remove the name of any reserve officer from a promotion list established under this chapter.

(b) The name of a reserve officer selected under this chapter for promotion to a grade above captain in the Navy or above colonel in the Marine Corps shall be removed from the promotion list if the Senate rejects his appointment to the grade for which he has been recommended.

(c) An officer whose name is removed from a promotion list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board, and the report of the board is approved by the President, his name shall be placed on the promotion list without prejudice and, if he is promoted, he shall have the same lineal rank and date of rank that he would have had if his name had not been removed. However, if the officer is not recommended for promotion in the approved report of the next selection board, or if he is so recommended but the President removes his name from the promotion list or the Senate rejects his appointment, he is considered for all purposes as having twice failed of selection for promotion. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5905	50: 1309.	Sept. 3, 1954, ch. 1257, § 409, 68 Stat. 1169.

The corresponding provision applicable to regular officers and lineal-list reserve officers is codified in section 5777 of this title. The reason for the difference in language in subsection (b) of this section and section 5777 (b) is that Senate confirmation is required for appointments of regular officers in all grades but is not required for appointments of reserve officers in grades below flag and general officer grades.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5906. Effect of transfer to inactive status list.

A reserve officer who is recommended for promotion by a selection board convened under this chapter or under chapter 543 of this title, and who, at the time he would otherwise be promoted, is ineligible for promotion because he has been transferred to the inactive status list, shall be treated as if he had not been considered for promotion by the selection board that last considered him. If he is later returned to an active status, his name may not be placed on a promotion list for promotion to the next higher grade until he is considered by another selection board and is recommended for promotion in the approved report of that board. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5906	50: 1198.	Sept. 3, 1954, ch. 1257, § 208, 68 Stat. 1152.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5907. Repealed. Pub. L. 87–649, § 14c(33), Sept. 7, 1962, 76 Stat. 501.

Section, Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1506; Pub. L. 86–559, § 1(44), June 30, 1960, 74 Stat. 274, related to pay and allowances of reserve officers promoted to a grade above lieutenant (junior grade) in the Naval Reserve or above first lieutenant in the Marine Corps Reserve, and is now covered by section 905 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5908. Ensigns; second lieutenants.

(a) An ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve is eligible for promotion to the grade of lieutenant (junior grade) or first lieutenant, as appropriate, upon completing three years of service in grade in an active status computed from his date of rank in the grade of ensign or second lieutenant.

(b) The Secretary of the Navy may withhold from promotion any officer who is otherwise eligible for promotion under this section but who has failed to meet the requirements for promotion prescribed by the Secretary. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1506, and amended Pub. L. 87–649, § 14c(34), Sept. 7, 1962, 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5908	50: 1305 (c), (d) (1st sentence, as applicable to (c)).	Sept. 3, 1954, ch. 1257, § 405 (c), (d) (1st sentence, as applicable to (c)), 68 Stat. 1168.
	50: 1306 (less exceptions).	Sept. 3, 1954, ch. 1257, § 406 (less exceptions), 68 Stat. 1168.

The statement as to pay and allowances is derived from the law relating to regular officers. That law is codified in section 5788 of this title.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–649 repealed sentence which related to entitlement to pay and allowances of the higher grade for duty performed from the date given as his date of rank. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title; title 37 section 905.

§ 5909. Sea or foreign service not required.

Sea or foreign service may not be made a prerequisite for the promotion of reserve officers under this chapter. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5909	50: 1200.	Sept. 3, 1954, ch. 1257, § 210, 68 Stat. 1152.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5910. Promotions under regulations prescribed by Secretary.

(a) Notwithstanding any other provision of this chapter, an officer of the Naval Reserve in a grade above ensign may be promoted under regulations prescribed by the Secretary of the Navy whenever any part of the law governing the promotion of his running mate is suspended by the President. An officer of the Naval Reserve in the grade of ensign may be promoted under regulations prescribed by the Secretary whenever ensigns on the active list of the Navy are being promoted with less than three years of service in that grade.

(b) Notwithstanding any other provision of this chapter, an officer of the Marine Corps Reserve in a grade above second lieutenant may be promoted under regulations prescribed by the Secretary whenever any part of the law governing the promotion of his running mate is suspended by the President. An officer of the Marine Corps Reserve in the grade of second lieutenant may be promoted under regulations prescribed by the Secretary whenever second lieutenants on the active list of the Marine Corps are being promoted with less than three years of service in that grade.

(c) Promotions under subsections (a) and (b) may be made in such numbers as the Secretary prescribes.

(d) In the regulations prescribed by him for the promotion of reserve officers under subsections (a) and (b), the Secretary shall provide for equality of opportunity for consideration for promotion among officers of the Naval Reserve and among officers of the Marine Corps Reserve, respectively. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5910	50: 1313 (a), (b).	Sept. 3, 1954, ch. 1257, § 413 (a), (b), 68 Stat. 1171.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5911. Promotions: temporary; permanent.

Notwithstanding any other provision of law, the promotion of a reserve officer under this chapter shall be made by a temporary appointment if the promotion of his running mate is made by a temporary appointment. If the running mate's temporary appointment is terminated for reasons other than disciplinary and he reverts to a lower grade, the temporary appointment of the reserve officer shall also be terminated and the reserve officer reverts to the same lower grade in the same manner as his running mate and with corresponding rank. If the running mate is permanently appointed in the grade in which he is serving under a temporary appointment, the reserve officer shall be permanently appointed in the grade in which he is serving under a temporary appointment. (Added Pub. L. 85–861, § 1(133), Sept. 2, 1958, 72 Stat. 1507, and amended Pub. L. 86–559, § 1(45), June 30, 1960, 74 Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5911	50: 1313 (c)	Sept. 3, 1954, ch. 1257, § 413 (c), 68 Stat. 1171.

AMENDMENTS

1960—Pub. L. 86–559 substituted "shall be permanently appointed" for "may be permanently appointed."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 5912. Appointing power.

Permanent and temporary appointments under this chapter in grades above captain in the Naval Reserve and in grades above colonel in the Marine Corps Reserve shall be made by the President, by and with the advice and consent of the Senate. All other permanent and temporary appointments under this chapter shall be made by the President alone. (Added Pub. L. 85–861, § 1 (133), Sept. 2, 1958, 72 Stat. 1507.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5912	[No source].	[No source].

This revised section reflects sections 218 and 219 of the Armed Forces Reserve Act of 1952 (formerly 50 U. S. C. 942 and 943).

Chapter 551.—OFFICERS IN COMMAND

Sec.
5942. Aviation commands: eligibility.
5943. Naval shipyards.
5944. Marine Corps officers: limitation on power to command.
5945. Staff corps officers: limitation on power to command.
5946. Precedence accorded commanding officers.
5947. Requirement of exemplary conduct.
5948. Consular powers: senior officer present afloat.
5949. Policy as to leave and liberty.
5951. Continuation of authority after loss of vessel or aircraft.
5952. Marine Corps organizations on vessels: authority of officers.
5955. Retired officers withdrawn from command.

AMENDMENTS

1968—Pub. L. 90–235, § 5(a)(4), (b)(2), Jan. 2, 1968, 81 Stat. 761, struck out item 5941, which read: "Assignment to command: regulations", item 5950, which read: "Exemption from Supply Corps duties", item 5953, which read: "Executive officer: assignment; authority", and item 5954, which read: "Command: when different commands of Marine Corps and Army or Air Force join".

§ 5941. Repealed. Pub. L. 90–235, § 5(b)(1), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 371, provided that the President could prescribe regulations governing the assignment of officers to command fleets, subdivisions of fleets, and vessels.

§ 5942. Aviation commands: eligibility.

(a) To be eligible to command an aircraft carrier or an aircraft tender, an officer must be an officer in the line of the Navy who is designated as a naval aviator or naval flight officer and who is otherwise qualified.

(b) To be eligible to command a naval aviation school, a naval air station, or a naval aviation unit organized for flight tactical purposes, an officer must be an officer in the line of the Navy designated as a naval aviator or naval flight officer.

(c) To be eligible to command a Marine Corps aviation school, a Marine Corps air station, or a

Marine Corps aviation unit organized for flight tactical purposes, an officer must be an officer of the Marine Corps designated as a naval aviator or naval flight officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 371; Feb. 26, 1970, Pub. L. 91-198, § 1(1), 84 Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5942 (a)	34 U. S. C. 735 (5th par.).	June 24, 1926, ch. 668, § 3 (5th par.), 44 Stat. 767.
5942 (b)	34 U. S. C. 735 (4th par.).	June 24, 1926, ch. 668, § 3 (4th par.), 44 Stat. 767.
5942 (c)	34 U. S. C. 735 (7th par.).	June 24, 1926, ch. 668, § 3 (7th par.), 44 Stat. 767.

The last proviso of § 8 of the act of July 12, 1921, ch. 44 (34 U. S. C. 734), was superseded by paragraphs 4, 5, and 7 of § 3 of the act of June 24, 1926, ch. 668 (34 U. S. C. 735), insofar as ships and activities mentioned in those paragraphs are concerned. The requirements of this section are stated as conditions of eligibility for clarity.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-198 substituted "naval flight officer" for "naval aviation observer".

Subsec. (b). Pub. L. 91-198 added "or naval flight officer" following "naval aviator".

Subsec. (c). Pub. L. 91-198 added "or naval flight officer" following "naval aviator".

CROSS REFERENCES

Aviation designations: naval aviator, naval flight officer and aviation pilot, see sections 6023 to 6025 of this title.

§ 5943. Naval shipyards.

Commanders of naval shipyards may be selected by the President from officers of the Navy not below the grade of commander. (Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5943	34 U. S. C. 501.	R. S. 1542.

The words "Commanders of naval shipyards" are substituted for the words "commandants of the several navy yards" to conform to present terminology. The words "of the Navy" are inserted for clarity.

§ 5944. Marine Corps officers: limitation on power to command.

Officers of the Marine Corps may not command vessels or naval shipyards. (Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5944	34 U. S. C. 713.	R. S. 1617.

The words "of the United States" are omitted as surplusage. The word "command" is substituted for the words "exercise command over any".

§ 5945. Staff corps officers: limitation on power to command.

An officer in a staff corps may command only such activities as are appropriate to his corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 371; Nov. 8, 1967, Pub. L. 90-130, § 1(21), 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5945	34 U. S. C. 253; 34 U. S. C. 30h (1st 23 words); 34 U. S. C. 43d (proviso).	R. S. 1488; Mar. 3, 1899, ch. 413, § 7 (3d provisio of 2d sentence, and 3d sentence), 30 Stat. 1006; June 24, 1910, ch. 378, 36 Stat. 614 (3d proviso). Aug. 4, 1947, ch. 459, § 207 (1st 23 words), 61 Stat. 738; renumbered § 206, Aug. 7, 1947, ch. 512, § 433 (b), 61 Stat. 881. Apr. 16, 1947, ch. 38, § 205 (proviso), 61 Stat. 48.

The provision of § 7 of the act of March 3, 1899 (supra), relating to relative rank is omitted as executed. The provision that the rank conferred upon staff corps officers shall not change their titles is omitted because these titles were abolished by § 405 of the Officer Personnel Act of 1947 (34 U. S. C. 10a) and the corresponding line grades substituted. The cited proviso in the act of June 24, 1910 (34 U. S. C. 253 (proviso)) is omitted as obsolete because the officers referred to were officers of the Construction Corps which has been abolished.

The first sentence of this section is phrased so as to reflect the accepted meaning of the cited provision. 34 U. S. C. 253, as worded, if interpreted literally, could be held to prohibit, for example, the assignment of members of the Medical Service Corps, Nurse Corps, and Hospital Corps to duty under officers of the Medical Corps, despite the fact that all of these corps were established by law within the Medical Department of the Navy. The provision is not so interpreted. It is understood to restrict only the types of activities that staff corps officers may command, and not to restrict to a single corps the personnel who may be assigned to an activity commanded by a staff corps officer.

AMENDMENTS

1967—Pub. L. 90-130 struck out provision that an officer in the Nurse Corps may not exercise command.

§ 5946. Precedence accorded commanding officers.

The commanding officer of a vessel or of a naval station takes precedence over all officers under his command. (Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5946	34 U. S. C. 246.	R. S. 1468.

The word "placed" is omitted as surplusage. The words "of war" are omitted to avoid an erroneous implication that the section does not apply to the commanding officers of noncombatant ships of the Navy. As of the date of enactment of R. S. 1468, all vessels of the Navy were "vessels of war"; the elimination of the words, therefore, preserves the purpose of the statute.

§ 5947. Requirement of exemplary conduct.

All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical

well-being, and the general welfare of the officers and enlisted persons under their command or charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5947	34 U. S. C. 265.	May 5, 1950, ch. 169, § 7 (c), 64 Stat. 146.

§ 5948. Consular powers: senior officer present afloat.

In any foreign port where there is no resident consul of the United States, or on the high seas, the senior officer present afloat has the powers of a consul in relation to mariners of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5948	34 U. S. C. 217.	R. S. 1433.

The words "the senior officer present afloat" are substituted for the words "The commanding officer of any fleet, squadron, or vessel acting singly". At the time of enactment of the Revised Statutes, the word "squadron" meant any number of vessels more than one. Today the concept of "senior officer present afloat" covers as nearly as possible the current equivalent of the original statute.

§ 5949. Policy as to leave and liberty.

The commanding officer of a vessel shall favor the faithful and obedient in granting leave and liberty. (Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5949	34 U. S. C. 220.	R. S. 1431.

The words "to exercise carefully a discrimination in" are omitted as surplusage. The words "leave and liberty" are substituted for "temporary leave of absence and liberty on shore" to conform to modern terminology.

§ 5950. Repealed. Pub. L. 90–235, § 5(b)(1), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 372, provided that the commanding officer of a vessel could not be required to perform the duties of an officer in the Supply Corps.

§ 5951. Continuation of authority after loss of vessel or aircraft.

If the crew of any naval vessel or naval aircraft are separated from their vessel or aircraft because of its wreck, loss, or destruction, all the command and authority given to the officers of the vessel or aircraft remain in full force until the crew are discharged or reassigned. (Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5951	34 U. S. C. 264.	May 5, 1950, ch. 169, § 7 (a), 64 Stat. 145.

The word "officers" is substituted for the word "officer" since the cited subsection of the act of May 5, 1950, was intended to reenact the substance of Article 21 of the Articles for the Government of the Navy) R. S. 1624; 34 U. S. C. 1200), in which the word "officers" was used. The words "regularly" and "by competent authority" are omitted as surplusage.

§ 5952. Marine Corps organizations on vessels: authority of officers.

When an organization of the Marine Corps is embarked in any vessel, not as part of the authorized complement of the vessel, the authority of the officers of that organization is the same as though the organization were serving at a naval station. However, this section does not impair the paramount authority of the commanding officer of a vessel over the vessel and all persons embarked in it. (Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5952	34 U. S. C. 623c.	May 5, 1950, ch. 169, § 7 (b), 64 Stat. 145.

The words "organization of the Marine Corps" are substituted for "force of marines" for clarity. The words "or vessels", "and powers", "on shore", and "under his command" are omitted as surplusage.

§§ 5953, 5954. Repealed. Pub. L. 90–235, § 5(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 761.

Section 5953, act Aug. 10, 1956, ch. 1041, 70A Stat. 372, provided for the assignment and authority of executive officers of vessels or naval stations.

Section 5954, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, provided for command when different commands of the Marine Corps and the Army or the Marine Corps and the Air Force joined or served together. See section 747 of this title.

§ 5955. Retired officers withdrawn from command.

Retired officers of the Navy shall be withdrawn from command. (Aug. 10, 1956, ch. 1041, 70A Stat. 373.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5955	34 U. S. C. 401.	R. S. 1459.

The words "except in the case provided in sections fourteen hundred and sixty-three and fourteen hundred and sixty-four," which appear in R. S. 1459 but not in 34 U. S. C. 401, are omitted as surplusage, since R. S. 1459 can not be construed as prohibiting the exercise of the authority granted in R. S. 1463 and R. S. 1464. The words "and from the line of promotion on the active list" are omitted as unnecessary, because the various laws relating to promotions all contain provisions specifically excluding or specifically including retired officers.

Chapter 553.—SPECIAL ASSIGNMENTS AND DETAILS

Sec.
5982. Ships and squadrons: detail of retired officers to command.
5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries.
5985. Nautical Schools: detail of naval officers as superintendents or instructors.
5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture.

AMENDMENTS

1970—Pub. L. 91-482, § 2C, Oct. 21, 1970, 84 Stat. 1082, struck out item 5981, which read: "Squadrons: detail of officers on active list to command."

1968—Pub. L. 90-235, § 4(a)(4), (b)(3), Jan. 2, 1968, 81 Stat. 759, 760, struck out item 5984, which read: "Military institutions and colleges: details as superintendents and instructors", and item 5987, which read: "American National Red Cross: detail of officers in the Medical Corps".

§ 5981. Repealed. Pub. L. 91-482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, provided that the President could select any officer on the active list of the Navy not below the grade of commander and assign him to the command of a squadron, with the rank and title of a flag officer.

§ 5982. Ships and squadrons: detail of retired officers to command.

(a) In time of war, the President, by and with the advice and consent of the Senate, may detail retired officers of the Navy on active duty to the command of squadrons and single ships, if he believes that the good of the service requires that they be so detailed.

(b) In making details under subsection (a), the President may select any retired officer not below the grade of commander and assign him to the command of a squadron, with the rank and title of a flag officer.

(c) If a retired officer detailed under subsection (a) receives, on the recommendation of the President, a vote of thanks of Congress for his services and gallantry in action against the enemy, the President, by and with the advice and consent of the Senate, may appoint him to the active list of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 373.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5982	34 U. S. C. 424, 425, 426.	R. S. 1463, 1464, 1465.

In subsection (a) the words "on active duty" are inserted for clarity. The authority to order retired officers to active duty in time of war is covered in 34 U. S. C. 423, codified in § 6481 of this title.

In subsection (b) the part of R. S. 1464 that follows the words "flag officer" is omitted for the reasons stated in the revision note on § 5981 of this title.

In subsection (c) the words "the President, by and with advice and consent of the Senate, may appoint him to the active list of the Navy" are substituted for the words "may be restored to the active list" for clarity. Restoration to the active list is a new appointment which must be made in the constitutional manner.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of sections 424, 425 of former Title 34, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

The state of war with Japan actually ended Apr. 28, 1952, by the coming into effect of the Treaty of Peace with Japan on that date. The state of war with Germany had ended on Oct. 19, 1951. See notes preceding section 1 of Appendix to Title 50, War and National Defense.

§ 5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries.

Upon the request of the Secretary of State, the Secretary of the Navy may assign enlisted members of the naval service to serve as custodians under the supervision of the principal officer at any embassy, legation, or consulate. (Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5983	22 U. S. C. 957.	Aug. 13, 1946, ch. 957, § 562, 60 Stat. 1011.

§ 5984. Repealed. Pub. L. 90-235, § 4(b)(1), Jan. 2, 1968, 81 Stat. 760.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 374, provided for detail to military institutions and colleges that gave instruction and drill in military tactics of officers of the Navy as superintendents or professors and retired officers and petty officers of the Navy, with their consent, as instructors in military drill and tactics.

§ 5985. Nautical Schools: detail of naval officers as superintendents or instructors.

The President may detail officers of the Navy as superintendents or instructors of institutions receiving benefits under the Act of March 4, 1911, ch. 265, 36 Stat. 1353, as amended, when in his opinion it can be done without detriment to the naval service. Officers so detailed shall be recalled from an institution if it is discontinued or if the good of the naval service requires. (Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5985	34 U. S. C. 1123 (less 1st proviso as applicable to vessels, and less 2d proviso).	Mar. 4, 1911, ch. 265, § 3 (less 1st proviso as applicable to vessels, and less 2d proviso), 36 Stat. 1353.

The words "naval service" are substituted for the words "public service" for uniformity within the section. The citation of the act establishing the nautical institutions is substituted for the words "such schools" for clarity. The word "proper" is omitted as surplusage.

REFERENCES IN TEXT

The act of March 4, 1911, ch. 265, 36 Stat. 1353, as amended, referred to in the text, was classified to sections 1121—1123 of former Title 34, Navy. Sections 1121 and 1122 are now covered by sections 1382 and 1388, respectively, of Title 46, Shipping. Section 1123 was repealed by act Aug. 10, 1956, § 53, and is now covered by this section.

§ 5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture.

(a) To promote a knowledge of naval engineering and naval architecture, the President, upon the application of any established scientific school or college in the United States, the Territories, Commonwealths, or possessions, may detail a qualified officer of the Navy as a professor in that school or college. The number of officers detailed under this section may not exceed 25 at any one time.

(b) The President may prescribe regulations for detailing such officers and may recall them when the public interest requires. (Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
5986	34 U. S. C. 1126.	Feb. 26, 1879, ch. 105, 20 Stat. 322.

In subsection (a) the words "To promote" are substituted for the words "For the purposes of promoting" for brevity and the words "among the young men of the United States" are omitted as surplusage. The words "naval engineering" are substituted for the words "steam engineering" and the words "naval architecture" are substituted for the words "iron-ship building" to conform to current terminology and to express more clearly the intent of the statute. The words "the Territories, Commonwealths, or possessions" are inserted, since the words "United States" in the source statute are considered to have included all areas under the United States flag.

Section 1 of the act of March 3, 1899, ch. 413, 30 Stat. 1004, transferred officers of the Engineer Corps of the Navy to the line of the Navy; therefore, in subsection (a) the words "qualified officer" are substituted for the words "engineer officer" to preserve the meaning of the section and to include any officer possessing adequate background and training in engineering duties.

In subsection (b) the word "regulations" is substituted for the word "rules," and the words "public interest" are substituted for the words "public service" to conform to current terminology.

§ 5987. Repealed. Pub. L. 90-235, § 4(a)(2), Jan. 2, 1968, 81 Stat. 759.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 374, provided for the detail of officers in the Medical Corps of the Navy for duty with the Services to the Armed Forces Division of the American National Red Cross. See section 711a of this title.

Chapter 555.—ADMINISTRATION

Sec.
6011. Navy Regulations.
6012. Additional regulations for Marine Corps.
6013. Enlisted grades and ratings: authority to establish.
6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy.
6015. Women members: duty; qualifications; restrictions.
6017. Retired list for Reserve members entitled to retired pay.
6018. Naval officers: shore duty; limitations.
6019. Citizenship of officers of vessels.
6021. Aviation duties: number of personnel assigned.
6022. Aviation training facilities.
6023. Aviation designations: naval aviator.
6024. Aviation designations: naval flight officer.
6025. Aviation designations: aviation pilot.
6026. Supply Corps officers: bonds.
6027. Medical Department: composition.
6028. Medical Service Corps: composition.
6029. Dental services: responsibilities of senior dental officer.
6031. Chaplains; divine services.
6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases.
6034. Regulations for retired pay based on service in the Reserve.

AMENDMENTS

1970—Pub. L. 91-198, § 1(3), Feb. 26, 1970, 84 Stat. 15, substituted "naval flight officer" for "naval aviation observer" in item 6024.

1968—Pub. L. 90-235, § 7(a)(5), Jan. 2, 1968, 81 Stat. 763, struck out item 6033 which read: "Woman member: definition of dependents".

1967—Pub. L. 90-130, § 1(22), Nov. 8, 1967, 81 Stat. 380, eliminated item 6030 which read: "Nurse Corps officers: authority."

1961—Pub. L. 87-123, § 5(24), Aug. 3, 1961, 75 Stat. 266, deleted item 6020.

1958—Pub. L. 85-861, § 1(135), Sept. 2, 1958, 72 Stat. 1507, deleted item 6016.

§ 6011. Navy Regulations.

United States Navy Regulations shall be issued by the Secretary of the Navy with the approval of the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6011	34 U. S. C. 591.	R. S. 1547.

So much as pertains to the "orders, regulations, and instructions issued by the Secretary of the Navy prior to July 14, 1862" and the alterations thereto is omitted as executed, and the section is worded to preserve the remaining requirement that Navy Regulations must be issued with Presidential approval. The words "United States Navy Regulations" are substituted for the words "regulations of the Navy" to preserve the distinction between the permanent regulations of general applicability falling within this statute and the many other regulations issued by the Secretary alone under specific statutes and under his power to administer the Department.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 591 of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Uniform Code of Military Justice, see section 801 et seq. of this title.

§ 6012. Additional regulations for Marine Corps.

The President may prescribe military regulations for the discipline of the Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6012	34 U. S. C. 714.	R. S. 1620.

The words "such" and "as he may deem expedient" are omitted as surplusage.

CROSS REFERENCES

Uniform Code of Military Justice, see section 801 et seq. of this title.

§ 6013. Enlisted grades and ratings: authority to establish.

The Secretary of the Navy may establish such enlisted grades and ratings as are necessary for the proper administration of the Navy and the Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6013	34 U. S. C. 176; 34 U. S. C. 34 (less 1st sentence, and less proviso of 2d sentence).	June 4, 1920, ch. 228, § 7 (proviso), 41 Stat. 836. Aug. 29, 1916, ch. 417 (1st par. under "Hospital Corps", less 1st sentence, and less proviso of 2d sentence), 39 Stat. 572; Aug. 4, 1947, ch. 459, § 301 (a), 61 Stat. 738.

The words "in his discretion" and "of the enlisted personnel" are omitted as surplusage. The words "Navy and

the Marine Corps" are substituted for the words "naval service."

§ 6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy.

Under regulations prescribed by the Secretary of the Navy, enlisted members of the Marine Corps are eligible for transfer to the Hospital Corps of the Navy, and enlisted members of the Hospital Corps are eligible for transfer to the Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6014	34 U. S. C. 34 (proviso of 2d sentence); 34 U. S. C. 34a.	Aug. 29, 1916, ch. 417 (proviso of 2d sentence in 1st paragraph under "Hospital Corps"), 39 Stat. 572; Aug. 4, 1947, ch. 459, § 301 (a), 61 Stat. 738. Aug. 4, 1947, ch. 459, § 302, 61 Stat. 738.

The authority to transfer Navy personnel to the Hospital Corps and personnel of that Corps to other branches or designations in the Navy is omitted as unnecessary because transfers within the Navy are permitted under provisions which authorize the Secretary of the Navy to establish grades and ratings (34 U. S. C. 176) and to administer the Department (5 U. S. C. 171a (c)).

The saving provision of 34 U. S. C. 34a which provided that no person would suffer any reduction in grade, rating, or pay, is omitted as executed. It pertained to personnel who, when the Hospital Corps was reorganized under the act of August 4, 1947, ch. 459, §§ 301, 302, 61 Stat. 738, were in grades and ratings prescribed by prior laws.

§ 6015. Women members: duty; qualifications; restrictions.

The Secretary of the Navy may prescribe the manner in which women officers appointed under section 5590 of this title, women warrant officers, and enlisted women members of the Regular Navy and the Regular Marine Corps shall be trained and qualified for military duty. The Secretary may prescribe the kind of military duty to which such women members may be assigned and the military authority which they may exercise. However, women may not be assigned to duty in aircraft that are engaged in combat missions nor may they be assigned to duty on vessels of the Navy other than hospital ships and transports. (Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6015	34 U. S. C. 105g; 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 210, 62 Stat. 368. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

The limitation to "women officers appointed under section 5590" is inserted to avoid application of the section to officers in the Nurse Corps, as required by 34 U. S. C. 105k, and to avoid application to women appointed in the Medical Corps, Dental Corps, and Medical Service Corps under 34 U. S. C. 21e, as required by that section.

§ 6016. Repealed. Pub. L. 85-861, § 36B (16), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, required the names of retired officers to be carried on the Navy Register.

§ 6017. Retired list for Reserve members entitled to retired pay.

The Secretary of the Navy shall maintain a United States Naval Reserve Retired List containing the names of members of the Naval Reserve and the Marine Corps Reserve entitled to retired pay. (Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6017	34 U. S. C. 440h.	June 29, 1948, ch. 708, § 301 (b), 62 Stat. 1087.

Citations to provisions authorizing retired pay are omitted as unnecessary. The authority to establish the list is omitted as executed and the section is rephrased to require the Secretary to maintain it.

CROSS REFERENCES

Naval Reserve and Marine Corps Reserve; administration, see sections 5251, 5252 of this title.

§ 6018. Naval officers: shore duty; limitations.

An officer of the Regular Navy, other than an officer in the Nurse Corps and other than a woman officer appointed under section 5590 of this title, may not be assigned to shore duty, unless—

(1) the shore duty is specifically provided for by law; or

(2) the Secretary of the Navy determines that the employment of the officer on shore duty is required by the public interest.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376; Aug. 1, 1958, Pub. L. 85-588, 72 Stat. 488.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6018	34 U. S. C. 222.	Mar. 3, 1883, ch. 97, § 2, 22 Stat. 481; July 19, 1892, ch. 206, 27 Stat. 245 (3d par.).

The words "but need not state the duration of such service" are omitted as surplusage. The word "specifically" is substituted for the word "specially".

The exception as to officers in the Nurse Corps is added to reflect the fact that the primary duties of such officers are performed at medical activities, which are generally located ashore. The exception as to women officers appointed under § 5590 of this title is added to reflect 34 U. S. C. 105g, which indicates that the primary duties of the women officers concerned are performed ashore. As written, the section applies to male officers of the Regular Navy and women officers of the Regular Navy covered by 34 U. S. C. 21e, and it is so interpreted.

AMENDMENTS

1958—Pub. L. 85-588 deleted from clause (2) the words "and his determination to that effect is stated in the officer's orders to shore duty".

§ 6019. Citizenship of officers of vessels.

The officers of vessels of the United States shall in all cases be citizens of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6019	34 U. S. C. 211.	R. S. 1428.

CROSS REFERENCES

Citizenship of officers of Regular Navy and Regular Marine Corps, see section 5571 of this title.

§ 6020. Repealed. Pub. L. 87-123, § 5(23), Aug. 3, 1961, 75 Stat. 266.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, provided for detail of Marine Corps officers for duty in the supply department for a period of four years.

§ 6021. Aviation duties: number of personnel assigned.

The number of officers and enlisted members of the Navy and the Marine Corps detailed to duty involving flying and to other duties in connection with aircraft shall be in accordance with the requirements of naval aviation as determined by the Secretary of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6021	34 U. S. C. 732; 34 U. S. C. 732a.	July 12, 1921, ch. 44, § 8 (last par., less provisos), 42 Stat. 141. July 22, 1935, ch. 402, § 8, 49 Stat. 490.

The provisions cited as source are consolidated in this section. The second sentence of § 8 of the act of July 22, 1935, is omitted as executed.

CROSS REFERENCES

Incentive pay for hazardous duty, see section 301 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6022. Aviation training facilities.

The President may maintain facilities to provide flight training for 16,000 members of the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6022	34 U. S. C. 736.	June 15, 1940, ch. 375, § 1 (2d sentence), 54 Stat. 400.

The proviso to the effect that the section does not affect the responsibility of the Secretary of the Navy under 34 U. S. C. 732 is omitted as unnecessary. The words "as may, in his judgment, be necessary" are omitted as surplusage. The words "members of the naval service" are substituted for "naval aviators" to avoid the implication that trainees are naval aviators while undergoing the training. The designation depends on successful completion of flight training.

§ 6023. Aviation designations: naval aviator.

(a) Members of the naval service in the following categories may be designated as naval aviators:

(1) Commissioned officers.

(2) Warrant officers, W-1, classed as of the line.

(b) To be eligible for designation as a naval aviator, a member must have successfully completed the course prescribed for naval aviators and must—

(1) have flown in heavier-than-air craft a total of 200 hours at least 75 of which were flown alone or as first pilot of a dual-control aircraft; or

(2) have been in the air under training in lighter-than-air craft at least 150 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376; Oct. 13, 1964, Pub. L. 88-647, title III, § 301(15), 78 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6023	34 U. S. C. 735 (par. 1); 34 U. S. C. 1020d (as applicable to designation as naval aviators).	June 24, 1926, ch. 668, § 3 (par. 1), 44 Stat. 766; Aug. 27, 1940, ch. 694, § 9, 54 Stat. 566; June 5, 1942, ch. 330, 56 Stat. 309. Aug. 13, 1946, ch. 962, § 5 (as applicable to designation as naval aviators), 60 Stat. 1059; May 16, 1947, ch. 77, § 1 (e), 61 Stat. 100.

The definition form of 34 U. S. C. 735 is not followed in this section. The provision is worded to set forth (1) the categories of persons eligible for the designation and (2) qualifications required of designees.

In subsection (a), clause (3), the words "warrant officers, W-1, classed as of the line" are substituted for the words "warrant line officers". The Warrant Officer Act of 1954 established the grade of warrant officer, W-1, in lieu of all the old warrant officer (as distinguished from the commissioned warrant officer) grades. There is not now, nor has there been in the past, a statutory designation of warrant officers as "line" or "staff" officers; however, warrant officers are grouped administratively as warrant officers "classed as of the line" or "classed as of the staff" according to the nature of their duties. The substituted phrase, therefore, conforms to current law and usage.

In subsection (b) the words "lighter-than-air craft" are substituted for the word "airships" for uniformity.

AMENDMENTS

1964—Subsec. (a) Pub. L. 88-647 redesignated former clause (3) as (2), and eliminated former clause (2) which related to midshipmen appointed under section 6906 of this title.

CROSS REFERENCES

Aviation commands, eligibility, see section 5942 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6913 of this title; title 14 section 373.

§ 6024. Aviation designations: naval flight officers.

Any officer of the naval service may be designated a naval flight officer if he has successfully completed the course prescribed for naval flight officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 377; Feb. 26, 1970, Pub. L. 91-198, § 1(2), 84 Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6024	34 U. S. C. 735 (par. 3).	June 24, 1926, ch. 668, § 3 (par. 3), 44 Stat. 767.

The phrase "by competent authority" is omitted as surplusage. The definition form of 34 U. S. C. 735 is not followed.

AMENDMENTS

1970—Pub. L. 91-198 substituted "naval flight officer" for "naval aviation observer" and "naval flight officers" for "naval aviation observers," and struck out requirement that such officer have been in the air at least 100 hours.

CROSS REFERENCES

Aviation commands, eligibility, see section 5942 of this title.

§ 6025. Aviation designations: aviation pilot.

Any enlisted member of the naval service may be designated an aviation pilot if he has successfully completed the course prescribed for aviation pilots and—

(1) has flown in heavier-than-air craft a total of 200 hours at least 75 of which were flown alone or as first pilot of a dual-control aircraft; or

(2) has flown in lighter-than-air craft a total of 200 hours at least 150 of which were under training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6025	34 U. S. C. 735 (par. 2).	June 24, 1926, ch. 668, § 3 (par. 2), 44 Stat. 767; June 5, 1942, ch. 330, 56 Stat. 309.

The phrase "by competent authority in the Navy" is omitted as surplusage. The last sentence is omitted as unnecessary because the term "pilot" is not used in the subtitle in the defined sense. The definition form of 34 U. S. C. 735 is not followed and the wording is conformed to that of the preceding two sections.

§ 6026. Supply Corps officers: bonds.

(a) Each officer in the Supply Corps, before entering upon the duties of his office, shall give a good and sufficient bond to the United States, approved by the Secretary of the Navy, to account for all public money and property that he receives. The bond shall be in an amount prescribed by the Secretary. The Secretary may waive the requirement of a bond for any officer who is not accountable for public funds or public property.

(b) When required by the Secretary, an officer in the Supply Corps shall post a new bond with sufficient surety.

(c) The promotion or appointment to a new office in the Supply Corps of an officer who is bonded under this section does not affect his existing bond. The bond remains in force and continuous to cover the officer in his new office. (Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6026	34 U. S. C. 64; 34 U. S. C. 65; 34 U. S. C. 66.	R. S. 1383; June 6, 1935, ch. 181, 49 Stat. 326. R. S. 1384. R. S. 1385.

In subsection (a) the word "faithfully" is omitted as surplusage.

In subsection (c) the words "promotion or appointment to a new office in the Supply Corps of" are substituted for the words "issuing of a new appointment and commission to" to cover transfers between the Naval Reserve and the Regular Navy specifically and not merely by implication. The words "does not affect" are substituted for the words "shall not offset or annul".

§ 6027. Medical Department: composition.

The Medical Corps, the Dental Corps, the Medical Service Corps, the Nurse Corps, and the Hospital Corps are in the Medical Department of the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6027	34 U. S. C. 30a (1st 20 words of 1st sentence); 34 U. S. C. 43 (less 2d sentence); 34 U. S. C. 32; 34 U. S. C. 51 (26th through 37th words).	Aug. 4, 1947, ch. 459, § 201 (1st 20 words of 1st sentence), 61 Stat. 736. Apr. 16, 1947, ch. 38, § 201 (less 2d sentence), 61 Stat. 47; Aug. 7, 1947, ch. 512, § 434 (a), 61 Stat. 882. Aug. 29, 1916, ch. 417, 39 Stat. 573 (30th through 44th words of 6th par. under "Hospital Corps"). Aug. 29, 1916, ch. 417 (1st par. under "Naval Dental Corps", 75th word to end of 1st sentence); added July 1, 1918, ch. 114, 40 Stat. 708 (4th par.).

There is no provision of law specifically stating that the Medical Corps is in the Medical Department. It was the first corps to have duties relating to medical and sanitary matters and so long as it was the only corps having such duties there was no need for the departmental concept. The subsequent establishment of other corps with related duties "in the Medical Department" indicates clearly that the Medical Corps is in that Department.

The words "effective August 4, 1947" and the words "establishing the Medical Service Corps" in 34 U. S. C. 30a are omitted as executed. The words "is created and established as a Staff Corps of the United States Navy" in 34 U. S. C. 43 are omitted as executed.

§ 6028. Medical Service Corps: composition.

The following sections, and such other sections as the Secretary of the Navy considers necessary, are in the Medical Service Corps:

(1) Pharmacy, Supply, and Administration Section.

(2) Medical Allied Sciences Section.

(3) Optometry Section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6028	34 U. S. C. 30a (1st sentence, less 1st 20 words).	Aug. 4, 1947, ch. 459, § 201 (1st sentence, less 1st 20 words), 61 Stat. 736.

§ 6029. Dental services: responsibilities of senior dental officer.

(a) The Secretary of the Navy shall prescribe regulations for dental services on ships and at shore stations. Such services shall be under the senior dental officer, who is responsible to the commanding officer of the ship or station for all professional, technical, and administrative matters concerning dental services.

(b) This section does not impose any administrative requirements that would interfere with the proper functioning of battle organizations. (Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6029	5 U. S. C. 456d.	Dec. 28, 1945, ch. 604, § 4, 59 Stat. 667.

The words "for establishing" are omitted as executed and unnecessary.

The last sentence of § 4 of the act of December 28, 1945, ch. 604, 59 Stat. 667, was a repealing clause and savings provision. It is omitted from this section.

§ 6030. Repealed. Pub. L. 90–130, § 1(22), Nov. 8, 1967, 81 Stat. 380.

Section, act Aug. 10, 1956, ch. 1040, 70A Stat. 378, gave officers in the Nurse Corps authority in medical and sanitary matters and other work within the line of their professional duties in activities of the Medical Department after officers in the Medical Corps, Dental Corps, and Medical Service Corps and authorized officers in the Nurse Corps to exercise such military authority, other than command, as the Secretary of the Navy prescribed.

§ 6031. Chaplains: divine services.

(a) An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.

(b) The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

(c) All persons in the Navy and in the Marine Corps are enjoined to behave themselves in a reverent and becoming manner during divine service. (Aug. 10, 1956, ch. 1041, 70A Stat. 378; Aug. 7, 1959, Pub. L. 86–140, 73 Stat. 288.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6031 (a)	34 U. S. C. 95.	R. S. 1397.
6031 (b)	34 U. S. C. 266 (1st sentence).	May 5, 1950, ch. 169, § 7 (d) 64 Stat. 146.
6031 (c)	34 U. S. C. 266 (2d sentence).	
6031 (d)	34 U. S. C. 96.	May 5, 1950, ch. 169, § 7 (e), 64 Stat. 146. R. S. 1398.

In subsection (c) the words "and in the Marine Corps" are added to execute the definition of "Navy" in section 1, article 1, of the act of May 5, 1950, ch. 169, 64 Stat. 146.

AMENDMENTS

1959—Subsec. (d) Pub. L. 86–140 repealed subsec. (d) which required each chaplain to report annually to the Secretary of the Navy the official services performed by him.

§ 6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases.

Under regulations prescribed by the Secretary of the Navy, appropriations for the pay of the Marine Corps are available to pay any indebtedness to Marine Corps Exchanges of members of the Marine Corps who are discharged, who desert, or who are sentenced to prison. (Aug. 10, 1956, ch. 1041, 70A Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6032	34 U. S. C. 725.	Aug. 2, 1946, ch. 756, § 28, 60 Stat. 857.

The words "while in debt to the United States" are omitted as surplusage and to avoid the erroneous interpretation that the provision authorizes the payment, out of appropriations, of debts other than to Marine Corps Exchanges.

§ 6033. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 378; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(5), 76 Stat. 494; Sept. 7, 1962, Pub. L. 87–651, title I, § 122, 76 Stat. 513, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Navy, Regular Marine Corps, Fleet Reserve, Fleet Marine Corps Reserve, Naval Reserve or Marine Corps Reserve.

§ 6034. Regulations for retired pay based on service in the Reserve.

The Secretary of the Navy may prescribe regulations for the Navy and the Marine Corps to carry out chapter 67 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6034	34 U. S. C. 440n.	June 29, 1948, ch. 708, § 307, 62 Stat. 1090.

Chapter 557.—RATIONS

Sec.
6081. Navy ration: persons entitled to.
6082. Navy ration: composition.
6083. Fixing cost on certain vessels and stations.
6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess.
6085. Flight rations.
6086. Subsistence in hospital messes; hospital ration.
6087. Sale of meals by general messes.

§ 6081. Navy ration: persons entitled to.

(a) Except when entitled to a basic allowance for subsistence or to a per diem in place of subsistence, each enlisted member of the naval service is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(b) Each midshipman is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(c) The Secretary of the Navy may prescribe regulations stating the conditions under which the ration shall be allowed under subsection (b). (Aug. 10, 1956, ch. 1041, 70A Stat. 379; Sept. 7, 1962, Pub. L. 87–649, § 5(c), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6081	34 U. S. C. 901a (1st 2 sentences); 5 U. S. C. 421g (b).	Aug. 2, 1946, ch. 756, § 17 (a) (1st 2 sentences), 60 Stat. 855. Aug. 2, 1946, ch. 756, § 40 (b), 60 Stat. 858.

So much of 34 U. S. C. 901a as authorizes a commuted ration for enlisted members of the naval service under conditions and at rates prescribed by the Secretary of the Navy is superseded by § 301 of the Career Compensation Act of 1949 (37 U. S. C. 251). That section established a basic allowance for subsistence for enlisted members entitled to basic pay who are not subsisting at Government expense and prescribes the conditions under which the basic allowance for subsistence shall be paid and the amount of the allowance. Pursuant to Executive Order No. 10119, March 30, 1950, 15 F. R. 1757, the Secretary of Defense is authorized to make supplemental regulations to carry out the provisions of § 301. The words "or to a per diem in place of subsistence" are inserted to reflect the subsistence allowance authorized by § 303 (a) of the Career Compensation Act of 1949 (37 U. S. C. 253a) to members in travel status.

In subsection (a) reference to the Coast and Geodetic Survey is omitted since there are no enlisted personnel in that service, and reference to the Coast Guard is omitted as covered by 14 U. S. C. 478.

In subsections (a) and (b) the words "or furlough therefrom" are omitted as surplusage, and the words "for each day" are inserted to make clear the fact that a ration is a daily allowance of food and that, in subsection (b), the commuted ration is credited on a daily basis. The words "and cadets" are omitted as there are no cadets in the Navy or Marine Corps entitled to a Navy ration. Aviation cadets are entitled to the basic allowance for subsistence prescribed for officers (34 U.S.C. 850c).

In subsection (c) the words "prescribed by law" and "in accordance with law" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–649 eliminated provisions which permitted payment of the commuted value of the ration in money. See section 422(b) of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87–649 eliminated provisions which permitted the Secretary to prescribe regulations for the allowance of the commuted value of the ration. See section 422(b) of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Commuted value of ration, see section 422(b) of Title 37, Pay and Allowances of the Uniformed Services.

§ 6082. Navy ration: composition.

(a) The Navy ration consists of the following daily allowance of provisions:

(1) Eight ounces of biscuit or twelve ounces of soft bread or twelve ounces of flour.

(2) Twelve ounces of preserved meat or fourteen ounces of salt or smoked meat or twenty ounces of fresh meat, fish, or poultry.

(3) Twelve ounces of dried vegetables or eighteen ounces of canned vegetables or forty-four ounces of fresh vegetables.

(4) Four ounces of dried fruit or ten ounces of canned fruit or six ounces of preserved fruit or sixteen ounces of fresh fruit or six ounces of canned fruit or vegetable juices, or one ounce of powdered fruit juices, or six-tenths of an ounce of concentrated fruit juices.

(5) Two ounces of cocoa or two ounces of coffee or one-half ounce of tea.

(6) Four ounces of evaporated milk or one ounce of powdered milk or one-half pint of fresh milk.

(7) One and six-tenths ounces of butter.

(8) One and six-tenths ounces of cereal or rice or starch foods.

(9) One-half ounce of cheese.

(10) One and two-tenths eggs.

(11) One and six-tenths ounces of lard or lard substitutes.

(12) Two-fifths of a gill of oils or sauces or vinegar.

(13) Five ounces of sugar.

(14) Such quantities of baking powder and soda, flavoring extracts, mustard, pepper, pickles, salt, sirup, spices, and yeast as required.

(b) Any article of the Navy ration may be issued in excess of the authorized quantity if there is an under issue of the same value in other articles.

(c) The Secretary of the Navy may increase the daily allowance of provisions on a vessel or station having an authorized complement of less than 150 men and subsisting on a ration allowance when, in his opinion, the vessel or station is operating under conditions warranting an increase. (Aug. 10, 1956, ch. 1041, 70A Stat. 379.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6082 (a)	34 U. S. C. 902a.	Mar. 2, 1933, ch. 184, § 1 (2d sentence), 47 Stat. 1423; Feb. 21, 1942, ch. 106, 56 Stat. 97.
6082 (b)	34 U. S. C. 902b.	Mar. 2, 1933, ch. 184, § 2, 47 Stat. 1423.
6082 (c)	34 U. S. C. 902c.	Mar. 2, 1933, ch. 184, § 3, 47 Stat. 1423.

In subsection (a) the words "issued to each person entitled thereto" are omitted as surplusage. In clause (2) the words "or fresh" and in clause (6) the words "together with" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6083 of this title.

§ 6083. Fixing cost on certain vessels and stations.

If the Secretary of the Navy considers that it is undesirable to administer the mess on any ship or at any station under the quantity allowance prescribed in section 6082 of this title, he may fix the cost of each ration for that mess. (Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6083	34 U. S. C. 902d.	Mar. 2, 1933, ch. 184, § 4, 47 Stat. 1423; Aug. 3, 1951, ch. 287, 65 Stat. 151.

The words "the cost of each ration for that mess" are substituted for the words "the monetary limit of the cost of ration aboard such ships and at such stations" to make it clear that the figure fixed by the Secretary of the Navy under this section is the amount the mess may spend per day for food for each man subsisting at the mess.

§ 6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess.

Under such regulations as the Secretary of the Navy prescribes, the basic allowance for subsistence of enlisted members of the naval service assigned to duty with and subsisting in an officers' or other mess, afloat or ashore, may be paid to the mess to which they are assigned. (Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6084	34 U. S. C. 908.	July 1, 1902, ch. 1368, 32 Stat. 680 (4th par.); Mar. 14, 1940, ch. 53, 54 Stat. 50.

The words "basic allowance for subsistence" are substituted for the words "money accruing from the commuted rations" to conform to the terminology of § 301

of the Career Compensation Act of 1949 (37 U. S. C. 251). Section 301 of the Career Compensation Act of 1949 supersedes the authority of the Secretary of the Navy to commute the rations of enlisted members and authorizes in lieu thereof a basic allowance for subsistence. The words "enlisted members of the naval service" are substituted for the words "enlisted men" for uniformity of expression and for clarity. The word "legally" is omitted as surplusage. The words "and subsisting in" are inserted to make it clear that the mess must actually subsist the enlisted members assigned before the basic allowance of the members may be paid to the mess. The words "to which they are assigned" are inserted for clarity.

CROSS REFERENCES

Basic allowance for subsistence, see section 402 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6085. Flight rations.

An aircraft flight ration chargeable to the proper Navy or Marine Corps appropriation may be furnished to members of the naval service and to civilian employees of the Department of the Navy while engaged in flight operations. The flight ration is supplementary to any ration or subsistence allowance to which the members or employees are otherwise entitled. However, the flight ration may not be furnished without charge to any person in a travel status or to any person to whom a per diem allowance is granted in place of subsistence. (Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6085	34 U. S. C. 909.	June 5, 1942, ch. 327, 56 Stat. 308.

The words "members of the naval service and to civilian employees of the Department of the Navy" are substituted for the words "officers, enlisted men, and civilian employees of the Navy and Marine Corps" for uniformity. The words "in kind" and the word "aircraft" are omitted as surplusage.

§ 6086. Subsistence in hospital messes: hospital ration.

(a) Enlisted members of the naval service on duty in hospitals and enlisted members of the naval service, including retired members and members of the Fleet Reserve and the Fleet Marine Corps Reserve, when sick in hospitals, may be subsisted in hospital messes. When subsistence is furnished under this subsection, the appropriation chargeable with the maintenance of the hospital mess shall be credited at the rate prescribed by the Secretary of the Navy as the value of the hospital ration.

(b) Under such regulations as the Secretary prescribes, officers in the Nurse Corps may be subsisted in hospital messes. Each officer so subsisted shall pay for her subsistence at the rate fixed by the regulations. (Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6086	34 U. S. C. 901a (less 1st and 2d sentences); 34 U. S. C. 43h (a) (1st 21 words of 2d provisio).	Aug. 2, 1946, ch. 756, § 17 (a) (less 1st and 2d sentences) 60 Stat. 855. Apr. 16, 1947, ch. 38, § 208 (a) (1st 25 words of 2d proviso), 61 Stat. 50.

In subsection (a) the words "active duty" before the words "enlisted personnel" are omitted as surplusage since there is no authority to hospitalize an enlisted member in a naval hospital under conditions where he would not be entitled to a hospital ration. The words "active and inactive" before the words "retired enlisted personnel" are omitted as surplusage. The word "members" is substituted for the word "personnel" for uniformity. The words "the Fleet Marine Corps Reserve" are inserted for clarity since the term "Fleet Reserve" in the source statute is used in a generic sense and includes members of the Fleet Marine Corps Reserve.

In subsection (b) the words "that nothing contained in this section shall deprive such nurses of allowances for subsistence now or after August 2, 1946, provided by law" are omitted as surplusage. Section 301 of the Career Compensation Act of 1949 (37 U. S. C. 251) authorizes a basic allowance for subsistence for all officers entitled to basic pay.

CROSS REFERENCES

Ration allowance for hospitalized members of the naval service, see section 6201 of this title.

§ 6087. Sale of meals by general messes.

Under such regulations as the Secretary of the Navy prescribes, meals may be sold by general messes afloat and ashore. (Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6087	34 U. S. C. 915b (c).	Aug. 2, 1946, ch. 756, § 16 (c), 60 Stat. 855.

Chapter 559.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
6111.[1] Pay: withheld during absence due to use of alcohol or drugs.
6113. Loans: Supply Corps officers.

AMENDMENTS

1968—Pub. L. 90-235, § 6(a)(4), (9), Jan. 2, 1968, 81 Stat. 762, struck out item 6114, which read: "Civilian employment: enlisted members", and item 6116, which read: "Service credit: officers; service as midshipman or cadet not counted".

1967—Pub. L. 90-83, § 3(5), Sept. 11, 1967, 81 Stat. 220, struck out item 6112.

1958—Pub. L. 85-861, § 1(136), Sept. 2, 1958, 72 Stat. 1507, deleted item 6115.

§ 6111. Repealed. Pub. L. 87-649, § 14c(35), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 381, related to withholding of pay during absence due to use of alcohol or drugs, and is now covered by section 802 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6112. Repealed. Pub. L. 87-649, § 14c(36), Sept. 7, 1962, 76 Stat. 501.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 381; Oct. 9, 1962, Pub. L. 87-777, § 1, 76 Stat. 777, prohibited employment of officers of the Regular Navy and Regular Marine Corps, other than a retired officer, from being employed by any person furnishing naval supplies or war materials to the United States under pain of loss

[1] Section 6111 repealed and analysis was not amended to reflect such repeal.

of payment from the United States during that employment.

Section was also repealed by Pub. L. 89–718, § 75(6), (7), Nov. 2, 1966, 80 Stat. 1124.

§ 6113. Loans: Supply Corps officers.

Except as otherwise provided by law, an officer in the Supply Corps on active duty may not advance or lend any sum of money, public or private, or any article or commodity and may not extend credit to any officer of the naval service on active duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6113	34 U. S. C. 67.	R. S. 1389.

The words "paymaster, passed assistant paymaster, or assistant paymaster" are omitted because those titles no longer exist, and the words "officer in the Supply Corps" are substituted therefor.

The words "except as otherwise provided by law" are added because the act of Oct. 5, 1949, ch. 600 (34 U. S. C. 875a), authorizes advances of pay to personnel upon permanent changes of station or where such personnel are on distant duty stations where disbursements of pay and allowances cannot be regularly made, and § 303 (a) of the Career Compensation Act of 1949 (37 U. S. C. 253) authorizes advance payments of travel and transportation allowances. The words "on active duty" are supplied since the section has application to officers accountable for public funds or property. Officers not on active duty are not accountable officers.

§ 6114. Repealed. Pub. L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 381, set forth restrictions on civilian employment for enlisted members of the naval service on active duty. See section 974 of this title.

§ 6115. Repealed. Pub. L. 85–861, § 36B (17), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, prescribed a time limit for filing claims for drill pay and for the uniform gratuity. Section was also amended by Pub. L. 85–861, § 33 (a) (31), which amended catchline by substituting "uniform gratuity" for "unform gratuity".

§ 6116. Repealed. Pub. L. 90–235, 6(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, provided that in computing length of service, no officer of the Navy or Marine Corps could be credited with service as a midshipman at the Naval Academy or as a cadet at the Military Academy, if he was appointed as a midshipman or cadet after March 4, 1913. See section 971 of this title.

Chapter 561.—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
6141.[1] Pay: officers, date of commencement.
6142.[1] Pay: assignments.
6143.[1] Pay: sale to be discouraged by commanding officer.
6144.[1] Pay accounts: settlement when lost with vessel.
6145.[1] Pay accounts: settlement; fixing date of loss of vessel.
6146.[1] Allotments: officers.
6147.[1] Allowances: prisoners.
6148. Disability and death benefits: Naval Reserve and Marine Corps Reserve.
6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments.
6152. Emergency shore duty: advance of funds.
6153. Shore patrol duty: payment of expenses.
6154. Mileage books; commutation tickets.
6155. Uniforms, accouterments, and equipment: sale at cost.
6156. Uniform: sale to former members of the naval service.
6160. Pension to persons serving ten years.
6161. Remission of indebtedness of enlisted members upon discharge.

[1] Sections 6141—6147 repealed and analysis was not amended to reflect such repeal.

AMENDMENTS

1970—Pub. L. 91–482, § 2D, Oct. 21, 1970, 84 Stat. 1082, struck out item 6159, which read: "Half rating to disabled naval enlisted personnel serving twenty years."

1968—Pub. L. 90–235, § 7(b)(4), Jan. 2, 1968, 81 Stat. 763, struck out item 6158, which read: "Exemption from arrest for debt: enlisted members of Marine Corps".

1963—Pub. L. 88–132, § 5(h)(3), Oct. 2, 1963, 77 Stat. 214, struck out item 6149.

1962—Pub. L. 87–651, title I, § 123(c), Sept. 7, 1962, 76 Stat. 514, eliminated item 6157.

1960—Pub. L. 86–511, § 1(b), June 11, 1960, 74 Stat 207, added item 6161.

1959—Pub. L. 86–155, § 9(a)(2), Aug. 11, 1959, 73 Stat. 337, struck out item 6150.

1958—Pub. L. 85–861, § 1 (139) (B), Sept. 2, 1958, 72 Stat. 1508, substituted "who serve satisfactorily under temporary appointments" for "temporarily appointed or promoted during World War II" in item 6151.

1957—Pub. L. 85–56, title XXII, § 2201 (31) (D), June 17, 1957, 71 Stat. 162, eff. Jan. 1, 1958, added items 6159 and 6160.

CROSS REFERENCES

General military law provisions, see section 1031 et seq. of this title.

§§ 6141 to 6147. Repealed. Pub. L. 87–649, § 14c(37—43), Sept. 7, 1962, 76 Stat. 501.

Section 6141, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, related to the date of commencement of pay of officers of the Regular Navy or the Regular Marine Corps, and is now covered by section 905 of Title 37, Pay and Allowances of the Uniformed Services.

Section 6142, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, provided for assignments of pay due to enlisted members, and is now covered by section 705 of Title 37.

Section 6143, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to the discouragement of the sale of pay, and is now covered by section 805 of Title 37.

Section 6144, act Aug. 10, 1956, ch. 1041, 70A Stat. 383 provided for the settlement of pay accounts when lost with the vessel, and is now covered by section 902 of Title 37.

Section 6145, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to fixing the date of loss of a vessel for the purpose of settling the accounts of persons aboard other than officers, and is now covered by section 902 of Title 37.

Section 6146, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, provided for allotments by officers, and is now covered by section 702 of Title 37.

Section 6147, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to allowances for prisoners, and is now covered by section 426 of Title 37.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6148. Disability and death benefits: Naval Reserve and Marine Corps Reserve.

(a) A Member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty,

or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed, or the beneficiary of such a member who dies from such an injury, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service. For the purpose of this subsection, a member who is not in a pay status shall be treated as though he were receiving the pay and allowances to which he would be entitled if serving on active duty.

(b) A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, other than active duty for training under section 270(b) of this title, for a period of more than 30 days, and is disabled in line of duty from disease while so employed, or the beneficiary of such a member who dies from such a disease, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service.

(c) Subsections (a) and (b) do not authorize the hospitalization of dependents of members of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve.

(d) A member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while he is on active duty or performing inactive-duty training is entitled to receive at Government expense medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such a member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment. The treatment may not extend beyond ten weeks after the member is released from active duty, except—

(1) upon an approved recommendation of a board of medical survey consisting of one or more officers in the Medical Corps; or

(2) upon authorization of the Surgeon General, based on the certificate of a reputable physician that the illness or disease is a continuation of the illness or disease for which the member was initially treated and that benefit will result from further treatment.

(e) If a person is entitled to benefits under subsection (a) or (b) and under—

(1) section 6327 of this title; or

(2) section 331 of title 38;

he must elect the provision that is to be applied to him. (Aug. 10, 1956, ch. 1041, 70A Stat. 383; Sept. 2, 1958, Pub. L. 85-861, §§ 1(137), 36B(18), 72 Stat. 1507, 1571; Sept. 7, 1962, Pub. L. 87-649, § 6(e), 76 Stat. 494; Sept. 7, 1962, Pub. L. 87-651, title I, § 123(a), 76 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6148 (a)	34 U. S. C. 855c-1 (less applicability to disability or death from disease, and less proviso).	Aug. 27, 1940, ch. 694, § 4 (less applicability to disability or death from disease, and less proviso), 54 Stat. 864; Oct. 10, 1942, ch. 586, 56 Stat. 780; June 20, 1949, ch. 225, § 1, 63 Stat. 201.
6148 (b)	34 U. S. C. 855c-1 (as applicable to disability or death from disease, less proviso).	Aug. 27, 1940, ch. 694, § 4 (as applicable to disability or death from disease, less proviso), 54 Stat. 864; Oct. 10, 1942, ch. 586, 56 Stat. 780; June 20, 1949, ch. 225, § 1, 63 Stat. 201.
6148 (c)	34 U. S. C. 855c (less election provision and less application to Act of June 23, 1937, of 1st proviso, and less 3d and 4th provisos).	June 25, 1938, ch. 690, § 304 (less election provision and less application to Act of June 23, 1937, of 1st proviso, and less 3d and 4th provisos), 52 Stat. 1181; Aug. 7, 1946, ch. 796, § 1, 60 Stat. 892.
6148 (d)	34 U. S. C. 855c (3d and 4th provisos).	June 25, 1938, ch. 690, § 304 (3d and 4th provisos), 52 Stat. 1181; Aug. 7, 1946, ch. 796, § 1, 60 Stat. 892.
6148 (e)	34 U. S. C. 855c (election provision of 1st proviso); 34 U. S. C. 855c-1 (proviso).	June 25, 1938, ch. 690, § 304 (election provision of 1st proviso), 52 Stat. 1181; Aug. 7, 1946, ch. 796, § 1, 60 Stat. 892. Aug. 27, 1940, ch. 694, § 4 (proviso), 54 Stat. 864; Oct. 10, 1942, ch. 586, 56 Stat. 780; June 20, 1949, ch. 225, § 1, 63 Stat. 201.
6148 (f)	34 U. S. C. 855c (1st proviso as applies to Act of June 23, 1937).	June 25, 1938, ch. 690, § 304 (1st proviso as applies to Act of June 23, 1937), 52 Stat. 1181; Aug. 7, 1946, ch. 796, § 1, 60 Stat. 892.

In subsections (a) and (b) the words "A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve" are substituted for the words "All officers, nurses, warrant officers, and enlisted men of the United States Naval Reserve or United States Marine Corps Reserve" for brevity and accuracy. Insertion of the words "Fleet Reserve and Fleet Marine Corps Reserve" is made necessary by the Armed Forces Reserve Act of 1952. When 34 U. S. C. 855c-1 was enacted in 1949, members of these components were members of the Naval Reserve and Marine Corps Reserve and were consequently eligible for benefits under that section. Since enactment of the Armed Forces Reserve Act of 1952, these members are no longer members of a reserve component, but there is nothing in the 1952 act or its legislative history that indicates an attempt to narrow the meaning of 34 U. S. C. 855c-1 or to deny its benefits to these members. The revised section also covers midshipmen of the Naval Reserve although they are not covered by the specific wording of 34 U. S. C. 855c-1. The Comptroller General, in 21 Comp. Gen. 121, held that 34 U. S. C. 855, before amendment, was applicable to midshipmen in the Naval Reserve, and the wording of that section was similar to the wording of 34 U. S. C. 855c-1. The Judge Advocate General of the Navy, in CMO 5, 1951, 149, held that reserve midshipmen are covered by 34 U. S. C. 855c-1. The words "called or" and the words "by the federal government" are omitted as surplusage. In subsection (a) the words "who is ordered to active duty, or to perform inactive-duty training" are substituted for the words "ordered * * * to active naval service or to perform inactive duty for training or inactive-duty training" and in subsection (b) the words "who is ordered to active duty, other than active duty for training, for a period of more than 30 days" are substituted for the words "ordered * * * for extended naval or military service in excess of thirty days" in accordance with the uniform interpretation of these provisions. The last sentence of subsection (a) is substituted for the words "shall be deemed to be in the active naval service during such period". In subsection (b) these words are omitted as surplusage since that subsection relates only to members who are on extended active duty. The words "in all respects" are omitted as surplusage. The words "retirement pay" are omitted

in view of 30 Comp. Gen. 409, 414 which holds that Title IV of the Career Compensation Act of 1949 supersedes these and other prior provisions as they relate to retired pay for physical disability. The words "are now or may hereafter" are omitted as surplusage. The words "a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service" are substituted for the words "officers, warrant officers, nurses, and enlisted men of corresponding grades and length of service of the Regular Navy or the Marine Corps" for uniformity.

Subsection (c) is made applicable to members of the Marine Corps Reserve as required by § 803 of the Armed Forces Reserve Act of 1952. In the subsection the word "physically" is omitted as surplusage. The words "on active duty or performing inactive-duty training, or while on authorized travel to or from such duty or training" are substituted for the words "while performing active military or naval service", as that service is defined in the first proviso. The words "administered by the Secretary of Labor" are inserted in the first sentence for clarity. The last sentence of the revised subsection is substituted for the words "the Secretary of Labor shall have jurisdiction in such cases". The words "and shall perform the same duties with reference thereto as in the cases of civil employees of the United States so disabled" are omitted as surplusage. Although § 304 of the Naval Reserve Act of 1938, as amended, states that the United States Employees' Compensation Commission administers the benefits concerned, 34 U. S. C. 855c and this subsection reflect section 3 of Reorganization Plan No. 2 of 1946, 60 Stat. 1095, and section 1 of Reorganization Plan No. 19 of 1950, 64 Stat. 1271, which placed the functions in the Secretary of Labor. The second sentence of the revised subsection is substituted for the 6th proviso of 34 U. S. C. 855c, and the third sentence of the revised subsection is substituted for the 2d proviso of 34 U. S. C. 855c. The 5th proviso of 34 U. S. C. 855c is omitted as executed, since the treaty of peace with Japan, effective 28 April 1952, terminated the last existing state of war designated as World War II. 34 U. S. C. 855c does not apply to members of the Fleet Reserve or Fleet Marine Corps Reserve because of its enactment in Title III of the Naval Reserve Act of 1938, entitled "Provisions Applicable Only to the Organized Reserve, Merchant Marine Reserve, and Voluntary Reserve", and the subsection is therefore not expanded to cover Fleet Reservists.

Subsection (d) is made applicable to members of the Marine Corps Reserve as required by the third sentence of § 803 of the Armed Forces Reserve Act of 1952. Subsection (d) is not extended to cover members of the Fleet Reserve or Fleet Marine Corps Reserve for the reasons stated as to subsection (c). The words "while he is on active duty or performing inactive-duty training" are substituted for the words "during the performance of active duty or training duty with or without pay" to provide the same coverage but to conform the terminology to other sections of this title. Both "active duty" and "inactive-duty training" are defined in § 101 of this title. The words "for which the member was initially treated" are substituted in clause (2) for the words "which was sustained or contracted during the period of active or training duty".

Subsection (e) combines the election provisions of 34 U. S. C. 855c and 855c–1. In the case of benefits involved in the election that are in this title, the reference is to those sections, and references to provisions outside this title are preserved.

In subsection (f) the words "with or without pay" are omitted as surplusage. The words "inactive-duty training" are substituted for the words "drills, equivalent instruction or duty, appropriate duty, or other prescribed duty" for uniformity.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–649 substituted "and hospital benefits" for "hospital benefits, and pay and allowances."

Subsec. (b). Pub. L. 87–649 substituted "and hospital benefits" for "hospital benefits, and pay and allowances." See section 204 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (e). Pub. L. 87–651 substituted "section 331 of title 38" for "the Act of June 23, 1937, ch. 376 (50 Stat. 305)" in cl. (2).

1958—Subsec. (b). Pub. L. 85–861, § 1(137)(A), inserted "under section 270(b) of this title" following "other than active duty for training".

Subsec. (c). Pub. L. 85–861, § 1(137)(B), substituted provisions stating that subsections (a) and (b) do not authorize the hospitalization of dependents of members of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve, for provisions which granted to members of the Naval Reserve or the Marine Corps Reserve who, in time of peace, are injured in line of duty while on active duty or performing inactive-duty training, or while on authorized travel, or to the beneficiaries of such members who die from the injuries, the same benefits as are provided for civilian employees of the United States who are injured in line of duty or who die as a result of such an injury.

Subsec. (e). Pub. L. 85–861, § 1(137)(C) substituted "under subsection (a) or (b) and under" for "under more than one of the preceding subsections, or if he is entitled to benefits under any of the preceding subsections and under".

Subsec. (f). Pub. L. 85–861, § 36B(18), repealed subsec. (f) which prescribed the manner of determining entitlement to benefits under the act of June 23, 1937, ch. 376 (50 Stat. 305).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF BENEFITS

Benefits under act June 20, 1949, effective from August 14, 1945, see note under section 3687 of this title.

CROSS REFERENCES

Death benefits, general military law provisions, see section 1481 et seq. of this title.

Federal Employees' Compensation Act, see section 8101 et seq. of Title 5, Government Organization and Employees.

§ 6149. Repealed. Pub. L. 88–132, § 5(h)(3), Oct. 2, 1963, 77 Stat. 214.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 385, related to computation of retired pay on basis of rates of pay for officers on the active list.

EFFECTIVE DATE OF REPEAL

Repeal of this section effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6150. Repealed. Pub. L. 86–155, § 9(a)(1), Aug. 11, 1959, 73 Stat. 337.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 385; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(32), 72 Stat. 1566, authorized advancement to a higher retired grade for officers specially commended.

EFFECTIVE DATE OF REPEAL

Section 9(b) of Pub. L. 86–155 provided that the repeal of this section shall become effective on November 1, 1959.

§ 6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments.

(a) Unless otherwise entitled to a higher retired grade, each member, other than a retired member, of the Navy or the Marine Corps shall, when retired, be advanced on the retired list to the highest officer grade in which he served satisfactorily under a temporary appointment as determined by the Secretary of the Navy.

(b) Each member, other than a former member of the Fleet Reserve or the Fleet Marine Corps Reserve, who is advanced on the retired list under this section is, unless otherwise entitled to higher retired pay, entitled to retired pay at the rate of 2½ percent of the basic pay of the grade to which advanced multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computations of retired pay is based. In determining the number of years to be used as a multiplier under this subsection, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

(c) Each former member of the Fleet Reserve or the Fleet Marine Corps Reserve who is advanced on the retired list under this section is entitled to retired pay based upon the grade to which advanced. Such retired pay shall be at the rate of 2½ percent of the basic pay of the grade to which advanced, determined by the same period of service used to determine the basic pay of the grade upon which his retainer pay is based, multiplied by the number of years of service creditable for his retainer pay at the time of retirement, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(d) A member who is advanced on the retired list under this section from the grade of warrant officer, W-1, or from an enlisted grade to a commissioned grade, and who applies to the Secretary within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted grade, as the case may be. A member who is restored to his former grade under this subsection is thereafter considered for all purposes as a warrant officer, W-1, or an enlisted member, as the case may be. (Aug. 10, 1956, ch. 1041, 70A Stat. 385; May 20, 1958, Pub. L. 85-422, § 11 (a) (6) (A), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85-861, § 1 (138), (139) (A), 72 Stat. 1507, 1508; Oct. 2, 1963, Pub. L. 88-132, § 5(h) (4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6151	34 U. S. C. 350i (b) (2), (e); 34 U. S. C. 410c (a), (b), (c); 34 U. S. C. 43g (c); 34 U. S. C. 43g (f), (g); 34 U S. C. 410r (a), (g), (h); 34 U. S. C. 625h (a); 34 U. S. C. 993c.	July 24, 1941, ch. 320, § 10 (b) (2), (e), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28. Feb. 21, 1946, ch. 34, § 7 (a) (less 1st proviso), (b), (c). 60 Stat. 27; Aug. 7, 1947, ch. 512, § 432 (a), 61 Stat. 881. Apr. 16, 1947, ch. 38, § 207 (d), 61 Stat. 49; redesignated (c), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (h), 64 Stat. 162. Apr. 16, 1947, ch. 38, § 207 (g), (h), 61 Stat. 47; redesignated (f), (g), Aug. 7, 1947, ch 512, § 434 (d), 61 Stat. 882. June 12, 1948, ch. 449, § 207 (a), (g), (h), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 19, 1948, ch. 540, § 3, 62 Stat. 505.

Subsections (b) and (c) are worded to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.). The second and third provisos in 34 U. S. C. 410c (a), relating to the computation of retired pay for officers whose pay on the active list was not based on years of service, are omitted as obsolete, since under the Career Compensation Act of 1949, the active-duty pay of all officers is based on years of service.

In subsection (d) the words "A retired member who is advanced * * * from the grade of warrant officer, W-1, or from an enlisted grade" are substituted for the words "Enlisted men and warrant officers * * * advanced" and the words "as a warrant officer, W-1, or an enlisted member" are substituted for the words "to be enlisted or warrant officer personnel" because the Warrant Officer Act of 1954 established the grade of warrant officer, W-1, in lieu of the old warrant officer (as distinguished from commissioned warrant officer) grades. The words "rank or" are omitted as unnecessary. The words "within three months of the date of the approval of this Act" and "whichever is the later" are omitted as executed.

AMENDMENTS

1963—Subsec. (b). Pub. L. 88-132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Pub. L. 85-861, § 1 (139) (A), substituted "who serve satisfactorily under temporary appointments" for "temporarily appointed or promoted during World War II" in the catchline.

Subsec. (a). Pub. L. 85-861, § 1 (138), eliminated provisions which restricted application of section to members of the Navy or the Marine Corps who were appointed or promoted under the act of July 24, 1941, ch. 320, 55 Stat. 603.

Subsec. (b). Pub. L. 85-422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-422 effective on June 1, 1958.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6152. Emergency shore duty: advance of funds.

Under such regulations as the President approves, the Secretary of the Navy may, to meet necessary expenses, advance funds to members of the naval service detailed on emergency shore duty. The funds advanced may not exceed the reasonable estimate of expenses to be incurred for which reimbursement is authorized. (Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6152	34 U. S. C. 885.	May 22, 1928, ch. 688, 45 Stat. 712.

The words "public", "actual", and "by law" are omitted as surplusage.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 885 of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

§ 6153. Shore patrol duty: payment of expenses.

An officer, midshipman, or cadet of the naval service who is assigned to shore patrol duty away

from his vessel or other duty station may be paid his actual services. (Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6153	37 U. S. C. 306 (less applicability to Coast Guard).	Oct. 12, 1949, ch. 681, § 506 (less applicability to Coast Guard), 63 Stat. 828.

§ 6154. Mileage books: commutation tickets.

The Secretary of the Navy may buy such mileage books, commutation tickets, and other similar transportation tickets as he considers necessary, and he may furnish them to persons ordered to perform travel on official business. Payment for those tickets before the travel is performed is not an advance of public money within the meaning of section 529 of title 31. (Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6154	34 U. S. C. 891.	Apr. 27, 1904, ch. 1630, 33 Stat. 403 (6th par., 2d sentence).

The words "to continue" and the words "upon their receipt in accordance with commercial usage" are omitted as surplusage. The word "persons" is substituted for the words "officers and others".

§ 6155. Uniforms, accouterments, and equipment: sale at cost.

Under such regulations as the Secretary of the Navy prescribes, uniforms, accouterments, and equipment shall be sold by the United States at cost to officers and midshipmen of the naval service and, when the Coast Guard is operating as a service in the Navy, to officers of the Coast Guard. (Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6155	34 U. S. C. 537.	Jan. 12, 1919, ch. 8, 40 Stat. 1054; Aug. 4, 1949, ch. 393, § 9, 63 Stat. 559.

The words "officers and midshipmen of the naval service" are substituted for the words "any officer of the Navy or any officer of the Marine Corps" and "any midshipman". The words "at the Naval Academy" are omitted. The statute is interpreted as covering all midshipmen, including the reserve category created by subsequent statute. The word "sold" is substituted for the word "furnished" for directness of expression.

§ 6156. Uniform: sale to former members of the naval service.

(a) Under such regulations as the Secretary of the Navy prescribes, exterior articles of uniform may be sold to a person who has been discharged from the naval service honorably or under honorable conditions. This section does not modify section 772 or 773 of this title.

(b) Money received from sales under this section shall be covered into the Treasury to the credit of the appropriation out of which the articles were purchased. (Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6156	34 U. S. C. 608.	Feb. 14, 1927, ch. 134, 44 Stat 1096.

The word "person" is substituted for the words "former members of the naval service".

§ 6157. Repealed. Pub. L. 87-651, title I, § 123(b), Sept. 7, 1962, 76 Stat. 514.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 387, related to transportation of motor vehicles on permanent change of station, and is now covered by section 2634 of this title.

§ 6158. Repealed. Pub. L. 90-235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 387, exempted enlisted members of the Marine Corps, while on active duty, from personal arrest for debt or contract.

§ 6159. Repealed. Pub. L. 91-482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Section, Pub. L. 85-56, title XXII, § 2201(31)(C), June 17, 1957, 71 Stat. 161, provided for a pension to disabled naval enlisted personnel serving 20 years or more, equal to one-half the pay of enlisted man's rating at the time of his discharge.

PENSION CONTINUATION PROVISION

Section 3 of Pub. L. 91-482 provided that: "Notwithstanding the first section of this Act [repealing this section and sections 4539, 4623, 5981, and 6406 of this title and section 208 of Title 37], a person who is entitled to a pension under section 6159 of title 10, United States Code [this section], on the day before the date of enactment of this Act [which was approved Oct. 21, 1970] shall continue to be entitled to that pension on and after that date of enactment."

§ 6160. Pension to persons serving ten years.

(a) Every disabled person who has served in the Navy or Marine Corps as an enlisted man or petty officer, or both, for ten or more years, and has not been discharged for misconduct, may apply to the Secretary of the Navy for aid.

(b) Upon receipt of an application under subsection (a), the Secretary of the Navy may convene a board of not less than three naval officers (one of whom shall be a surgeon) to examine into the condition of the applicant, and to recommend a suitable amount for his relief, and for a specified time. If the Secretary of the Navy approves the recommendation, he shall so certify to the Administrator of Veterans' Affairs, who shall pay a pension in such amount monthly to the applicant.

(c) No naval pension under this section shall be paid at a rate in excess of the rate payable to a veteran of World War I for permanent and total non-service-connected disability, unless the applicant's disability is service-connected, in which case the naval pension payable to him shall not exceed the rate of disability compensation payable for total disability to a veteran of any war, or of peacetime service, as the case may be. In the case of any initial award of naval pension granted before July 14, 1943, where the person granted the naval pension is also entitled to pension or compensation under laws administered by the Veterans' Administration, such naval pension shall not exceed one-fourth of such

pension or compensation. (Added Pub. L. 85–56, title XXII, § 2201 (31) (C), June 17, 1957, 71 Stat. 161, and amended Pub. L. 85–857, § 13 (v) (4), Sept. 2, 1958, 72 Stat. 1268.)

AMENDMENTS

1958—Pub. L. 85–857 limited naval pensions granted before July 14, 1943 to not more than one-fourth of any pension or compensation which the person is entitled to receive under laws administered by the Veterans' Administration.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13 (v) (4) of Pub. L. 85–857 provided in part that the amendment of this section by Pub. L. 85–857 shall be effective as of Jan. 1, 1958.

EFFECTIVE DATE

Section effective January 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

§ 6161. Remission of indebtedness of enlisted members upon discharge.

If he considers it in the best interest of the United States, the Secretary of the Navy may have remitted or canceled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of that member's honorable discharge. (Added Pub. L. 86–511, § 1(a), June 11, 1960, 74 Stat. 207.)

Chapter 563.—HOSPITALIZATION AND MEDICAL CARE

Sec.
6201. Members of the naval service in other United States hospitals.
6202. Insane members of the naval service.
6203. Emergency medical treatment: reimbursement for expense.

§ 6201. Members of the naval service in other United States hospitals.

(a) When appropriate naval hospital facilities are unavailable, the Secretary of the Navy may provide for the care and treatment of members of the naval service, entitled to treatment in naval hospitals, in other United States hospitals, if the agencies controlling the other hospitals consent. Expenses incident to such care and treatment are chargeable to the same appropriation as would be chargeable for care and treatment in a naval hospital.

(b) The deduction authorized by section 16 of title 24 shall be made from accounts of members hospitalized under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 387; Sept. 2, 1958, Pub. L. 85–861, § 36B(19), 72 Stat. 1571.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6201 (a), (b), (c).	24 U. S. C. 31. 34 U. S. C. 854f; 34 U. S. C. 854 (note).	Jan. 19, 1929, ch. 85, 45 Stat. 1090. June 25, 1938, ch. 690, § 207, 52 Stat. 1180. July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words "members of the naval service" are substituted for the words "naval patients on the active or retired list and members of the Naval Reserve or Marine Corps Reserve". The definition of "member of the naval service" makes the terms coextensive. Reference to St. Elizabeths Hospital is omitted in view of Reorganization Plan No. 3 of 1946, § 201, 60 Stat. 1098, which transferred the functions of that hospital pertaining to members of the naval service to the Secretary of the Navy. For the purposes of this section, St. Elizabeths is now in the same category as other United States hospitals.

In subsection (b) reference to R. S. 4813 (24 U. S. C. 6) is omitted because the Administrator of Veterans' Affairs held in Decision Number 571 (July 27, 1944) that R. S. 4813 was repealed by implication. Since this decision is binding on the Secretary of the Navy (see 38 U. S. C. 11a–2), the deductions from pension accounts authorized by R. S. 4813 may not be made.

In subsection (c) the words "each retired enlisted member of the naval service" are substituted for the words "retired enlisted men" and the words "is entitled to" are substituted for the words "shall receive" to conform to terminology used throughout this title. The words "equal in value to the hospital ration" are substituted for the words "prescribed by law for enlisted men of the Regular Navy" to show that the amount of the allowance is the value of the hospital ration. The words "for each day" are inserted to make it clear that the ration allowance is credited on a daily basis. The words "under this section" are substituted for the words "in a Federal hospital in accordance with law" because this section is the only authority for the hospitalization of members of the Fleet Reserve and Fleet Marine Corps Reserve and retired enlisted members of the naval service in Federal hospitals, other than naval hospitals, under conditions entitling the members to a ration allowance. The subsistence of a member of the Fleet Reserve or Fleet Marine Corps Reserve or a retired enlisted member of the naval service while hospitalized in naval hospitals is covered by § 6086 of this title.

AMENDMENTS

1958—Pub. L. 85–861 repealed former subsec. (c), which related to a ration allowance for members of the Fleet Reserve of the Fleet Marine Corps Reserve and retired enlisted members of the naval service.

§ 6202. Insane members of the naval service.

A member of the naval service who becomes insane may be placed in the hospital for the insane that, in the opinion of the Secretary of the Navy, is most convenient and will provide the most beneficial treatment. (Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6202	34 U. S. C. 595.	R. S. 1551; July 1, 1916, ch. 209, § 1, 39 Stat. 309.

The words "that * * * will provide the most beneficial treatment" are substituted for the words "best calculated to promise a restoration of reason" for clarity. The second sentence of 34 U. S. C. 595 is omitted as superseded. It provided a method by which the Secretary of the Navy, in his discretion, could compensate other agencies for expenses involved in hospitalizing insane naval patients. Other provisions of law, principally 24 U. S. C. 31, 31 U. S. C. 686, and 37 U. S. C. 284, and regulations, principally Executive Order 10122, of April 14, 1950, establish the method currently used.

§ 6203. Emergency medical treatment: reimbursement for expense.

The Secretary of the Navy shall prescribe regulations for reimbursing members of the naval service for expenses of emergency or necessary medical service, including hospitalization and medicines, when the member was in a duty status at the time he received the service and the service was not available from a Federal source. For the purpose of this section, a member on leave or liberty is in a duty status. (Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6203	34 U. S. C. 921a; 34 U. S. C. 921b.	May 4, 1948, ch. 254, § 2, 62 Stat. 208. May 4, 1948, ch. 254, § 3, 62 Stat. 208.

The word "shall" is substituted for the words "authorized and directed to". The word "members" is substituted for the word "persons". The words "from civilian sources" are omitted as surplusage. The word "hospitalization" is substituted for the words "hospital service". In the second sentence, the word "authorized" is omitted as surplusage.

Chapter 565.—BANDS

Sec.
6221. United States Navy Band; leader's pay and allowances.
6222. United States Marine Band: composition; director; assistant director.
6223. Competition with civilian musicians prohibited.
6224.[1] United States Navy Band: United States Marine Corps Band: concert tours.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (141), Sept. 2, 1958, 72 Stat. 1509, substituted "United States Marine Band" for "United States Marine Corps Band", and "director; assistant director" for "pay and allowances of leader and second leader" in item 6222.

§ 6221. United States Navy Band; leader's pay and allowances.[2]

(a) There is a Navy band known as the United States Navy Band.

(b) Repealed. Pub. L. 87-649, § 14c(44), Sept. 7, 1962, 76 Stat. 501.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Sept. 7, 1962, Pub. L. 87-649, § 14c(44), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6221	34 U. S. C. 596 (less 3d proviso).	Mar. 4, 1925, ch. 536, § 17 (less 3d proviso), 43 Stat. 1275.

Subsection (a) is set forth to preserve the legal authority for the title of the band, but the first 30 words of the act of March 4, 1925, ch. 536, § 17, 43 Stat. 1275, are omitted as executed. To conform to the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.), the word "basic" is inserted before "pay" in subsection (b) and the words "and is entitled to be credited for pay purposes with all service which may be credited under section 202 of the Career Compensation Act of 1949 (37 U. S. C. 233)" are substituted for the words *"Provided,* That all service as an enlisted man in the naval service shall be counted in computing longevity increases for pay of this leader".

The second proviso is omitted as executed.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-649 repealed subsec. (b), which related to the pay and allowances of the leader of the United States Navy Band. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Pay and allowances, see sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6222. United States Marine Band: composition; director; assistant director.

(a) The band of the Marine Corps shall be composed of one director, two assistant directors, and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

(b) The Secretary shall designate the director and assistant directors of the Marine Band from among qualified members of the Marine Corps. Upon the recommendation of the Secretary, a member so designated may be appointed by the President, by and with the advice and consent of the Senate, to a commissioned grade in the Regular Marine Corps.

(c) The initial appointment to a commissioned grade of a member designated as director of the Marine Band shall be in the grade of captain, except that a member who, at the time of his designation, holds an appointment in a higher grade may be appointed in that higher grade, but not above lieutenant colonel. The initial appointment of a member designated as assistant director shall be in a grade below captain.

(d) The Secretary shall prescribe regulations for the promotion of members designated as director or assistant director of the Marine Band, and the President, by and with the advice and consent of the Senate, may from time to time appoint them to higher grades.

(e) Repealed. Pub. L. 87-649, § 14c(45), Sept. 7, 1962, 76 Stat. 501.

(f) Unless otherwise entitled to higher retired grade and retired pay, a member who holds, or has held, an appointment under this section is entitled, when retired, to be retired in, and with retired pay based on, the highest grade held under this section in which the Secretary determines that he served satisfactorily.

(g) The Secretary may revoke any designation as director or assistant director of the Marine Band. When a member's designation is revoked, his appointment to commissioned grade under this section terminates and he is entitled, at his option—

(1) to be discharged from the Marine Corps; or

(2) to revert to the grade and status he held at the time of his designation as director or assistant director.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Sept. 2, 1958, Pub. L. 85-861, § 1(140), 72 Stat. 1508; Sept. 7, 1962, Pub. L. 87-649, § 14c(45), 76 Stat. 501; Feb. 24, 1970, Pub. L. 91-197, 84 Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6222	34 U. S. C. 701 (less proviso).	Mar. 4, 1925, ch. 536, § 11 (less proviso), 43 Stat. 1274; June 29, 1946, ch. 523, § 1 (c), 60 Stat. 343; Oct. 12, 1949, ch. 681, § 517 (a), 63 Stat. 833.

In subsection (b) the second sentence is substituted for the two references to the Career Compensation Act of 1949 and for the words "and with the same number of cumulative years of service".

[1] Section 6224 repealed and analysis was not amended to reflect such repeal.

[2] Section amended by Pub. L. 87-649 to eliminate provisions which related to pay and allowances without amending catchline to reflect such change.

AMENDMENTS

1970—Subsec. (d). Pub. L. 91–197 struck out provision that the grade of the director be no higher than lieutenant colonel and that the grades of the assistant directors be no higher than captain.

1962—Subsec. (e). Pub. L. 87–649 repealed subsec. (e) which related to pay and allowances of members who accepted a commission under this section. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Pub. L. 85–861 substituted "United States Marine Band" for "United States Marine Corps Band", and "director; assistant director" for "pay and allowances of leader and second leader" in the catchline.

Subsec. (a). Pub. L. 85–861 authorized one director and two assistant directors instead of one leader and one second leader.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designation of director and assistant directors for provisions which prescribed the pay and allowances of the leader and second leader.

Subsecs. (c)—(g). Pub. L. 85–861 added subsecs. (c)—(g).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Pay and allowances, see sections 207 and 427 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 207.

§ 6223. Competition with civilian musicians prohibited.

(a) No Navy band, except the United States Naval Academy Band, and no member of any Navy band may receive remuneration for furnishing music outside a military installation when the furnishing of such music involves competition with local civilian musicians.

(b) No member of the United States Marine Corps Band, as an individual, may furnish music in competition with any civilian musician or receive remuneration for furnishing music except under special circumstances when authorized by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6223 (a)	None.	May 13, 1908, ch. 166, 35 Stat. 153 (2d par.).
6223 (b)	34 U. S. C. 702.	Aug. 29, 1916, ch. 417, 39 Stat. 612 (proviso of 4th par.).

In subsection (a) the phrase "at Annapolis, Maryland," is omitted as surplusage.

In subsection (b) the phrases "or accept an engagement to furnish music, when such furnishing of music places him", "or musicians", and "accept or" are omitted as surplusage.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (b) of this section delegated to the Secretary of Defense, see section 1(13) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 974 of this title.

§ 6224. Repealed. Pub. L. 87–649, § 14c(46), Sept. 7, 1962, 76 Stat. 501.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 388, provided that members of the United States Navy Band and the United States Marine Corps Band shall lose no allowances while on concert tours approved by the President, and is now covered by section 425 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

Chapter 567.—DECORATIONS AND AWARDS

Sec.
6241. Medal of honor.
6242. Navy cross.
6243. Distinguished-service medal.
6244. Silver star medal.
6245. Distinguished flying cross.
6246. Navy and Marine Corps Medal.
6247. Additional awards.
6248. Limitations of time.
6249. Limitation of honorable service.
6250. Posthumous awards.
6251. Delegation of power to award.
6252. Regulations.
6253. Replacement.
6254. Availability of appropriations.
6255. Commemorative or special medals: facsimiles and ribbons.

CROSS REFERENCES

General military law provisions, see section 1121 et seq. of this title.

§ 6241. Medal of honor.

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the naval service, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force;

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; July 25, 1963, Pub. L. 88–77, § 2(1), 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6241	34 U. S. C. 354.	Feb. 4, 1919, ch. 14, § 1, 40 Stat. 1056; Aug. 7, 1942, ch. 551 § 1, 56 Stat. 743.

In subsection (a) the word "award" is added for clarity since the President determines the recipient, in addition to presenting the medal in the name of Congress. The words "a member of the naval service" are substituted for the words "in the naval service of the United States" for uniformity. The word "distinguishes" is substituted for the words "shall * * * distinguish" for uniformity.

In subsection (b) the words "of the medal of honor authorized on August 8, 1942" are substituted for the words "adopted pursuant to the Act approved December 21, 1861 (12 Stat. 330)" for the reason that the 1861 Act does not establish the design, and the date of formal adoption of the design of the medal is obscure. The effect of the subsection is to continue the design recognized by 34 U. S. C. 354.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the medal of honor, which was limited to those cases in

which persons distinguish themselves in action involving actual conflict with an enemy, or in the line of his profession, and without detriment to the mission of his command or to the command to which attached, to permit its award for distinguished service while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, and substituted the requirement that it be of appropriate design, with ribbons and appurtenances, for the requirement that it be the same as that authorized on August 8, 1942.

CROSS REFERENCES

Award of Medal of Honor to members of Army and Air Force, see sections 3741 and 8741 of this title.

CROSS REFERENCES

Meritorious Service Medal, establishment of, see Ex. Ord. No. 11448, set out as a note preceding section 1121 of this title.

§ 6242. Navy cross.

The President may award a Navy cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; July 25, 1963, Pub. L. 88–77, § 2(2), 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6242	34 U. S. C. 356.	Feb. 4, 1919, ch. 14, § 3, 40 Stat. 1056; renumbered § 2 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 743.

The word "award" is substituted for the word "present" to cover the determination of the recipient as well as the actual presenting of the decoration. The words "but not in the name of Congress" are omitted, since a decoration is presented in the name of Congress only if the law so directs. The words "Navy or the Marine Corps" are substituted for the words "naval service of the United States" for clarity. To be eligible for the award, a person need not be a member of the naval service, but only serving in some capacity either with the Navy or with the Marine Corps.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the Navy cross, which was limited to those cases in which persons distinguished themselves in connection with military operations against an armed enemy, to permit its award for extraordinary heroism not justifying the award of a medal of honor, while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

§ 6243. Distinguished-service medal.

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility. (Aug. 10, 1956, ch. 1041, 70A Stat. 389.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6243	34 U. S. C. 355.	Feb. 4, 1919, ch. 14, § 2, 40 Stat. 1056; renumbered § 3 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 743.

The word "award" is substituted for the word "present" to cover the determination of the recipient as well as the actual presenting of the decoration. The words "but not in the name of Congress" are omitted as surplusage, since a decoration is presented in the name of Congress only if Congress so directs. The words "Navy or the Marine Corps" are substituted for the words "Navy of the United States" because the provision is interpreted as authorizing the award of the medal to persons serving with the Marine Corps as well as with the Navy. The words "since the sixth day of April 1917 has distinguished" are omitted as executed. The words "United States" are substituted for the word "Government" for uniformity.

CROSS REFERENCES

Award of distinguished-service medal to members of Army and Air Force, see sections 3743 and 8743 of this title.

§ 6244. Silver star medal.

The President may award a silver star medal of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, is cited for gallantry in action that does not warrant a medal of honor or Navy cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; July 25, 1963, Pub. L. 88–77, § 2(3), 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6244	34 U. S. C. 356a.	Feb. 4, 1919, ch. 14, § 4; added Aug. 7, 1942, ch. 551, § 1, 56 Stat. 743.

The word "award" is substituted for the word "present" to cover the determination of the recipient as well as the actual presenting of the decoration. The words "but not in the name of Congress" are omitted as surplusage, since a decoration is presented in the name of Congress only if the law so directs. The words "Navy or the Marine Corps" are substituted for the words "Navy of the United States" because the provision is interpreted as authorizing the award of the medal to persons serving with the Marine Corps. The words "since December 6, 1941, has distinguished himself" are omitted as executed.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award a silver star medal, which was limited to those cases in which persons distinguished themselves in action, to permit its award for gallantry while engaged in an action against an enemy of the United States, while engaged in

military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

CROSS REFERENCES

Award of silver star to members of Army and Air Force, see sections 3746 and 8746 of this title.

§ 6245. Distinguished flying cross.

The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight. (Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6245	34 U. S. C. 364a (1st sentence, less 1st 9 words, and less 2d and 3d sentences).	July 2, 1926, ch. 721, § 12 (1st sentence, less 1st 9 words, and less 2d and 3d sentences), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.

The word "award" is substituted for the word "present" to cover the determination of the recipient as well as the actual presenting of the decoration. The words "but not in the name of Congress" are omitted as surplusage, since a decoration is presented in the name of Congress only if the law so directs. The proviso of the first sentence of 34 U. S. C. 364a is omitted as executed. The words "Navy or the Marine Corps" are substituted for the words "United States Navy" because the provision is interpreted as authorizing the award of the decoration to persons serving with the Marine Corps as well as with the Navy. The words "and notwithstanding the provisions of section 14 of this Act," which are not now contained in title 34, are omitted as unnecessary. The words "since the 6th day of April, 1917, has distinguished, or who, after July 2, 1926," are omitted as executed.

CROSS REFERENCES

Award of distinguished flying cross to members of Army and Air Force, see sections 3749 and 8749 of this title.

§ 6246. Navy and Marine Corps Medal.

The President may award a medal called the "Navy and Marine Corps Medal" of appropriate design with accompanying ribbon, together with a rosette or other device to be worn in place thereof—

(1) to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism not involving actual conflict with an enemy; or

(2) to any person to whom the Secretary of the Navy, before August 7, 1942, awarded a letter of commendation for heroism, and who applies for that medal, regardless of the date of the act of heroism.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6246	34 U. S. C. 356b.	Feb. 4, 1919, ch. 14, § 5; added Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The word "award" is substituted for the word "present" to cover the determination of the recipient as well as the actual presenting of the award. The words "but not in the name of Congress" are omitted since a decoration is presented in the name of Congress only if the law so directs. The words "including the Naval Reserve and Marine Corps Reserve" are omitted as covered by the definitions of the Navy and the Marine Corps. The last sentence, relating to additional pay, is omitted for the reason that, under the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.), there is no additional pay authorized for any medal. The words "since December 6, 1941" are omitted as executed. The words "or herself" are omitted as covered by the rules of construction in 1 U. S. C. 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6248 of this title.

§ 6247. Additional awards.

Not more than one medal of honor, Navy cross, distinguished-service medal, silver star medal, distinguished flying cross, or Navy and Marine Corps Medal may be awarded to a person. However, for each succeeding act or service that would otherwise justify the award of such a medal or cross, the President may award a suitable bar, emblem, or insignia to be worn with the decoration and corresponding rosette or other device. (Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6247	34 U. S. C. 358; 34 U. S. C. 364a (2d sentence).	Feb. 4, 1919, ch. 14, § 5, 40 Stat. 1056; renumbered § 7 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744. July 2, 1926, ch. 721, § 12 (2d sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.

The word "awarded" is substituted for the word "issued" for uniformity. The words "that would otherwise justify" are substituted for the words "sufficient to justify" for clarity. The word "service" is substituted for the word "achievement" for uniformity. The words "as he shall direct" are omitted as surplusage.

§ 6248. Limitations of time.

(a) Except as provided in section 6246 of this title or subsection (b), no medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof may be awarded to a person unless—

(1) the award is made within five years after the date of the act or service justifying the award; and

(2) a statement setting forth the act or distinguished service and recommending official recognition of it was made by his superior through official channels within three years from the date of that act or service.

(b) If the Secretary of the Navy determines that—

(1) a statement setting forth the act or distinguished service and recommending official recognition of it was made by the person's superior through official channels within three years from the date of that act or service and was supported by sufficient evidence within that time; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof,

as the case may be, may be awarded to the person within two years after the date of that determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 39; July 5, 1960, Pub. L. 86-582, § 1(2), 74 Stat. 320.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6248	34 U. S. C. 360.	Feb. 4, 1919, ch. 14, § 7, 40 Stat. 1056; renumbered § 9 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The words "Except as provided in section 6246 of this title" are substituted for the words "That except as otherwise prescribed herein" to identify the only exception. The words "may be awarded to a person" are substituted for the words "shall be issued to any person" for uniformity. The words "specific", "or report distinctly", and "at the time of" are omitted as surplusage. The words "bar, emblem, or insignia" are substituted for the words "or bar or other suitable emblem or insignia" for uniformity. The words "from the date of that act or service" are substituted for the word "thereafter".

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-582, § 1(2) (A), (B), designated existing provisions as subsec. (a), and inserted "or subsection (b)" after the word "title."

Subsec. (b). Pub. L. 86-582, § 1(2)(C), added subsec. (b).

§ 6249. Limitation of honorable service.

No medal, cross, or bar, or associated emblem or insignia may be awarded or presented to any person or to his representative if his service after he distinguished himself has not been honorable. (Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6249	34 U. S. C. 362; 34 U. S. C. 364a (last 31 words of 3d sentence).	Feb. 4, 1919, ch. 14, § 8 (1st proviso), 40 Stat. 1057; renumbered § 10 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 745. July 2, 1926, ch. 721, § 12 (last 31 words of 3d sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.

The word "associated" is substituted for the word "other" to relate the medal or cross to its emblem or insignia. The word "entire" is omitted as surplusage.

§ 6250. Posthumous awards.

If a person who distinguishes himself dies before an award to which he is entitled is made, the award may be made and the medal, cross, or bar, or associated emblem or insignia may be presented, within five years from the date of the act or service justifying the award, to his representative as designated by the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6250	34 U. S. C. 363; 34 U. S. C. 364a (3d sentence, less last 31 words).	Feb. 4, 1919, ch. 14, § 8 (less 1st and 2d provisos), 40 Stat. 1057; renumbered § 10 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 745. July 2, 1926, ch. 721, § 12 (3d sentence, less last 31 words), 44 Stat. 789; July 30, 1937, ch. 545, § 4 50 Stat. 549.

The word "associated" is substituted for the word "other" to relate the medal or cross to its emblem or insignia.

§ 6251. Delegation of power to award.

The President may delegate, under such conditions as he prescribes, to flag and general officers who are commanders-in-chief or commanding on important independent duty, his authority to award the Navy cross, the distinguished-service medal, the silver star medal, or the Navy and Marine Corps Medal. (Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6251	34 U. S. C. 364 (less 10th, and last 47 words).	Feb. 4, 1919, ch. 14, § 9 (less applicability to regulations), 40 Stat. 1057; renumbered § 11 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 745.

The term "flag officers" is used generically in 34 U. S. C. 364. Officers of the Marine Corps who meet the duty requirements, if in the equivalent grades, are, therefore, within its terms and the authority to make the awards has been delegated to such officers.

§ 6252. Regulations.

The President may prescribe regulations for the administration of the preceding sections of this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6252	34 U. S. C. 364 (10th, and last 47 words); 34 U. S. C. 364a (1st 9 words of 1st sentence).	Feb. 4, 1919, ch. 14, § 9 (as applicable to regulations), 40 Stat. 1057; renumbered § 11 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 745. July 2, 1926, ch. 721, § 12 (1st 9 words of 1st sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.

The words "further", "from time to time any and all rules", "orders which he shall deem necessary", and "to execute full purpose and intention thereof" are omitted as surplusage.

§ 6253. Replacement.

The Secretary of the Navy may replace without charge any medal of honor, Navy cross, distinguished-service medal, silver star medal, or Navy and Marine Corps Medal, or any associated bar, emblem, or insignia awarded under this chapter that is lost or destroyed or becomes unfit for use without fault or neglect on the part of the person to whom it was awarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6253	34 U. S. C. 359 (proviso).	Feb. 4, 1919, ch. 14, § 6 (proviso), 40 Stat. 1056; renumbered § 8 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The words "Secretary of the Navy may replace" are substituted for the words "*Provided*, That such replacement shall be made only in those cases where".

§ 6254. Availability of appropriations.

The Secretary of the Navy may spend from appropriations for the pay of the Navy or the Marine Corps, as appropriate, amounts necessary to provide and replace medals of honor, Navy crosses, distinguished-service medals, silver star medals, and Navy and Marine Corps Medals, and associated bars, emblems, and insignia. (Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6254	34 U. S. C. 359 (less proviso).	Feb. 4, 1919, ch. 14 § 6 (less proviso), 40 Stat. 1056; renumbered § 8 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The words "the appropriations for the pay of the Navy or the Marine Corps, as appropriate", are substituted for the words "the appropriation 'Pay, subsistence, and transportation of naval personnel'", to identify by a general description, rather than by the specific appropriation title, the appropriation authorized to be used. Specific appropriation titles vary from one appropriation act to the next. The permanent authority contained in 34 U. S. C. 359 for the Secretary of the Navy to use appropriations available for the pay of the Navy and the Marine Corps is not affected by a change in the titles of those appropriations nor is it affected by a specific authorization in an appropriation act to use, during the life of the act, a different type of appropriation.

§ 6255. Commemorative or special medals: facsimiles and ribbons.

Under regulations prescribed by the Secretary of the Navy, members of the naval service may wear, in place of commemorative or special medals awarded to them, miniature facsimiles of such medals and ribbons symbolic of the awards. (Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6255	34 U. S. C. 358a.	Apr. 25, 1935, ch. 82, 49 Stat. 162.

The words "members of the naval service may" are substituted for the words "That authority is hereby granted to personnel of the Navy and Marine Corps" for clarity.

Chapter 569.—DISCHARGE OF ENLISTED MEMBERS

Sec.
6292. Minors enlisted upon false statement of age.
6294. Women in the Regular Navy and Regular Marine Corps: termination of enlistment.

AMENDMENTS

1968—Pub L. 90–235, §§ 3(a)(4), (b)(4), 8(4), Jan. 2, 1968, 81 Stat. 758, 764, struck out item 6291, which read: "Honorable discharges", item 6293, which read: "Minors enlisted without consent of parent or guardian", item 6295, which read: "Regular Navy: early discharge", item 6296, which read: "Furlough without pay", item 6297, which read: "Disposition of uniform; clothing allowance; emergency funds", and item 6298, which read: "Authority to live at a receiving station after honorable discharge".

§ 6291. Repealed. Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 391, provided for honorable discharges for enlisted members of the naval service.

§ 6292. Minors enlisted upon false statement of age.

(a) The Secretary of the Navy, under regulations prescribed by him, may discharge or release from the naval service, with pay and allowances and form of discharge certificate appropriate for his service after enlistment, any enlisted member who, as the result of a false statement of age on his application for enlistment, was enlisted while under the minimum statutory or administrative age limit. A member so discharged or released is entitled to transportation in kind and subsistence from the place of discharge to his home.

(b) Appropriations available for pay and allowances, subsistence, and transportation of enlisted members of the naval service are available for payments under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6292 (a)	34 U. S. C. 900a.	Sept. 24, 1945, ch. 385, § 1, 59 Stat. 536.
6292 (b)	34 U. S. C. 900a (note).	Sept. 24, 1945, ch. 385, § 3, 59 Stat. 537.

The word "member" is substituted for the word "person" and the words "naval service" are substituted for the words "Navy, Marine Corps, and the Reserve components thereof". The words "form of" are added for clarity. Reference to the date "September 24, 1945" is omitted as unnecessary. The words "is entitled to" are substituted for the words "shall be furnished" for uniformity. The decision of the Comptroller General of December 23, 1949 (B–91297), has not been overlooked. That decision, without passing on a case in which the point was involved, indicated that the transportation entitlement in 34 U. S. C. 900a might be impliedly repealed by the Career Compensation Act of 1949. The editors of the United States Code Annotated, apparently on the basis of this decision, have omitted 34 U. S. C. A. 900a from the 1954 pocket part. A conclusion that the section is repealed, however, defeats the specific purpose of the provision, which, as indicated in the legislative hearings, was to insure that underage dischargees would be transported home and not simply released at the place of discharge.

§ 6293. Repealed. Pub. L. 90–235, § 3(a)(2), Jan. 2, 1968, 81 Stat. 757.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for discharges for minors enlisted in the naval service or in the Regular Navy as seamen, seamen apprentices or seamen recruits. See section 1170 of this title.

§ 6294. Women in the Regular Navy and Regular Marine Corps: termination of enlistment.

The Secretary of the Navy, under regulations prescribed by him, may terminate the enlistment of and discharge any enlisted woman in the Regular Navy or the Regular Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 392.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6294	34 U. S. C. 105i (less (a)).	June 12, 1948, ch. 449, § 214 (less (a)), 62 Stat. 370.

SEPARATION FROM SERVICE

Ex. Ord. No. 10240, Apr. 27, 1951, 16 F. R. 3689, set out under section 3818 of this title, prescribes the regulations governing separation of women from the Navy and Marine Corps.

§§ 6295 to 6298. Repealed. Pub. L. 90-235, §§ 3(a)(2), (b)(1), 8(3), Jan. 2, 1968, 81 Stat. 757, 758, 764.

Section 6295, act Aug. 10, 1956, ch. 1041, 70A Stat. 392 provided for early discharges from the Regular Navy. See section 1171 of this title.

Section 6296, act Aug 10, 1956, ch. 1041, 70A Stat 392, provided for furlough without pay for any enlisted member of the Regular Navy for the unexpired term of his enlistment.

Section 6297, act Aug. 10. 1956, ch. 1041, 70A Stat. 393, provided for the disposition of uniforms of enlisted members of the naval service who were discharged and for the disposition of uniforms of and clothing allowance and emergency funds for enlisted members of the naval service who were discharged other than honorably.

Section 6298, act Aug. 10, 1956, ch. 1041, 70A Stat. 393, authorized the Secretary of the Navy to permit any person honorably discharged from the naval service to live at any naval receiving station while he was elegible for a reenlistment bonus.

Chapter 571.—VOLUNTARY RETIREMENT

Sec.
6321. Officers: 40 years.
6322. Officers: 30 years.
6323. Officers: 20 years.
6324. Officers: creditable service.
6325. Officers: retired grade and pay.
6326. Enlisted members: 30 years.
6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay.
6328. Treatment of fractions of years of service in computing retired pay.
6329. Officers not to be retired for misconduct.
6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay.
6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay.
6332. Conclusiveness of transfers.

AMENDMENTS

1967—Pub. L. 90-130, § 1(23)(B), Nov. 8, 1967, 81 Stat. 380, eliminated "Nurse Corps" preceding "Officers" in item 6324.

CROSS REFERENCES

General military law provisions, see section 1201 et seq. of this title.

§ 6321. Officers: 40 years.

(a) Each officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W-1, or above who applies for retirement after completing 40 or more years of active service shall be retired by the Secretary of the Navy.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces. (Aug. 10, 1956, ch. 1041, 70A Stat. 393.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6321	34 U. S. C. 381; 34 U. S. C. 879 (less applicability to enlisted men); 34 U. S. C. 626-1 (a) (1st sentence).	R. S. 1443; June 17, 1948, ch. 497, § 1 (a), 62 Stat. 477. June 4, 1920, ch. 228, § 3 (3d proviso, less applicability to enlisted men), 41 Stat. 835. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words "Regular" and "holding a permanent appointment in the grade of warrant officer, W-1, or above" are inserted for clarity. The word "shall" is substituted for the word "may" because the Attorney General has construed R. S. 1443 as conferring a right to retirement upon officers who apply for it after 40 years of service (30 Op. Atty. Gen. 406). The words "from active service" are omitted as surplusage. The words "after completing 40 or more years of active service" are substituted for the words "has been forty years in the service of the United States" for clarity.

In subsection (b) the accepted meaning of the words "service of the United States" is spelled out for clarity. They have been consistently interpreted to include active service in the armed forces as defined in this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

§ 6322. Officers: 30 years.

(a) An officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W-1, or above who applies for retirement after completing 30 or more years of active service may, in the discretion of the Secretary of the Navy, be retired.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(c) Each officer who is retired under this section is entitled to retired pay at the rate of 75 percent of the highest basic pay of the grade in which retired. (Aug. 10, 1956, ch. 1041, 70A Stat. 394.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6322	34 U. S. C. 383; 34 U. S. C. 879 (less applicability to enlisted men); 34 U. S. C. 626-1 (a) (1st sentence).	May 13, 1908, ch. 166, 35 Stat. 128 (8th sentence, less proviso); June 17, 1948, ch. 497, § 1 (d), 62 Stat. 477. June 4, 1920, ch. 228, § 3 (3d proviso, less applicability to enlisted men), 41 Stat. 835. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words "Regular" and "holding a permanent appointment in the grade of warrant officer, W-1, or above" are inserted for clarity. The words "after completing 30 or more years of active service" are substituted for the words "has been thirty years in the service" for clarity. The words "retired from active service" are omitted as surplusage.

Subsection (b) is added to clarify the word "service". It has been consistently interpreted to include active service in the armed forces as defined in this title.

In subsection (c) the words "is entitled to retired pay at the rate of 75 percent of the highest basic pay of the grade in which retired" are substituted for the words "with three-fourths of the highest pay of his grade" for clarity and uniformity of expression.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

§ 6323. Officers: 20 years.

(a) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active service in the armed forces under permanent or temporary appointments in grades above warrant officer, W-1.

(c) Unless otherwise entitled to a higher grade, each officer retired under this section shall be retired—

(1) in the highest grade, permanent or temporary, in which he served satisfactorily on active duty as determined by the Secretary of the Navy; or

(2) if the Secretary determines that he did not serve satisfactorily in his highest temporary grade, in the next lower grade in which he has served, but not lower than his permanent grade.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay at the rate of 2½ percent of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(f) Officers of the Naval Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213 (b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible. (Aug. 10, 1956, ch. 1041, 70A Stat. 394; Sept. 2, 1958, Pub. L. 85-861, § 1 (142), 72 Stat. 1509; Oct. 2, 1963, Pub. L. 88-132, § 5 (h) (4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6323 (a) and (b).	34 U. S. C. 410b.	Feb. 21, 1946, ch. 34, § 6, 60 Stat. 27.
6323 (c)----	34 U. S. C. 410b-1.	Apr. 14, 1949, ch. 52, § 1 (less applicability to Act of June 29, 1948, ch. 708, § 301 (b), 62 Stat. 1087), 63 Stat 47.

In subsection (b) the words "or the Reserve Components thereof" are omitted because the terms "Navy", "Marine Corps", and "Coast Guard" include the reserve components. The words "including active duty for training" are omitted because the term "active duty" is defined in this title as including training duty.

The act of April 14, 1949 (34 U. S. C. 410b-1), extending the benefits of 34 U. S. C. 410b to officers on the honorary retired lists, was enacted because the Comptroller General had held that these officers, being already in a retired status, could not be retired under 34 U. S. C. 410b (U. S. Code Congressional Service, 1949, p. 1179). The provisions of the Naval Reserve Act of 1938 relating to the honorary retired lists were repealed by § 803 of the Armed Forces Reserve Act of 1952, but insofar as they provided for retirement and retired pay they were reenacted, for a period of 20 years, in § 413 of that act (50 U. S. C. 1052). Persons on the honorary retired lists when the Armed Forces Reserve Act of 1952 was passed were transferred to the appropriate Retired Reserve under § 213 of the act. Persons qualifying for retirement under § 413 are likewise placed in the Retired Reserve. The purpose of Congress in enacting § 413 was to preserve the accrued rights of persons who were members of reserve components on January 1, 1953, the effective date of the act (U. S. Code Congressional and Administrative News, 1952, p. 3584). One of their rights was the right to apply for retirement under 34 U. S. C. 410b upon completion of the required service, notwithstanding the fact that, before qualifying for retirement under that section, they had already acquired a retired status. Subsection (c) is worded accordingly.

REFERENCES IN TEXT

Section 213 (b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), referred to in subsec. (f), was classified to former section 933 of Title 50, War and National Defense, and was repealed by act Aug. 10, 1956, § 53.

AMENDMENTS

1963—Subsec. (e). Pub. L. 88-132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (a). Pub. L. 85-861 substituted "first day of any month" for "first day of the month."

Subsec. (b). Pub. L. 85-861 added provisions in cl. (2).

Subsec. (c). Pub. L. 85-861 added subsec. (c), and redesignated former subsec. (c) as (f).

Subsecs (d) and (e). Pub. L. 85-861 added subsecs (d) and (e).

Subsec. (f). Pub. L. 85-861 redesignated former subsec. (c) as (f).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Treasury of authority vested in the President, see section 2 (g) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Composition of Retired Reserve, see section 274 of this title.

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 274, 974, 1006, 1405, 6325 of this title.

§ 6324. Officers: creditable service.

For the purpose of this chapter, service as a nurse in the armed forces before April 16, 1947, is considered as commissioned service. (Aug. 10, 1956, ch. 1041, 70A Stat. 394; Aug. 25, 1959, Pub. L. 86-197, § 1(6), 73 Stat. 426; Sept. 30, 1966, Pub. L. 89-609, § 1(15) 80 Stat. 853; Nov. 8, 1967, Pub. L. 90-130, § 1 (23) (A), 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6324-------	34 U. S. C. 43g (h).	Apr. 16, 1947, ch. 38, § 207 (i), 61 Stat. 50; redesignated (h), Aug. 7, 1947 ch. 512, § 434 (d), 61 Stat. 882.

The words "or the reserve components thereof" are omitted because "Army", "Navy", and "Air Force", as defined in this title, include the reserve components.

AMENDMENTS

1967—Pub. L. 90-130 substituted provision reciting simply that service as a nurse in the armed forces before April 16, 1947, is considered as commissioned service for purposes of this chapter for provisions making specific reference to service under an appointment or contract or as a commissioned officer in the Nurse Corps of the Army or the Navy or as a commissioned officer of the Air Force designated as an Air Force Nurse.

1966—Pub. L. 89-609 substituted "the person's" for "her" in the introductory text in two instances.

1959—Pub. L. 86-197 substituted "a regular officer or a reserve officer" for "an officer".

AUTHORITY OF MILITARY DEPARTMENT SECRETARIES TO CONVENE BOARDS TO RECOMMEND DEFERMENT OF RETIREMENT OR SEPARATION OF NURSES

Secretaries authorized until July 1, 1972, to convene boards of officers to consider and recommend deferment of separation or retirement of officers of the Army Nurse Corps, officers of the Navy Nurse Corps, and Air Force nurses, as needs of the service require, see section 4(f) of Pub. L. 90-130, set out as a note under section 3069 of this title.

§ 6325. Officers: retired grade and pay.

(a) Except as provided in subsection (b), each officer who is retired under section 6321 or 6322 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) unless otherwise entitled to higher pay is entitled to retired pay at the rate of 2½ percent of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(b) Each officer who is retired while serving in the grade of admiral, vice admiral, general, or lieutenant general by virtue of an appointment under section 5231 or 5232 of this title or who is retired while serving in a grade to which he was appointed under section 5597 of this title or promoted under section 5787 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade he would hold if he had not received such an appointment; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay at the rate of 2½ percent of the basic pay of the grade he would hold if he had not received such an appointment multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(c) A warrant officer who retires under section 6321, 6322, or 6323 of this title may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay. (Aug. 10, 1956, ch. 1041, 70A Stat. 394; May 20, 1958, Pub. L. 85-422, § 11 (a) (6) (B), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85-861, § 1(143), 72 Stat. 1509; Oct. 2, 1963, Pub. L. 88-132, § 5(h)(4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6325	34 U. S. C. 410m; 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 389 (1st sentence as applicable to grade); 34 U. S. C. 410c (a) (as applicable to retired pay of officers retired under 34 U. S. C. 410b); 34 U. S. C. 43g (d); 34 U. S. C. 43g (f); 34 U. S. C. 410r (a), (g); 34 U. S. C. 625h (a); 34 U. S. C. 430 (f) (as applicable to officers retired under 34 U. S. C. 381, 34 U. S. C. 383, and 34 U. S. C. 410b).	Aug 7, 1947, ch. 512, § 316 (j), 61 Stat. 868. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. R. S. 1457 (1st sentence as applicable to grade). Feb. 21, 1946, ch. 34, § 7 (a) (as applicable to retired pay of officers retired under § 6) 60 Stat. 27; Aug. 7, 1947, ch. 512, § 432 (a), 61 Stat. 881. Apr. 16, 1947, ch. 38, § 207 (e), 61 Stat. 49; redesignated (d), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (i), 64 Stat. 162. Apr. 16, 1947, ch. 38, § 207 (g), 61 Stat. 49; redesignated (f), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882. June 12, 1948, ch. 449, § 207 (a), (g), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. May 29, 1954, ch. 249, § 14 (f), 68 Stat. 163 (as applicable to officers retired under R. S. 1443, Act of May 13, 1908, ch. 166, 35 Stat. 128 (8th sentence, less proviso), and Act of Feb. 21, 1946, ch. 34, § 6, 60 Stat. 27).

Title III of the Officer Personnel Act of 1947 authorizes temporary promotions to the grades of lieutenant through rear admiral. The purpose of § 316 (j) of that act (34 U. S. C. 410m) was to insure that each officer who is temporarily promoted under that title, and who retires before he receives a permanent appointment in the grade in which he is serving, will be considered, for the purposes of the laws relating to retired grade and pay, to be serving in the grade he holds pursuant to his temporary appointment. Since § 5001 of this title provides that an officer who holds a permanent appointment in one grade and a temporary appointment in a higher grade is considered as serving in the higher grade, a restatement of the substance of § 316 (j) is unnecessary and is omitted from subsection (a). The words "retired other than by reason of physical disability incurred in line of duty", in 34 U. S. C. 43g (d) and (f) and 34 U. S. C. 410r (g), are omitted as unnecessary, since this section relates only to officers who are voluntarily retired under this chapter. The words "basic pay to which he would be entitled if serving on active duty in the grade in which retired" are substituted for the words "active-duty pay with longevity credit of the rank with which retired" in 34 U. S. C. 410c (a), for the words "active-duty pay to which entitled at the time of retirement" in 34 U. S. C. 43g (d), and for the words "active-duty pay to which she would be entitled if serving, at the time of retirement, on active duty in the rank in which placed upon the retired list" in 34 U. S. C. 43g (f) and 34 U. S. C. 410r (g), to make clear the fact that the amount of retired pay is not permanently fixed at the time of retirement but is subject to change when rates of basic pay are changed, as provided in 34 U. S. C. 410q. The words "basic pay" are substituted for the words "active-duty pay" and the words "creditable for basic pay" are substituted for the words "for which entitled to credit in the computation of her active-duty pay", and for the words "for which entitled to credit in the computation of their pay while on active duty" to conform to the terminology used in the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.)

Unlike provisions of law authorizing retirement on various other grounds, R. S. 1443, which provides for the retirement of officers on their own application after 40 years of service, contains no provisions as to retired pay.

R. S. 1588 provided, inter alia, that officers so retired should received retired pay at the rate of 75 percent of the sea pay of their respective grades, but that section was expressly repealed by § 531 (a) (7) of the Career Compensation Act of 1949, leaving no specific provision for the retired pay of officers retired under R. S. 1443. It would be absurd to assume, however, that Congress intended that an officer having 40 years of service should be retired without pay, when he could have been retired with pay at any time within the preceding 20 years. By the repeal of R. S. 1588 Congress intended merely to remove obsolete and superseded provisions as to retirement at age 62 and retirement after 45 years of service, references to sea pay, and provisions, inconsistent with later law, for half pay for officers retired for other reasons. Congress intended the retired pay of officers retired after 40 years of service to be computed according to the formula prescribed generally for retired officers, other than for officers retired by reason of physical disability, and this section is worded accordingly.

Subsection (b) is added for clarity. With respect to officers appointed under §§ 5231 or 5232 of this title it represents a necessary inference from 34 U. S. C. 410o and 623b (e), codified in § 5233 of this title.

AMENDMENTS

1963—Subsecs. (a)(2), (b)(2). Pub. L. 88-132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (a). Pub. L. 85-861 substituted "or 6322" for ", 6322, or 6323".

Subsec. (a)(2). Pub. L. 85-422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

Subsec. (b)(2). Pub. L. 85-422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-422 effective on June 1, 1958.

RECOMPUTATION OF RETIRED PAY OF ADMIRALS AND VICE ADMIRALS

Officers entitled to retired pay on May 31, 1958, who served on active duty before that day in the grade of admiral or vice admiral for a period of at least 180 days, authorized to recompute retired pay, see section 7 (b), (c) of Pub. L. 85-422.

CROSS REFERENCES

Higher retired grade and pay for members who serve satisfactorily under temporary appointments, see section 6151 of this title.

Limitation on amount of retired pay of officers of Navy holding civilian position with Government, see section 5532 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6326. Enlisted members: 30 years.

(a) Each enlisted member of the Regular Navy or the Regular Marine Corps who applies for retirement after completing 30 or more years of active service in the armed forces shall be retired by the President.

(b) For the purpose of subsection (a), "enlisted member" includes a member of the Regular Navy or the Regular Marine Corps who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(c) Each person retired under this section—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay at the rate of 75 percent of the basic pay of the pay grade in which he was serving on the day before retirement, or if he has served as senior enlisted advisor of the Navy or as sergeant major of the Marine Corps, he shall be entitled to retired pay at the rate of 75 percent of the highest basic pay to which he was entitled while so serving, if that rate is higher.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; May 20, 1958, Pub. L. 85-422, § 6 (9), 72 Stat. 129; Sept. 2, 1958, Pub. L. 85-861, § 36B (20), 72 Stat. 1571; Oct. 2, 1963, Pub. L. 88-132, § 5(h)(4), 77 Stat. 214; Dec. 16, 1967, Pub. L. 90-207, § 3(3), 81 Stat. 653.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6326	34 U. S. C. 431; 34 U. S. C. 432; 34 U. S. C. 879 (as applicable to enlisted men); 34 U. S. C. 3c (e); 34 U. S. C. 350f (a) (less provisos); 34 U. S. C. 410m; 34 U. S. C. 350i (e).	Mar. 3, 1899, ch. 413, § 17, 30 Stat. 1008; Mar. 2, 1907, ch. 2515, § 1, 34 Stat. 1217. Mar. 3, 1899, ch. 413, § 17, 30 Stat. 1008; June 22, 1906, ch. 3518, 34 Stat. 451; Mar. 2, 1907, ch. 2515, § 1, 34 Stat. 1217; June 4, 1920, ch. 228, § 3 (3d proviso as applicable to enlisted men), 41 Stat. 835. June 4, 1920, ch. 228, § 3 (3d proviso as applicable to enlisted men), 41 Stat. 835. Aug. 7, 1947, ch. 512, § 302 (e), 61 Stat. 829. July 24, 1941, ch. 320, § 7 (a), (less provisos), 55 Stat. 604; Nov. 30, 1942, ch. 643, 56 Stat. 1023. Aug. 7, 1947, ch. 512, § 316 (j), 61 Stat. 868. July 24, 1941, ch. 320, § 10 (e), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28.

In subsection (a) the word "Regular" is inserted before the words "Navy" and "Marine Corps" to reflect the longstanding interpretation that 34 U. S. C. 431 applies only to members of the Regular Navy and Regular Marine Corps. So much of the act of March 2, 1907, ch. 2515, § 1, (34 U. S. C. 431), as pertains to allowances and rations was expressly repealed by the act of June 16, 1942, ch. 413, 56 Stat. 369. The words "active service in the armed forces" are substituted for 34 U. S. C. 432 for brevity. The reference to the former Revenue Cutter Service in 34 U. S. C. 432 is omitted as obsolete, inasmuch as that Service was absorbed by the Coast Guard in 1915. If there are any enlisted men not yet retired who served in the Revenue Cutter Service, their right to count that service for the purpose of this section is protected by the saving provisions accompanying this title. The reference to active service in the Civil or Spanish-American war in 34 U. S. C. 432 is omitted as obsolete.

Subsection (b) is inserted to cover into the section permanent enlisted members who are temporarily appointed to commissioned or warrant grades.

In subsection (c) the word "grade" is substituted for the words "rating or rank" and the words "is entitled to retired pay at the rate of 75 percent of the basic pay, to which he would be entitled if serving on active duty in the grade in which retired" are substituted for the words "and with 75 per centum of the pay of the said rating or rank" to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

Subsection (d) is substituted for 34 U. S. C. 350i (e) as that section pertains to voluntary retirement of enlisted members with 30 years of active service.

AMENDMENTS

1967—Subsec. (c)(2). Pub. L. 90–207 inserted ", or if he has served as senior enlisted advisor of the Navy or as sergeant major of the Marine Corps, he shall be entitled to retired pay at the rate of 75 percent of the highest basic pay to which he was entitled while so serving, if that rate is higher" following "retirement".

1963—Subsec. (c)(2). Pub. L. 88–132 substituted "of" for "to which he would be entitled is serving on active duty in" following "75 percent of the basic pay."

1958—Subsec. (c)(2). Pub. L. 85–422 substituted "pay grade in which he was serving on the day before retirement" for "grade in which retired".

Subsec. (d). Pub. L. 85–861 repealed subsec. (d) which related to grade of members serving in a grade to which they were appointed under section 5597 or promoted under section 5787 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

APPLICATION OF 1958 AMENDMENT TO RETIRED PERSONS

Amendment by Pub. L. 85–422 inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see note under section 3991 of this title.

§ 6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay.

(a) A member of the Naval Reserve or the Marine Corps Reserve may be transferred to the Retired Reserve upon his request if he has completed—

(1) at least 30 years of active service in the armed forces, other than active duty for training; or

(2) at least 20 years of active service in the armed forces other than active duty for training, the last 10 of which he served in the 11-year period immediately preceding his transfer to the Retired Reserve.

(b) Each member who is transferred to the Retired Reserve under subsection (a) is entitled, when not on active duty, to retired pay at the rate of 50 percent of the basic pay of the grade in which retired.

(c) This section applies only to persons who were members of the Naval Reserve or the Marine Corps Reserve on January 1, 1953.

(d) This section terminates on January 1, 1973. However, its termination will not affect any accrued rights to retired pay.

(e) A member who is eligible for retirement under this section, and who is also eligible for retirement under another provision or for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title, is entitled to elect which of these benefits he is to receive. (Aug. 10, 1956, ch. 1041, 70A Stat. 395; Aug. 1, 1958, Pub. L. 85–583, § 1 (1), 72 Stat. 480; Oct. 2, 1963, Pub. L. 88–132, § 5 (h)(5), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6327	50 U. S. C. 1052 (a), (b), (d), (e), (f).	July 9, 1952, ch. 608, § 413 (a), (b), (d), (e), (f), 66 Stat. 499.

In subsection (a) the word "Federal" is omitted and the words "in the armed forces, other than active duty for training" are inserted. The words "active Federal service" are not defined in 50 U. S. C. 1052. Section 310 of the Naval Reserve Act of 1938, which 50 U. S. C. 1052 replaced, specifies active service in the "Army, Navy, Marine Corps, Coast Guard, Naval Auxiliary Service, Naval Reserve Force, Naval Militia in Federal status, National Naval Volunteers, Naval Reserve, Marine Corps Reserve Force, and Marine Corps Reserve." 50 U. S. C. 1052 was intended to preserve the rights of persons who, on January 1, 1953, were members of reserve components, so that they would not be prejudiced by the repeal of § 310 of the Naval Reserve Act of 1938 (U. S. Code Congressional and Administrative News, 1952, p. 3584). To effect that purpose, the service that was creditable under the 1938 act must be creditable under 50 U. S. C. 1052. The words "active service in the armed forces, other than active duty for training" cover all creditable service. The Judge Advocate General of the Navy, in an opinion dated August 27, 1954 (JAG II: 2: WGA: CA: mk), held that active duty for training was not creditable under the 1938 act and is, therefore, not creditable under the 1952 act.

AMENDMENTS

1963—Subsec. (b). Pub. L. 88–132 substituted "of the grade in which retired" for "to which he would be entitled if on active duty" following "50 percent of the basic pay."

1958—Subsec. (e). Pub. L. 85–583 entitled eligible members of Naval Reserve or Marine Corps Reserve to elect to transfer to Fleet Reserve or Fleet Marine Corps Reserve.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 6148, 6323 of this title.

§ 6328. Treatment of fractions of years of service in computing retired pay.

In determining the total number of years of service to be used as a multiplier in computing the retired pay of officers retired under this chapter, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6328	34 U. S. C. 410c (a) (1st proviso); 34 U. S. C. 43g (g); 34 U. S. C. 410r (h); 34 U. S. C. 625h (a).	Feb. 21, 1946, ch. 34, § 7 (a) (1st proviso), 60 Stat. 27; Aug. 7, 1947, ch. 512, § 432 (a), 61 Stat. 881. Apr. 16, 1947, ch. 38, § 207 (h), 61 Stat. 50; redesignated (g), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (j), 64 Stat. 162. June 12, 1948, ch. 449, § 207 (h), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

The words "and a part of a year that is less than six months is disregarded" are added for clarity. The legislative history of the Career Compensation Act of 1949, which contains a provision identical to those codified in this section, indicates that all of these provisions are construed as requiring a fractional year of less than six months to be disregarded (hearings before the Committee on Armed Services of the Senate on H. R. 5007, 81st Cong., 1st sess., p. 313, July 6, 1949).

§ 6329. Officers not to be retired for misconduct.

No officer of the Navy or the Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate. (Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6329	34 U. S. C. 385; 34 U. S. C. 626-1 (a) (1st sentence).	R. S. 1456. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

The words "for which trial by court-martial would be appropriate" are substituted for the words "but he shall be brought to trial by court-martial for such misconduct." The peremptory command in the source text is at variance with the theory of the Uniform Code of Military Justice and conflicts with the provisions of articles 30, 32, and 34. The substituted words are in accord with the interpretation placed on R. S. 1456 in *Denby* v. *Berry*, 263 U. S. 29, 36 (Nov. 12, 1923).

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay.

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under—

(1) Title II of the Naval Reserve Act of 1938 (52 Stat. 1178), as amended; or

(2) this section.

(b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he received at the time of transfer multiplied by the number of years of active service in the armed forces, except that in the case of a member who has served as senior enlisted advisor of the Navy or sergeant major of the Marine Corps, retainer pay shall be computed on the basis of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer. A member may recompute his retainer pay under section 1402 of this title to reflect active duty after transfer. If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent. However, in no case may a member's retainer pay be more than 75 percent of the basic pay upon which the computation of retainer pay is based.

(d) For the purposes of subsections (b) and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. A completed minority enlistment is counted as four years of active service, and an enlistment terminated within three months before the end of the term of enlistment is counted as active service for the full term. (Aug. 10, 1956, ch. 1041, 70A Stat. 396; Aug. 1, 1958, Pub. L. 85-583, § 1 (2, 3), 72 Stat. 480; Dec. 16, 1967, Pub. L. 90-207, § 3(4), 81 Stat. 653.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6330	34 U. S. C. 854 (less proviso); 34 U. S. C. 854 (note); 34 U. S. C. 854c (less 4th, 5th, 6th (as applicable to 34 U. S. C. 854b) and 7th provisos); 34 U. S. C. 854a (less provisos).	June 25, 1938, ch, 690, § 201 (less proviso), 52 Stat. 1178. July 9, 1952, ch. 608, § 803 (2d sentence of 1st par.), 66 Stat. 505. June 25, 1938, ch. 690, § 204 (less 4th, 5th, 6th (as applicable to § 203 of the Naval Reserve Act of 1938), and 7th provisos) 52 Stat. 1170; Aug. 10, 1946, ch. 952, § 2, 60 Stat. 993. June 25, 1938, ch. 690, § 202 (less provisos), 52 Stat. 1178.

In subsection (a) the words "officers" and "assigned" are omitted, since they are applicable only to the proviso in 34 U. S. C. 854, which is recommended for repeal as obsolete. (See Table 2A.) The words "including (a) those former members of the Fleet Reserve who were transferred * * * but before the expiration of three months following discharge", appearing in § 803 of the Armed Forces Reserve Act of 1952, 66 Stat. 505 (34 U. S. C. 854 (note) are omitted as surplusage. These words merely illustrate the class of persons transferred to the Fleet Reserve under the Naval Reserve Act of 1938, 52 Stat. 1178, as referred to in the section from which these words were taken, and in no way limit that class or impose a citizenship requirement for membership in it. (See the opinion of the Judge Advocate General of the Navy, JAG: II: 1: JFG: imz of February 17, 1953.)

In subsection (b) reference to the date July 1, 1925, is omitted, since members who were in the naval service on or before that date may, if they are qualified and so elect, be transferred to the Fleet Reserve or to the Fleet Marine Corps Reserve under 34 U. S. C. 854c instead of under 34 U. S. C. 854b, as provided in the fifth proviso of 34 U. S. C. 854c. That proviso and the provisions of 34 U. S. C. 854b, which are applicable only to persons who were in the naval service in 1925, are not codified because they relate to a small closed class and are therefore of limited interest. They are not repealed, however. (See Table 2D.)

In subsections (b) and (c) the term "active service in the armed forces" is substituted for the term "active Federal service" to execute the definition in the last sentence of 34 U. S. C. 854c.

In subsection (c) the words "is entitled, when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he received at the time of transfer" are substituted for the words "except when on active duty, shall be paid at the annual rate of 2½ per centum of the annual base and longevity pay they are receiving at the time of transfer" to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

Subsection (d) states the rule as to the method of counting minority and short-term enlistments, in connection with determining active service, in accordance with *White* v. *United States*, 97 F. Supp. 698.

REFERENCES IN TEXT

Title II of the Naval Reserve Act of 1938 (52 Stat. 1178), as amended, referred to in subsec. (a) (1), is act

June 25, 1938, ch. 690, §§ 201–208, 52 Stat. 1178, which was classified to sections 854—854c, 854d—854g of former Title 34, Navy, and was repealed by act Aug. 10, 1956, § 53.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90–207 inserted ", except that in the case of a member who has served as senior enlisted advisor of the Navy or sergeant major of the Marine Corps, retainer pay shall be computed on the basis of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer" following "armed forces".

1958—Subsec. (a). Pub. L. 85–583, § 1 (2), substituted "naval service" for "Regular Navy and the Regular Marine Corps, respectively,".

Subsec. (b). Pub. L. 85–583, § 1 (3), inserted "or the Naval Reserve" after "Regular Navy" and "or the Marine Corps Reserve" after "Regular Marine Corps".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FORMER MEMBERS OF NAVY OR MARINE CORPS TO FLEET RESERVE OR FLEET MARINE CORPS RESERVE; TRANSFER TO RETIRED LIST

Act July 24, 1956, ch. 683, 70 Stat. 626, provided:

"Upon application by any former member of the Navy or Marine Corps—

"(1) who was discharged prior to August 10, 1946, under honorable conditions, and

"(2) who, at the time of his discharge, had at least twenty years' active Federal service.

the Secretary of the Navy shall appoint such former member in the Fleet Reserve or Fleet Marine Corps Reserve, as may be appropriate, in the rank held by him at the time of such discharge.

"SEC. 2. Each person appointed to the Fleet Reserve or Fleet Marine Corps Reserve under the first section of this Act shall be transferred to the appropriate retired list (1) on the first day of the first calendar month beginning after such appointment, if his last discharge occurred ten or more years prior to the date of such appointment, and (2) in the case of individuals appointed under such section before the expiration of ten years from their last discharge, on the first day of the first calendar month, beginning after the expiration of ten years from the date of such discharge.

"SEC. 3. Each former member transferred to a retired list under clauses (1) and (2) of section 2 shall receive retired pay at the annual rate of 2½ per centum of the annual base and longevity pay he was receiving at the time of his last discharge, multiplied by the number of his years of active Federal service at such time (not to exceed thirty), and adjusted to reflect the percentage increases made since such discharge in the retired pay of persons retired from the Armed Forces prior to October 12, 1949.

"SEC. 4. For the purposes of this Act, all active service in the Army of the United States, the Navy, the Marine Corps, the Coast Guard, or any component thereof, shall be deemed to be active Federal service.

"SEC. 5. No pay shall accrue to the benefit of any person appointed under the provisions of this Act prior to the date such person is actually appointed under the provisions of this Act and in no event prior to the first day of the first month following enactment of this Act [July 24, 1956]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6327 of this title.

§ 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay.

(a) When he has completed 30 years of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred—

(1) to the retired list of the Regular Navy or the Regular Marine Corps, as appropriate, if he was a member of the Regular Navy or the Regular Marine Corps at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve; or

(2) to the appropriate Retired Reserve, if he was a member of the Naval Reserve or the Marine Corps Reserve at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) For the purpose of subsection (a), a member's years of service are computed by adding—

(1) the years of service credited to him upon his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve;

(2) his years of active and inactive service in the armed forces before his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve not credited to him upon that transfer; and

(3) his years of service, active and inactive, in the Fleet Reserve or the Fleet Marine Corps Reserve.

(c) Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve under this section is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer to the retired list or the Retired Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 397; Aug. 1, 1958, Pub. L. 85–583, § 1 (4–6), 72 Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6331	34 U. S. C. 854c (4th proviso); 34 U. S. C. 854e (2d and 4th provisos); 34 U. S. C. 854 (note).	June 25, 1938, ch. 690, § 204 (4th proviso), 52 Stat. 1179; Aug. 10, 1946, ch. 952, § 2, 60 Stat. 993. June 25, 1938, ch. 690, § 206 (2d and 4th provisos), 52 Stat. 1179; Apr. 25, 1940, ch. 153, 54 Stat. 162. July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words "transferred * * * in accordance with the provisions of this section and of sections 853 and 854b of this title", in the fourth proviso of 34 U. S. C. 854c, and the words "transferred after sixteen years' or more service in the Regular Navy", and "men coming under the cognizance of sections 853 and 854b of this title", in the second proviso of 34 U. S. C. 854e, are omitted as surplusage since the classes designated by these phrases comprise all members of the Fleet Reserve and Fleet Marine Corps Reserve.

Subsection (b) is worded so as to cover all members of the Fleet Reserve and the Fleet Marine Corps Reserve regardless of the law under which they attained that status. A member transferring under 34 U. S. C. 854b may count only active naval service in computing the service required for that transfer, but in determining his eligibility for retirement he may add to his active naval service all previous active or inactive service in the Army, Navy, Marine Corps, Air Force, or Coast Guard, and his time in the Fleet Reserve. A member transferring to the Fleet Reserve under 34 U. S. C. 854c may count active service in any armed force toward that transfer, and he determines his eligibility for retirement by adding to the service credited to him at the time of transfer any previous inactive service in the armed forces and his time in the Fleet Reserve. As to the latter member the words "active service" in clause (2) are superfluous, since such service would have been credited to him upon his transfer to the Fleet Reserve, but they are

needed in the case of a member transferred under 34 U. S. C. 854b.

In subsection (c) references to the "allowances to which enlisted men of the Navy are entitled on retirement after thirty years' service", in the second and fourth provisos of 34 U. S. C. 854e, are omitted because of the repeal, by § 19 of the Pay Readjustment Act of 1942, 56 Stat. 369, of the laws authorizing such allowances.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-583, § 1(4), provided for the transfer to the appropriate Retired Reserve of those members of the Fleet Reserve or the Fleet Marine Corps Reserve who had transferred thereto from the Naval Reserve or the Marine Corps Reserve.

Subsec. (b). Pub. L. 85-583, § 1 (5), struck out the words "of clause (2)".

Subsec. (c). Pub. L. 85-583, § 1 (6), inserted "or the Retired Reserve" after "retired list" wherever appearing.

§ 6332. Conclusiveness of transfers.

When a member of the naval service is transferred by the Secretary of the Navy—

(1) to the Fleet Reserve;

(2) to the Fleet Marine Corps Reserve;

(3) from the Fleet Reserve to the retired list of the Regular Navy or the Retired Reserve; or

(4) From the Fleet Marine Corps Reserve to the retired list of the Regular Marine Corps or the Retired Reserve;

the transfer is conclusive for all purposes. Each member so transferred is entitled, when not on active duty, to retainer pay or retired pay from the date of transfer in accordance with his grade and number of years of creditable service as determined by the Secretary. The Secretary may correct any error or omission in his determination as to a member's grade and years of creditable service. When such a correction is made, the member is entitled, when not on active duty, to retainer pay or retired pay in accordance with his grade and number of years of creditable service, as corrected, from the date of transfer. (Aug. 10, 1956, ch. 1041, 70A Stat. 397; Aug. 1, 1958, Pub. L. 85-583, § 1 (7), 72 Stat. 480; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (33), 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6332	34 U. S. C. 854a (provisos); 34 U. S. C. 854 (note).	June 25, 1938, ch. 690, § 202 (provisos), 52 Stat. 1178. July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

The words "when not on active duty, to retainer pay or retired pay" are substituted for the words "pay and allowances". The pay and allowances of a member on active duty are covered by the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.). When not on active duty a member of the Fleet Reserve receives retainer pay and a retired member receives retired pay without allowances, the provision for allowances for retired members having been repealed as pointed out in the note on the preceding section. In the last sentence the words "from the date of transfer" are added to make it clear that a correction is retroactive to that date. The Court of Claims has so held (*Dugan* v. *United States* (1943), 100 Ct. Cl. 7).

AMENDMENTS

1958—Pub. L. 85-861 substituted "to retainer pay or retired pay in accordance" for "to retain pay or retired pay in accordance".

Pub. L. 85-583 inserted "or the Retired Reserve" after "Navy" in clause (3) and after "Marine Corps" in clause (4).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

Chapter 573.—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

Sec.
6371. Regular Navy; line rear admirals not restricted in performance of duty: continuation on active list; retirement.
6372. Regular Navy; line rear admirals restricted in performance of duty and staff corps rear admirals: retention on active list; retirement.
6373. Regular Marine Corps; major generals: retention on active list; retirement.
6374. Regular Marine Corps; brigadier generals: retirement for failures of selection for promotion.
6376. Regular Navy, line captains not restricted in performance of duty; Regular Marine Corps, colonels: retirement for length of service.
6377. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: retirement for length of service.
6378. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: continuation on active list; retirement.
6379. Regular Navy, commanders; Regular Marine Corps, lieutenant colonels: retirement for length of service and failures of selection for promotion.
6380. Regular Navy, lieutenant commanders; Regular Marine Corps, majors: retirement for length of service and failures of selection for promotion.
6381. Officers retired under preceding sections: retired grade and pay; general rule.
6382. Regular Navy, lieutenants and lieutenants (junior grade); Regular Marine Corps, captains and first lieutenants: discharge for failures of selection for promotion; severance pay.
6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired or severance pay.
6384. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status.
6385. Officers appointed under sections 5231, 5232, and 5787 of this title: grade for purpose of preceding sections.
6386. Suspension: preceding sections.
6387. Regular Navy, male line officers; Regular Marine Corps, male officers: computation of total commissioned service.
6388. Regular Navy; certain staff corps officers: computation of total commissioned service.
6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service.
6390. Regular Navy and Regular Marine Corps; officers: retirement at age 62.
6391. Naval Reserve and Marine Corps Reserve; officers: retirement at age 62.
6392. Regular Navy and Regular Marine Corps; officers having less than three years of service: revocation of appointments; reversion of certain officers to prior status.
6393. Regular Navy and Regular Marine Corps; women officers: termination of appointments.
6394. Regular Navy, rear admirals and commodores; Regular Marine Corps, major generals and brigadier generals: retirement on recommendation of board.
6395. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge during war or emergency for unsatisfactory performance of duty.
6396. Regular Navy; officers in Nurse Corps in grades below commander: retirement or discharge.

Sec.
6397. Naval Reserves; officers in the Nurse Corps: elimination from active status.
6398. Regular Navy; women captains and commanders; Regular Marine Corps; women colonels and lieutenant colonels: retirement for length of service; retired grade and pay.
6400. Regular Navy, women lieutenant commanders; Regular Marine Corps, women majors: retirement for length of service; retired grade and pay.
6401. Regular Navy, women lieutenants; Regular Marine Corps, women captains: discharge for length of service; severance pay.
6402. Regular Navy, women lieutenants (junior grade); Regular Marine Corps, women first lieutenants: discharge for length of service; severance pay.
6403. Naval Reserve and Marine Corps Reserve; women officers: elimination from active status.
6404. Treatment of fractions of years of service in computing retired pay and severance pay.
6407. Communication with selection board.
6408. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal.
6410. Naval Reserve and Marine Corps Reserve; officers: elimination from active status to provide a flow of promotion.

AMENDMENTS

1970—Pub. L. 91-482, § 2E, Oct. 21, 1970, 84 Stat. 1082, struck out item 6406, which read: "Regular Navy and Regular Marine Corps; officers: furlough; furlough pay."

1968—Pub. L. 90-235, §§ 3(b)(5), 4(a)(13), Jan. 2, 1968, 81 Stat. 758, 760, struck out item 6405, which read: "Effect of acceptance of appointment in Foreign Service", and item 6409, which read: "Navy and Marine Corps; warrant officers: suspension of laws for mandatory retirement and separation during war or emergency".

1967—Pub. L. 90-130, § 1(24)(B), (G), (H), Nov. 8, 1967, 81 Stat. 380, 382 struck out "or for age" following "length of service" in item 6377, substituted "officers in Nurse Corps in grades below commander: retirement or discharge" for "officers in Nurse Corps: retirement for age or length of service; retired grade and pay" in item 6396, substituted "Regular Navy; women captains and commanders; Regular Marine Corps; women colonels and lieutenant colonels: retirement for length of service; retired grade and pay" for "Regular Navy, women commanders; Regular Marine Corps, women lieutenant colonels: retirement for age or length or service; retired grade and pay" in item 6398, and eliminated item 6399 which read: "Regular Navy, women lieutenant commanders and below; Regular Marine Corps, women majors and below: retirement at age 50; retired grade and pay."

1961—Pub. L. 87-123, § 5(30), Aug. 3, 1961, 75 Stat. 267, deleted "not restricted in performance of duty" following "brigadier generals" and "colonels" in items 6374 and 6376, respectively, "; Regular Marine Corps, colonels designated for supply duty" following "Nurse Corps commanders;" in items 6377 and 6378, and eliminated item 6375.

1958—Pub. L. 85-861, § 1 (144) (G), Sept. 2, 1958, 72 Stat. 1512, added items 6389, 6391, 6397, 6403, 6410.

1957—Pub. L. 85-155, title II, § 201 (14), Aug. 21, 1957, 71 Stat. 383, included Nurse Corps commanders and retirement for age in item 6377, and included Nurse Corps commanders in item 6378.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007 of this title.

§ 6371. Regular Navy; line rear admirals not restricted in performance of duty: continuation on active list; retirement.

(a) Each officer not restricted in the performance of duty serving in the grade of rear admiral on the active list in the line of the Navy is eligible for consideration for continuation on the active list by a selection board convened in the fiscal year in which he first completes—

(1) at least five years of service in the grade of rear admiral; and

(2) at least 35 years of total commissioned service as computed under section 6387 of this title.

However, an officer who will become 62 years of age in the fiscal year in which he would otherwise be eligible for consideration for continuation on the active list under this section is not eligible for such consideration.

(b) The Secretary of the Navy shall determine, as of the date of the convening of the appropriate selection board, the number of officers not restricted in the performance of duty serving in the grade of rear admiral on the active list in the line of the Navy that the board may recommend for continuation on the active list. The number may not be less than 50 percent or more than 75 percent of the number of officers who are eligible for consideration for continuation under this section. In determining the number that the board may recommend, the Secretary shall consider the number of existing vacancies for rear admirals in the line of the Navy not restricted in the performance of duty and the number of vacancies that he estimates must occur during each of the next five years in order that captains will be best assured of a flow of promotion to the grade of rear admiral and that rear admirals who will become eligible for consideration in succeeding years will be best assured of equality of opportunity for continuation on the active list.

(c) An officer who is recommended for continuation on the active list in the approved report of a selection board under this section may not be retired under this section.

(d) Each officer who is considered by a selection board for continuation on the active list under this section, and who is not recommended for continuation in the approved report of the board, shall, unless retired under another provision of law, be retired on June 30 of the current fiscal year.

(e) For the purpose of this section, an officer is credited with service in the grade of rear admiral from the date of his eligibility for promotion to that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 399.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6371 (a)	34 U. S. C. 306b (a) (1); 34 U. S. C. 3c (b) (1st sentence).	Aug. 7, 1947, ch. 512, ch. 307 (a) (1), 61 Stat. 842; June 23, 1950, ch. 344, § 1 (c), 64 Stat. 250. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829.
6371 (b)	34 U. S. C. 306c (a) (8).	Aug. 7, 1947, ch. 512, § 308 (a) (8), 61 Stat. 845; June 23, 1950, ch. 344, § 1 (d), 64 Stat. 250.
6371 (c)	34 U. S. C. 211a (r).	Aug. 7, 1947, ch. 512, § 304 (r), 61 Stat. 841; June 23, 1950, ch. 344, § 1 (b), 64 Stat. 250.
6371 (d)	34 U. S. C. 410 *l* (a) (less applicability to retired pay).	Aug. 7, 1947, ch. 512, § 313 (a) (less applicability to retired pay), 61 Stat 861; June 23, 1950, ch. 344, § 1 (f), 64 Stat. 251.
6371 (e)	34 U. S. C. 306q.	Aug. 7, 1947, ch. 512, § 421, 61 Stat. 878.

In subsection (a) the words "on the active list" are inserted after the words "rear admiral" for clarity. The words "is eligible for consideration * * * by a selection board convened in the fiscal year in which he first completes * * *" are substituted for the words "who attains a status of having completed * * * shall be eligible for consideration for recommendation * * * by a selection board convened in the fiscal year in which they first attain such status" for brevity. The first proviso in 34 U. S. C. 306b (a) (1) is omitted as executed.

In subsection (b) the words "the number * * * that the board may recommend for continuation" are substituted for the words "the number to be furnished the board" for clarity. The words "who will become eligible for consideration" are inserted before the words "in succeeding years" for clarity.

The source for subsection (c) states that line rear admirals not restricted in the performance of duty, upon completion of 35 years of total commissioned service and five years of service in grade, may be continued on the active list only if recommended for continuation by a selection board. The converse of this statement is that such an officer, if recommended, is not retired. Subsection (c) is worded accordingly. The proviso in 34 U. S. C. 211a (r) is omitted as executed. The words describing the officers to whom 34 U. S. C. 211a (r) applies are omitted, since they are covered in subsection (a).

In subsection (e) only the first proviso of 34 U. S. C. 306q is codified, and reference to the date of enactment of the Officer Personnel Act of 1947 is omitted. The remainder of 34 U. S. C. 306q, including the second proviso, is applicable only to officers who are still serving in the grade they held prior to August 7, 1947. Since all rear admirals who were promoted to that grade before August 7, 1947, have now been considered for continuation, reference to them is unnecessary.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

OFFICER PERSONNEL ACT OF 1947

Provisions relating to officers of the Navy, see note under section 5701 of this title.

EX. ORD. NO. 11284. SUSPENSION OF PROVISIONS RELATING TO CONTINUATION ON ACTIVE LIST OF LINE REAR ADMIRALS NOT RESTRICTED IN PERFORMANCE OF DUTY

Ex. Ord. No. 11284, May 27, 1966, 31 F.R. 7669, provided:

By virtue of the authority vested in me by Sections 5711(b) and 6386(c) of Title 10 of the United States Code, I hereby suspend the provisions of Sections 5701(a)(1) and 6371 of Title 10 of the United States Code.

LYNDON B. JOHNSON.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6372. Regular Navy; line rear admirals restricted in performance of duty and staff corps rear admirals: retention on active list; retirement.

(a) Except as provided in subsection (b), each officer restricted in the performance of duty serving in the grade of rear admiral on the active list in the line of the Navy, and each officer serving in the grade of rear admiral on the active list of the Navy in any staff corps, shall be retired on June 30 of the fiscal year in which he first completes—

(1) at least seven years of service in the grade of rear admiral; and

(2) at least 35 years of total commission service as computed under section 6387 or 6388 of this title.

(b) Each officer who would otherwise be retired under this section shall be retained on the active list if recommended for retention in the approved report of a board convened under section 5709 of this title. An officer so retained, if not retired under another provision of law, shall continue on the active list until June 30 of any succeeding fiscal year in which—

(1) he is not again recommended for retention in the approved report of such a board; or

(2) no such board is convened.

(c) The number of officers that may be recommended by a board for retention on the active list under this section may not exceed the number that the Secretary of the Navy determines is required to meet the needs of the service.

(d) For the purpose of this section, an officer's service in the grade of rear admiral is computed from the date of the occurrence of the vacancy that he was promoted to fill. However, service in grade of an officer promoted to the grade of rear admiral before August 7, 1947, and for any officer whose lineal position was adjusted in the grade of rear admiral or who was assigned a new running mate in that grade is computed from his date of rank in the grade of rear admiral. (Aug. 10, 1956, ch. 1041. 70A Stat. 400.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6372 (a), (b), and (d).	34 U. S. C. 410 (b) (1) (less applicability to composition of board and submission of report of board for approval, in 1st proviso); 34 U. S. C. 3c (b) (1st sentence).	Aug. 7, 1947, ch. 512, § 313 (b) (1) (less applicability to composition of board and submission of report of board for approval, in 1st proviso), 61 Stat. 861; June 23, 1950, ch. 344, § 1 (g), 64 Stat. 251. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829.
6372 (c)	34 U. S. C. 410*l* (b) (2) (last 21 words).	Aug. 7, 1947, ch. 512, § 313 (b) (2) (less 1st 30 words of 2d sentence), 61 Stat. 861; June 23, 1950, ch. 344, § 1 (g), 64 Stat. 251.

In subsection (a) the words "on the active list of the Navy" are inserted for clarity. The words "restricted in the performance of duty" are substituted for the words "designated for engineering duty, aeronautical engineering duty, and special duty", and the words "any staff corps" are substituted for the words "the Medical Corps, Supply Corps, Chaplain Corps, Civil Engineer Corps, and Dental Corps" for brevity. No inaccuracy results, since officers designated for limited duty and officers in the Medical Service Corps and the Nurse Corps may not attain the grade of rear admiral except by temporary wartime appointment under the act of July 24, 1941, ch. 320 (34 U. S. C. 350 et seq.), codified in § 5787 of this title, and that type of appointment is disregarded for the purpose of this section, as provided in § 6385 of this title. The words "who is not retired or separated from the active list at an earlier date under other provisions of law" are omitted as surplusage. The words "he first completes at least seven * * * and at least 35 * * *" are substituted for the words "he completes seven * * * or thirty-five * * * whichever is later" to conform to the style used in the preceding section.

In subsection (d) the rule for computing service in grade applicable to rear admirals promoted to that grade on or after August 7, 1947, is stated first and without reference to the date because it is the rule of most general application. Within a year or two the rule as to rear admirals promoted before that date will become obsolete. It is preserved in this section, but only as an exception to the principal rule. The words "in accordance with the provisions of this Act" are omitted as surplusage.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EX. ORD. NO. 11436. SUSPENSION OF PROVISIONS RELATING TO RETIREMENT OR RETENTION ON ACTIVE LIST OF CERTAIN REAR ADMIRALS

Ex. Ord. No. 11436, Dec 2, 1968, 33 F.R. 17943, provided: By virtue of the authority vested in me by section 6386(c) of title 10 of the United States Code, I hereby suspend the provisions of section 6372 of title 10 of the United States Code.

LYNDON B. JOHNSON

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5709 of this title.

§ 6373. Regular Marine Corps; major generals: retention on active list; retirement.

(a) Except as provided in subsections (b) and (c), each officer serving in the grade of major general on the active list of the Marine Corps shall be retired on June 30 of the fiscal year in which he first completes—

(1) at least five years of service in the grade of major general; and

(2) at least 35 years of total commissioned service as computed under section 6387 of this title.

(b) An officer is not subject to retirement under this section while serving as Commandant of the Marine Corps.

(c) Each officer who would otherwise be retired under this section shall be retained on the active list if recommended for retention in the approved report of a board convened under section 5709 of this title. An officer so retained, if not retired under another provision of law, shall continue on the active list until June 30 of any succeeding fiscal year in which—

(1) he is not again recommended for retention in the approved report of such a board; or

(2) no such board is convened.

(d) The number of officers that may be recommended by a board for retention on the active list under this section may not exceed the number that the Secretary of the Navy determines to be necessary to meet the requirements of the Marine Corps. In any year in which the number of officers subject to retirement under this section is three or more, the Secretary shall fix the maximum number that may be recommended for retention at not less than the number of officers subject to such retirement minus two.

(e) For the purpose of this section, an officer's service in the grade of major general is computed from the date of the occurrence of the vacancy that he was promoted to fill. However, service in grade of an officer promoted to the grade of major general before August 7, 1947, is computed from the date of his appointment in that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 400.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6373 (a) (b) (c) (e).	34 U. S. C. 626-1 (l) (1) (less applicability to composition of board and submission of report of board for approval, in 1st proviso); 34 U. S. C. 3c (b) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (l) (1) (less applicability to composition of board and submission of report of board for approval, in 1st proviso), 61 Stat. 865; June 23, 1950, ch. 344, § 1 (j), 64 Stat. 252. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829.
6373 (d)	34 U. S. C. 626-1 (m) (less 1st sentence).	Aug. 7, 1947, ch. 512, § 314 (m) (less 1st sentence), 61 Stat. 865; June 23, 1950, ch. 344, § 1 (k), 64 Stat. 252.

In subsection (a) the words "on the active list of the Marine Corps" are inserted for clarity. The words "who are not retired or separated from the active list at an earlier date under other provisions of law" are omitted as surplusage. The words "he first completes at least five * * * and at least 35 * * * " are substituted for the words "they complete five * * * or thirty-five * * * whichever is later" to conform to the style used in the two preceding sections.

In the first sentence of subsection (d) the words "the number furnished it by the Secretary of the Navy" and the words "so furnished" are omitted as surplusage. In the second sentence the word "otherwise" is omitted as surplusage and the words "maximum number that may be recommended for retention" are substituted for the words "number so furnished" for clarity.

Subsection (e) is worded to conform to § 6372 (d). Comment in the revision note on that section is applicable to this subsection also.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5709 of this title.

§ 6374. Regular Marine Corps; brigadier generals: retirement for failures of selection for promotion.

Each officer serving in the grade of brigadier general on the active list of the Marine Corps whose name is not on a promotion list shall be retired on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of major general for the second time. (Aug. 10, 1956, ch. 1041, 70A Stat. 401; Aug. 3, 1961, Pub. L. 87-123, § 5(25), 75 Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6374	34 U. S. C. 626-1 (n) (less applicability to retired pay); 34 U. S. C. 3c (b) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (n) (less applicability to retired pay), 61 Stat. 865. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829.

The words "on the active list of the Marine Corps" are inserted for clarity. The words "if not otherwise retired pursuant to law" are omitted as surplusage. The words "to the grade of major general" are inserted for clarity and accuracy.

AMENDMENTS

1961—Pub. L. 87-123 eliminated words in the catchline and in the text limiting the section to officers not restricted in the performance of duty.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EX. ORD. NO. 11333. PARTIAL SUSPENSION OF PROVISIONS RELATING TO RETIREMENT OF BRIGADIER GENERALS

Ex. Ord. No. 11333, Mar. 7, 1967, 32 F.R. 3879, provided: By virtue of the authority vested in me by section 6386(c) of title 10 of the United States Code, I hereby suspend until June 29, 1968, the provisions of section 6374 of title 10 of the United States Code, but only with respect to a brigadier general on the active list of the Marine Corps whose second failure of selection for promotion to the grade of major general occurred during the same fiscal year as his first failure of selection for such promotion.

LYNDON B. JOHNSON.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6375. Repealed. Pub. L. 87-123, § 5(26), Aug. 3, 1961, 75 Stat. 266.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 401, provided for the retirement of Marine Corps brigadier generals designated for supply duty after specified years of service, their retention on the active list with board approval and the computation of their years of service in grade.

§ 6376. Regular Navy, line captains not restricted in performance of duty; Regular Marine Corps, colonels: retirement for length of service.

(a) Each officer not restricted in the performance of duty serving in the grade of captain on the active list in the line of the Navy and each officer serving in the grade of colonel on the active list of the Marine Corps shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which he completes—

(1) 30 years of total commissioned service as computed under section 6387 of this title, if he is not on a promotion list and is considered as having twice failed of selection for promotion to the grade of rear admiral or brigadier general; or

(2) 31 years of total commissioned service as computed under section 6387 of this title, if he is not on a promotion list.

However, an officer who has lost numbers or precedence may not be retired because of completing 31 years of total commissioned service until June 30 of the fiscal year in which he completes five years of service in the grade of captain in the Navy or colonel in the Marine Corps. For the purpose of this section, an officer promoted to the grade of captain in the Navy or colonel in the Marine Corps after August 6, 1947, is credited with service in that grade from the date of his eligibility for promotion to the grade of captain or colonel.

(b) This section does not apply to women officers appointed under section 5590 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 402; Aug. 3, 1961, Pub. L. 87-123, § 5(27), 75 Stat. 266; Nov. 8, 1967, Pub. L. 90-130, § 1(24)(A), 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6376	34 U. S. C. 410j (a), (b) (words before 3d proviso, as applicable to unrestricted line captains); 34 U. S. C. 3c (b) (1st sentence); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 306q.	Aug. 7, 1947, ch. 512, § 312 (a), (b) (words before 3d proviso, as applicable to unrestricted line captains), 61 Stat. 858; June 25, 1949, ch. 248, 63 Stat. 277. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 421, 61 Stat. 878.

The conditions under which an officer is retired on completion of 30 years of service, from the second proviso of 34 U. S. C. 410j (b), are stated in the first clause, and those under which an officer is retired on completion of 31 years of service are stated in the second clause for clarity. The words "if not otherwise retired pursuant to law" are omitted as surplusage. The last sentence of this subsection is derived from the first proviso in 34 U. S. C. 306q. The remainder of § 306q, including the second proviso, is applicable only to officers who were promoted to their present grade before August 7, 1947, and is not needed in this section because all such officers have now had more than 5 years of service in grade under any method of computation.

AMENDMENTS

1967—Pub. L. 90-130 designated existing provisions as subsec. (a) and added subsec. (b).

1961—Pub. L. 87-123 eliminated words in the catchline and in the text limiting the section to officers not restricted in the performance of duty.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6377. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: retirement for length of service.

(a) If not on a promotion list and if not continued on the active list under section 6378 of this title, each officer restricted in the performance of duty serving in the grade of captain on the active list in the line of the Navy shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which he completes 31 years of total commissioned service as computed under section 6387 of this title.

(b) If not on a promotion list and if not continued on the active list under section 6378 of this title, each officer serving in the grade of captain on the active list of the Navy in any staff corps shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which he completes—

(1) 30 years of total commissioned service as computed under section 6388 of this title and is considered as having twice failed of selection for promotion to the grade of rear admiral; or

(2) 31 years of total commissioned service as computed under section 6388 of this title.

(c) Repealed. Pub. L. 90–130, § 1(24)(C), Nov. 8, 1967, 81 Stat. 380.

(d) If not on a promotion list and if not continued on the active list under section 6378 of this title, each officer serving in the grade of commander on the active list of the Navy in the Nurse Corps shall be retired on June 30 of the fiscal year in which the officer is considered as having twice failed of selection for promotion to the grade of captain and has completed at least twenty-six years of active commissioned service as computed under section 6388 of this title.

(e) Notwithstanding subsections (a) and (b), an officer who has lost numbers or precedence may not be retired because of completing 31 years of total commissioned service until June 30 of the fiscal year in which he completes five years of service in the grade of captain in the Navy. For the purpose of this section, an officer promoted to the grade of captain in the Navy after August 6, 1947, is credited with service in that grade from the date of his eligibility for promotion to the grade of captain. (Aug. 10, 1956, ch. 1041, 70A Stat. 402; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(15), 71 Stat. 384; Aug. 3, 1961, Pub. L. 87–123, § 5(28), 75 Stat. 266; Sept. 30, 1966, Pub. L. 89–609, § 1 (16), (17), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, § 1(24) (B), (C), 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6377	34 U. S. C. 410j (a), (b) (words before 3d proviso, less applicability to unrestricted line captains, and 5th proviso); 34 U. S. C. 3c (b) (1st sentence); 34 U. S. C. 626–1 (a) (1st sentence), (p); 34 U. S. C. 306q.	Aug. 7, 1947, ch. 512, § 312 (a), (b) (words before 3d proviso, less applicability to unrestricted line captains, and 5th proviso), 61 Stat. 858. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 312 (a) (1st sentence), (p), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 421, 61 Stat. 878.

In subsections (a) and (b) the words "if not continued on the active list under section 6378" are added for clarity, and the words "if not otherwise retired pursuant to law" are omitted as surplusage.

In subsection (b) the conditions under which a staff corps officer is retired on completion of 30 years of service, from the second proviso of 34 U. S. C. 410j (b), are stated in the first clause, and those under which an officer is retired on completion of 31 years of service are stated in the second clause for clarity.

In subsection (d) the last sentence is derived from the first proviso in 34 U. S. C. 306q. The remainder of § 306q, including the second proviso, is applicable only to officers who were promoted to their present grade before August 7, 1947, and is not needed in this section because all such officers have now had more than 5 years of service in grade under any method of computation.

The fifth proviso in 34 U. S. C. 410j (b) is omitted as obsolete.

AMENDMENTS

1967—Pub. L. 90–130, § 1(24)(B), struck out "or for age" following "length of service" in the section catchline.

Subsec. (b). Pub. L. 90–130, § 1(24)(C), struck out provision making an exception for officers in the Nurse Corps.

Subsec. (c). Pub. L. 90–130, § 1(24)(C), struck out subsec. (c) which provided for the retirement of officers in the grade of captain on the active list of the Navy in the Nurse Corps on June 30 of the fiscal year in which the person becomes 55 years of age or completes 30 years of active service as computed under section 6388 of this title.

Subsec. (d). Pub. L. 90–130, § 1(24)(C), substituted the year in which the officer is considered as having twice failed of selection for promotion to the grade of captain and has completed at least twenty-six years of active commissioned service as computed under section 6388 of this title for the year in which the person becomes 55 years of age or completes 30 years of active service as computed under section 6388 of this title, whichever is earlier, as the year in which officers not on a promotion list and not continued on the active list under section 6378 of this title and serving in the grade of commander on the active list of the Navy in the Nurse Corps shall be retired.

1966—Subsecs. (c), (d). Pub. L. 89–609 substituted "the person" for "she".

1961—Pub. L. 87–123, § 5(28)(A), deleted references to Marine Corps colonels designated for supply duty from the catchline.

Subsec. (a). Pub. L. 87–123, § 5(28)(B), deleted references to Marine Corps colonels on the active list designated for supply duty.

Subsec. (e). Pub. L. 87–123, § 5(28)(C), deleted references to Marine Corps colonels.

1957—Pub. L. 85–155, § 201 (15) (A), included Nurse Corps commanders and retirement for age in the catchline.

Subsec. (b). Pub. L. 85–155, § 201 (15) (B), substituted "Nurse Corps" for "Medical Service Corps".

Subsec. (c). Pub. L. 85–155, § 201 (15) (C), substituted provisions relating to retirement of captains in the Nurse Corps for provisions which required captains in the Medical Service Corps to be retired on June 30 of the fiscal year in which they completed 31 years of total commissioned service.

Subsec. (d). Pub. L. 85–155, § 201 (15) (D), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85–155, § 201 (15) (D), redesignated former subsec. (d) as (e), and § 201 (15) (E) substituted "subsections (a) and (b)" for "subsections (a), (b), and (c)".

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6378 of this title.

§ 6378. Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: continuation on active list; retirement.

(a) Each officer restricted in the performance of duty serving in the grade of captain on the active list in the line of the Navy, each officer serving in the grade of captain on the active list of the Navy in any staff corps, and each officer serving in the grade of commander on the active list of the Navy in the Nurse Corps is eligible for consideration for continuation on the active list by an appropriate selection board convened under section 5701, 5702, or 5703 of this title in the fiscal year in which he would be subject to retirement under section 6377 of this title and in each fiscal year thereafter while

on the active list and not on a promotion list. However, any such captain or commander who will complete 35 years of total commissioned service as computed under section 6387 or 6388 of this title or who will become 62 years of age in the fiscal year in which the selection board is convened is ineligible for consideration for continuation on the active list.

(b) Not more than the following numbers of officers recommended for continuation on the active list may be so continued until the report of the next succeeding selection board is approved;

(1) 10 captains designated for engineering duty.

(2) 5 captains designated for aeronautical engineering duty.

(3) 10 captains designated for special duty.

(4) 22 captains in the Supply Corps.

(5) 25 captains in the Chaplain Corps.

(6) 7 captains in the Civil Engineer Corps.

(7) The number of captains in the Medical Corps, the Judge Advocate General's Corps, the Dental Corps, the Medical Service Corps and the Nurse Corps, and the number of commanders in the Nurse Corps, that the Secretary of the Navy determines to be necessary to meet the needs of the service.

(c) If an officer continued on the active list under this section is not again recommended for continuation in the approved report of the next succeeding selection board, he shall be carried in excess of the number authorized to be so continued until June 30 of the then current fiscal year and shall be placed on the retired list on that date. (Aug. 10, 1956, ch. 1041, 70A Stat. 403; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (16), 71 Stat. 384; Aug. 3, 1961, Pub. L. 87–123, § 5(29), 75 Stat. 267; Dec. 8, 1967, Pub. L. 90–179, § 12, 81 Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6378 (a)	34 U. S. C. 306b (a) (2), (b) (1); 34 U. S. C. 3c (b) (1st sentence).	Aug. 7, 1947, ch. 512, § 307 (a) (2), (b) (1), 61 Stat. 843. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829.
6378 (b) (c).	34 U. S. C. 410j (a), (b) (less words before 3d proviso, and less 5th proviso).	Aug. 7, 1947, ch. 512, § 312 (a), (b) (less words before 3d proviso, and less 5th proviso), 61 Stat. 858; June 25, 1949, ch. 248, 63 Stat. 277. Aug. 7, 1947, ch. 512, § 314 (p), 61 Stat. 865.
6378 (a) (b) (c).	34 U. S. C. 626–1 (p); 34 U. S. C. 626–1 (s) (less applicability to information to be furnished selection board).	Aug. 7, 1947 ch. 512, § 314 (s) (less applicability to information to be furnished selection board). 61 Stat. 866; renumbered June 23, 1950, ch 344, § 1 (p) (less last 10 words), 64 Stat. 253.

In subsection (a) the words "restricted in the performance of duty" are substituted for the words "designated for engineering duty, aeronautical engineering duty, or special duty" for brevity. Although limited duty officers are also "restricted in the performance of duty", they cannot be promoted to the grade of captain except by temporary appointment under § 5787 of this title, and such appointments are disregarded for the purpose of this section as provided in § 6385 of this title. For the same reason, it is unnecessary to except the Nurse Corps. Officers in the Medical Service Corps are specifically excepted, however, because they may hold the grade of captain but may not be continued on the active list after completing 31 years of service. The words "convened under section 5701, 5702, or 5703 of this title in the fiscal year in which he would be subject to retirement under section 6377 of this title and in each fiscal year thereafter while on the active list and not on a promotion list" are substituted for the words "(1) Those who have twice failed of selection for temporary promotion to the grade of rear admiral, and (2) those who have failed of selection for temporary promotion to the grade of rear admiral in the immediately preceding year and who are not recommended for temporary promotion by the selection board concerned" for brevity and clarity. Since there are no promotion zones for line captains restricted in the performance of duty, they are not "considered as having failed of selection" under section 5776 of this title. The fourth proviso in 34 U. S. C. 306d (a) (1) states that such an officer, if not on a promotion list, is considered as having once failed of selection when he has completed 30 years of total commissioned service and as having twice failed when he has completed 31 years. That proviso is not codified because it is not needed; its provisions are executed in this section and the preceding section of this title.

AMENDMENTS

1967—Subsec. (b) (7). Pub. L. 90–179 inserted the reference to the Judge Advocate General's Corps.

1961—Pub. L. 87–123, § 5(29) (A), deleted references to Marine Corps Colonels designated for supply duty from the catchline.

Subsec. (a). Pub. L. 87–123, § 5(29) (B), (C), deleted references to Marine Corps colonels on the active list designated for supply duty.

Subsec. (b). Pub L. 87–123, § 5(29) (D), deleted clause (8) which restricted the number of Marine Corps colonels designated for supply duty who could be continued on the active list by recommendation to two.

1957—Pub. L. 85–155, § 201(16) (A), included Nurse Corps commanders in the catchline.

Subsec. (a). Pub. L. 85–155, § 201(16) (B), (C), substituted ", each officer serving in the grade of commander on the active list of the Navy in the Nurse Corps" for "except the Medical Service Corps", and "captain, colonel, or commander" for "captain or colonel".

Subsec. (b) (7). Pub. L. 85–155, § 201(16) (D), included captains in the Medical Service Corps and the Nurse Corps, and commanders in the Nurse Corps.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6377 of this title.

§ 6379. Regular Navy, commanders; Regular Marine Corps, lieutenant colonels: retirement for length of service and failures of selection for promotion.

(a) Each officer on the active list of the Navy or the Marine Corps serving in the grade of commander or lieutenant colonel, except an officer designated for limited duty, shall, subject to the provisions of section 5777 of this title, be retired on June 30, of the fiscal year in which—

(1) he is not on a promotion list;

(2) he is considered as having twice failed of selection for promotion to the grade of captain in the Navy or colonel in the Marine Corps; and

(3) he has completed at least 26 years of total commissioned service as computed under section 6387 or 6388 of this title.

(b) This section does not apply to woman officers appointed under section 5590 of this title or officers in the Nurse Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 404; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(17), 71 Stat. 384; Nov. 8, 1967, Pub. L. 90–130, § 1(24) (D), 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6379	34 U. S. C. 410j (c); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 410j (a); 34 U. S. C. 3c (b) (1st sentence).	Aug 7, 1947, ch. 512, § 312 (c), 61 Stat. 859. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 312 (a), 61 Stat. 858. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829.

The first and second sentences of 34 U. S. C. 410j (c) are consolidated for brevity and clarity. Since all three conditions must be met before an officer is retired under this section, the insertion of the words "at least" before the words "26 years" makes the single statement cover both of the situations stated in the two sentences of the source. The words "if not otherwise retired pursuant to law" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 inserted reference to women officers appointed under section 5590 of this title.

1957—Subsec. (a). Pub. L. 85–155, § 201(17) (A), eliminated "or an officer in the Medical Service Corps" which followed "limited duty".

Subsec. (b). Pub. L. 85–155, § 201(17) (B), substituted provisions making this section inapplicable to officers in the Nurse Corps for provisions which related to retirement of officers in the Medical Service Corps serving in the grade of commander.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6380. Regular Navy, lieutenant commanders; Regular Marine Corps, majors: retirement for length of service and failures of selection for promotion.

(a) Each officer on the active list of the Navy or the Marine Corps serving in the grade of lieutenant commander or major shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which—

(1) he is not on a promotion list;

(2) he is considered as having twice failed of selection for promotion to the grade of commander or lieutenant colonel; and

(3) he has completed at least 20 years of total commissioned service as computed under section 6387 or 6388 of this title.

(b) This section does not apply to women officers appointed under section 5590 of this title, to officers designated for limited duty, or to officers in the Nurse Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 404.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6380	34 U. S. C. 410j (e); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 410j (a); 34 U. S. C. 3c (b) (1st sentence); 34 U. S. C. 410r (a); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 312 (e), 61 Stat. 859. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205 68 Stat. 68. Aug. 7, 1947, ch. 512, § 312 (a), 61 Stat. 858. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829. June 12, 1948, ch. 449, § 207 (a), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 370.

The first and second sentences in 34 U. S. C. 410j (e) are consolidated for brevity and clarity. The words "at least" are inserted before the words "20 years" to make the single statement cover both situations described in the two sentences of the source. The words "if not otherwise retired pursuant to law" are omitted as surplusage.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Retired pay and grade, see section 6381 of this title.

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6381. Officers retired under preceding sections: retired grade and pay; general rule.

(a) Each officer retired under the preceding sections of this chapter—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) is entitled to retired pay at the rate of 2½ percent of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(b) The retired pay under this section of an officer commissioned in the Regular Navy or the Regular Marine Corps under the Act of April 18, 1946, ch. 141 (60 Stat. 92), or commissioned in the Regular Navy or the Regular Marine Corps after September 8, 1939, while serving on active duty as an officer in the Naval Reserve or the Marine Corps Reserve, may not be less than 50 percent of the basic pay upon which the computation of retired pay is based.

(c) The retired pay under this section of an officer in the Nurse Corps may not be less than 50 per cent of the basic pay upon which the computation of retired pay is based. (Aug. 10, 1956, ch. 1041, 70A Stat. 404; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (18), 71 Stat. 384; May 20, 1958, Pub. L. 85–422, § 11 (a) (6) (C), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5 (h) (4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6381 (a)	34 U. S. C. 389 (1st sentence as applicable to grade); 34 U. S. C. 410m; 34 U. S. C. 626-1 (*l*) (2); 34 U. S. C. 626-1 (n) (as applicable to retired pay); 34 U. S. C. 626-1 (q) (2); 34 U. S. C. 410j (g) less provisos); 34 U. S. C. 410j (a); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 410j (k); 34 U. S. C. 410*l* (a) (as applicable to retired pay), (b) (3), (c); 34 U. S. C. 3c (j).	R. S. 1457 (1st sentence as applicable to grade). Aug. 7, 1947, ch. 512, § 316 (j), 61 Stat. 868. Aug. 7, 1947, ch. 512, § 314 (*l*) (2), 61 Stat. 865; June 23, 1950, ch. 344, § 1 (j), 64 Stat. 252. Aug. 7, 1947, ch. 512, § 314 (n) (as applicable to retired pay), 61 Stat. 865. Aug. 7, 1947, ch. 512, § 314 (q) (2), 61 Stat. 866; June 23, 1950, ch. 344, § 1 (*l*) 64 Stat. 252.
6381 (b)	34 U. S. C. 410j (g) (2d proviso); 34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 312 (g) (less provisos), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 312 (a), 61 Stat. 858. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 312 (k), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 313 (a) (as applicable to retired pay), (b) (3), (c), 61 Stat. 861; redesignated June 23, 1950, ch. 344, § 1 (f), (g), (h), 64 Stat. 251. Aug. 7, 1947, ch. 512, § 302 (j), 61 Stat. 831. Aug. 7, 1947, ch. 512, § 312 (g) (2d proviso), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words "retired under the preceding sections of this chapter" are substituted for the words "serving in the grade of rear admiral or below under authority of this title by virtue of a temporary appointment therein * * * retired while so serving" for brevity and clarity. Section 6385 of this title provides that appointments to grades above rear admiral are disregarded for the purposes of this chapter. The words "if they had been serving in the grade of captain" in 34 U. S. C. 410*l* (a) and the words "had they been serving in the grade of colonel" in 34 U. S. C. 626-1 (n) are omitted as obsolete. Prior to the enactment of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.), flag and general officers did not receive increases in pay for additional years of service. Pursuant to that Act, however, all officers receive such increases.

In subsection (a) (2) the words "basic pay to which he would be entitled if serving on active duty in the grade in which retired" are substituted for the words "active-duty pay in the grade in which serving at the time of retirement" (34 U. S. C. 410*l* (a) and (b) (3); 34 U. S. C. 626-1 (n); 34 U. S. C. 626-1 (q) (2)), for the words "their active-duty pay at the time of retirement" (34 U. S. C. 410j (g)), and for the words "the active-duty pay to which entitled at the time of retirement" (34 U. S. C. 410m). The words "creditable for basic pay" are substituted for the words "for which they would be (or he is) entitled to credit in the computation of pay on the active list." These substitutions are made to conform to the terminology of the Career Compensation Act of 1949.

REFERENCES IN TEXT

The Act of April 18, 1946, ch. 141, referred to in text, is now covered by section 5401 et seq. of this title.

AMENDMENTS

1963—Subsec. (a) (2). Pub. L. 88-132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (a) (2). Pub. L. 85-422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

1957—Subsec. (c). Pub. L. 85-155 added subsec. (c).

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-422 effective on June 1, 1958.

CROSS REFERENCES

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6382. Regular Navy, lieutenants and lieutenants (junior grade); Regular Marine Corps, captains and first lieutenants: discharge for failures of selection for promotion; severance pay.

(a) Each officer on the active list of the Navy serving in the grade of lieutenant, except an officer in the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

(b) Each officer on the active list of the Navy serving in the grade of lieutenant (junior grade), except an officer of the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

(c) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of total commissioned service as computed under section 6387 or 6388 of this title, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section until the total deducted equals the amount of lump-sum payment. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

(d) This section does not apply to women officers appointed under section 5590 of this title or to officers designated for limited duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 405; Aug. 21, 1957, Pub. L. 85-155, title II, § 201 (19), 71 Stat. 384; July 12, 1960, Pub. L. 86-616, § 5 (1), 74 Stat. 390; June 28, 1962, Pub. L. 87-509, § 4 (b), 76 Stat. 121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6382	34 U. S. C. 410j (h) (less provisos, and less applicability to officers reported under 34 U. S. C. 306d (c) (2); 34 U. S. C. 410j (m) (less applicability to persons discharged under 34 U. S. C. 410j (*l*)); 34 U. S. C. 3c (b) (1st sentence); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 410j (a); 34 U. S. C. 410r (a); 34 U. S. C. 625h (a).	Aug. 7, 1947, ch. 512, § 312 (h) (less provisos, and less applicability to officers reported under § 309 (c) (2), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 312 (m); added June 18, 1954, ch. 311 (b) (less applicability to persons discharged under § 312 (*l*)), 68 Stat. 257. Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 312 (a), 61 Stat. 858. June 12, 1948, ch. 449, § 207 (a), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 370.

The phrase "basic pay" is substituted for "active-duty pay" to conform to the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

In subsection (c) the words "to which he would otherwise become entitled" are omitted as surplusage and the words "based on the service for which he has received payment" are substituted for the words "attributable to the active service in respect of which lump-sum payment shall have been made to him".

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-509 limited the lump-sum payment to not more than $15,000.

1960—Subsec. (a). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

Subsec. (b). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time.

1957—Subsec. (b). Pub. L. 85-155 excepted officers of the Nurse Corps.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired or severance pay.

(a) Each officer designated for limited duty on the active list of the Navy or the Marine Corps shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of active duty for training in a reserve component.

(b) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant commander and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of major shall be retired on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.

(c) Each officer retired under subsection (a) or (b)—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) is entitled to retired pay at the rate of 2½ percent of the basic pay to which he would be entitled if serving on active duty in the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(d) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

(e) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant (junior grade) and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

(f) Each officer honorably discharged under subsection (d) or (e) is entitled to a lump-sum payment computed on the basis of two months' basic pay received at the time of discharge multiplied by the number of years of total commissioned service as computed under section 6387 or 6388 of this title, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section, until the total deductions equal the amount of the lump-sum payment. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

(g) If any officer subject to retirement or discharge under subsections (b), (d), or (e) had the permanent status of a warrant officer when first appointed as an officer designated for limited duty, he has the option, instead of being retired or discharged, of reverting to the grade and status he would hold if he had not been so appointed. If any such officer had a permanent grade below the grade of warrant officer, W-1, when first so appointed, he has the option, instead of being retired

or discharged, of reverting to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W-1.

(h) In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included. (Aug. 10, 1956, ch. 1041, 70A Stat. 405; May 20, 1958, Pub. L. 85-422, § 11 (a) (6) (D), 72 Stat. 131; July 12, 1960, Pub. L. 86-616, § 5 (2), 74 Stat. 390; June 28, 1962, Pub. L. 87-509, § 4 (b), 76 Stat. 121; Oct. 2, 1963, Pub. L. 88-132, § 5 (h) (4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6383 (a)—(h).	34 U. S. C. 410j (a); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 626-1 (o); 34 U. S. C. 3c (b) (1st sentence).	Aug. 7, 1947, ch. 512, § 312 (a) 61 Stat. 858.
6383 (a)	34 U. S. C. 410j (d).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
6383 (b)	34 U. S. C. 410j (f) (less provisos).	Aug. 7, 1947, ch. 512, § 314 (o), 61 Stat. 865.
6383 (c)	34 U. S. C. 389 (1st sentence as applicable to grade); 34 U. S. C. 410j (g) (less provisos); 34 U. S. C. 3c (j).	Aug. 7, 1947, ch. 512, § 302 (b) (1st sentence), 61 Stat. 829. Aug. 7, 1947. ch. 512, § 312 (d), 61 Stat. 859.
6383 (d), (e), and (f).	34 U. S. C. 410j (h) (as applicable to officers designated for limited duty who fail of selection, less provisos); 34 U. S. C. 410j (m) (less applicability to persons discharged under 34 U. S. C. 410j (l)).	Aug. 7, 1947, ch. 512, § 312 (f) (less provisos), 61 Stat. 859. R. S. 1457 (1st sentence as applicable to grade). Aug. 7, 1947, ch. 512, § 312 (g) (less provisos), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 312 (j), 61 Stat. 831.
6383 (g) and (h).	34 U. S. C. 410j (f) (provisos); 34 U. S. C. 410j (h) (2d proviso as applicable to officers designated for limited duty who fail of selection).	Aug. 7, 1947, ch. 512, § 312 (h) (as applicable to officers designated for limited duty who fail of selection less provisos), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 312 (m); added June 18, 1954, ch. 311 (b) (less applicability to persons discharged under § 312 (l)), 68 Stat. 257. Aug. 7, 1947, ch. 512, § 312 (f) (provisos), 61 Stat. 859. Aug. 7, 1947, ch. 512, § 312 (h) (2d proviso as applicable to officers designated for limited duty who fail of selection), 61 Stat. 860.

In subsection (a) the words "if not otherwise retired pursuant to law" are omitted as surplusage.

In subsection (c) the pay provisions are worded so as to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

The second proviso in § 312 (g) of the Officer Personnel Act of 1947 (34 U. S. C. 410j (g)), relating to the retired pay of officers commissioned in the Regular Navy under the act of April 18, 1946, ch. 141, as amended (34 U. S. C. 15), and officers commissioned in the Regular Navy while serving on active duty as officers of the Naval Reserve, is not codified in this section because it is inapplicable to officers designated for limited duty. The only authority to appoint limited duty officers is § 404 (a) of the Officer Personnel Act of 1947 (34 U. S. C. 211c (a)). Naval Reserve officers are not eligible for such appointments. Hence there can be no limited duty officers in the categories mentioned in the proviso.

In subsection (f) the words "to which he would otherwise become entitled" are omitted as surplusage and the words "based on the service for which he has received payment" are substituted for the words "attributable to the active service in respect of which lump-sum payment shall have been made to him".

The second proviso in § 312 (f) of the Officer Personnel Act of 1947 (34 U. S. C. 410j (f)), which provides that officers who exercise their option to revert to a warrant officer grade shall be retired upon completing 30 years of active naval service, is omitted as superseded by § 14 (b) (2) of the Warrant Officer Act of 1954 (34 U. S. C. 430 (b) (2)), codified in § 1305 of this title.

AMENDMENTS

1963—Subsec. (c) (2). Pub. L. 88-132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1962—Subsec. (f). Pub. L. 87-509 limited the lump-sum payment to not more than $15,000.

1960—Subsec. (d). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

Subsec. (e). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time.

1958—Subsec. (c) (2). Pub. 85-422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-422 effective on June 1, 1958.

CROSS REFERENCES

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6384. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status.

(a) Each selection board convened under chapter 543 of this title to recommend officers for promotion shall report, from among those officers eligible for consideration, the name of each officer with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade, and, in the opinion of the board, indicates that he would not satisfactorily perform the duties of a higher grade.

(b) Each officer on the active list of the Navy or the Marine Corps whose name is reported under this section shall, subject to subsection (d), be honorably discharged from the naval service on June 30 of the fiscal year in which his name is so reported, or, in the discretion of the Secretary of the Navy, on any earlier date if the officer so requests, with a lump-sum payment computed on the basis of two months' basic pay received at the time of discharge multiplied by the number of years of service, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is

based on the service for which he has received payment under this section, unless the total deductions equal the amount of the lump-sum payments. However, no person is entitled to a lump-sum payment under this section that is more than $15,000.

(c) The years of service that are counted under subsection (b) are—

(1) for a male line officer of the Navy or a male officer of the Marine Corps, his years of total commissioned service as computed under section 6387 of this title;

(2) for a staff corps officer, other than a woman officer appointed under section 5590 of this title and other than an officer in the Nurse Corps, his years of total commissioned service as computed under section 6388 of this title;

(3) for an officer serving in the grade of lieutenant (junior grade) in the Nurse Corps, the person's years of total commissioned service as computed under section 6388 of this title;

(4) for an officer serving in a grade above lieutenant (junior grade) in the Nurse Corps, the person's years of active service as computed under section 6396 of this title; and

(5) for a woman officer appointed under section 5590 of this title, her years of active commissioned service in the Navy or the Marine Corps.

(d) Each officer designated for limited duty whose name is reported under this section has the option of reverting to a lower grade instead of being discharged. Any such officer who had the permanent status of a warrant officer when first appointed as an officer designated for limited duty may revert to the grade and status he would hold if he had not been so appointed. Any such officer who had a permanent grade below the grade of warrant officer, W-1, when first appointed as an officer designated for limited duty may revert to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W-1.

(e) In any computation to determine the grade and status to which an officer may revert under subsection (d), all active service as an officer designated for limited duty or as a temporary or reserve officer is included. (Aug. 10, 1956, ch. 1041, 70A Stat. 407; July 12, 1960, Pub. L. 86-616, § 5 (3), 74 Stat. 390; June 28, 1962, Pub. L. 87-509, § 4 (b), 76 Stat. 121; Sept. 30, 1966, Pub. L. 89-609, § 1 (18), (19), 80 Stat. 853.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6384	34 U. S. C. 410j (a); 34 U. S. C. 626-1 (a) (1st sentence); 34 U. S. C. 306d (c) (2); 34 U. S. C. 410j (h) (less 1st proviso, as applicable to officers reported under 34 U. S. C. 306d (c) (2); 34 U. S. C. 410j (m) (less applicability to persons discharged under 34 U. S. C. 410j (*l*)).	Aug. 7, 1947, ch. 512, § 312 (a), 61 Stat. 858. Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. Aug. 7, 1947, ch. 512, § 309 (c) (2), 61 Stat. 851. Aug. 7, 1947, ch. 512, § 312 (h) (less 1st proviso, as applicable to officers reported under § 309 (c) (2)), 61 Stat. 860. Aug. 7, 1947, ch. 512, § 312 (m); added June 18, 1954, ch. 311 (b) (less applicability to persons discharged under § 312 (*l*)), 68 Stat. 257.

The section is phrased so as to apply to all officers including women officers appointed under the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105, 105c). Although § 215 of that act (34 U. S. C. 105j) provides that title III of the Officer Personnel Act of 1947 shall not apply to such women officers, it also provides that the provisions of titles I and II are immediately operative as to them insofar as these provisions do not conflict with the 1948 act. The parts of title III that are cited as source for this section have counterparts in titles I and II as follows:

Title III	*Title I*	*Title II*
§ 309 (c) (2)	§ 109 (f)	§ 209 (e)
§ 312 (h)	§ 112 (g)	§ 212 (g)

These provisions of titles I and II are consistent with the Women's Armed Services Integration Act of 1948 except as to the method of computing officers' years of service. Their effect is reflected by making the revised section applicable to women appointed under the 1948 Act so far as cause of discharge is concerned, with the substitution of an appropriate method of computing years of service for these women officers. The method supplied is derived from the sections of the Women's Armed Services Act of 1948 relating to involuntary retirement and discharge.

In subsection (b) the words "to which he would otherwise become entitled" are omitted as surplusage and the words "based on the service for which he has received payment" are substituted for the words "attributable to the active service in respect of which lump-sum payment shall have been made to him".

In subsection (c) (4) a method of computing the years of service of officers in grades above lieutenant (junior grade) in the Nurse Corps, based on the retirement provisions of the Army-Navy Nurses Act of 1947 (34 U. S. C. 43—43o), is supplied. The Officer Personnel Act of 1947 contains no provisions relating to the retirement of officers in the Nurse Corps, and the only section specifically referring to the discharge of such officers is that which states that lieutenants (junior grade) in the Nurse Corps are subject to discharge after twice failing of selection for promotion. A method of computing years of service for lieutenants (junior grade) in the Nurse Corps, consistent with the Army-Navy Nurses Act of 1947, is set out in § 202 (d) (2) (34 U. S. C. 3b (d) (2)), but the act is silent as to the method to be used for officers in higher grades in that corps. Although officers of the Nurse Corps are not specifically excluded from the provisions of § 202 (d) (1) (34 U. S. C. 3b (d) (1)), relating to years of service of staff corps officers generally, that subsection is not consistent with the Army-Navy Nurses Act, and it is not believed that it was intended to be applied to Nurse Corps officers.

Subsections (d) and (e) execute the cross reference in the 2d proviso of § 312 (h) of the Officer Personnel Act of 1947 (34 U. S. C. 410j (h) (2d proviso)). The provision relating to the retirement, after 30 years of active service, of former limited duty officers who exercise their option to revert to a warrant officer grade is omitted as superseded by § 14 (b) (2) of the Warrant Officer Act of 1954 (34 U. S. C. 430 (b) (2)), codified in § 1305 of this title.

AMENDMENTS

1966—Subsec. (c) (3), (4). Pub. L. 89-609 substituted "the Person's" and "the person's" for "her", respectively.

1962—Subsec. (b). Pub. L. 87-509 limited the lump-sum payment to not more than $15,000.

1960—Subsec. (b). Pub. L. 86-616 inserted words "or, in the discretion of the Secretary of the Navy, on any earlier date if the officer so requests" following "his name is so reported."

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

CROSS REFERENCES

Suspension of section during war or national emergency, see section 6386 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5708 of this title.

§ 6385. Officers appointed under sections 5231, 5232, and 5787 of this title: grade for purpose of preceding sections.

For the purpose of the preceding sections of this chapter, an officer serving in a grade in which he was appointed under section 5231, 5232, or 5787 of this title is considered as serving in the grade he would hold if he had not been so appointed. (Aug. 10, 1956, ch. 1041, 70A Stat. 408.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6385	34 U. S. C. 3c (b) (proviso).	Aug. 7, 1947, ch. 512, § 302 (b) (proviso), 61 Stat. 830.

The reference to appointments under § 5787 of this title covers not only appointments for periods of limited duration but also all other appointments made under the wartime temporary promotion law (act of July 24, 1941, ch. 320, as amended (34 U. S. C. 350 et. seq.)). The source text for this section does not mention the latter class of appointments, presumably because, when the Officer Personnel Act of 1947 was enacted, it was expected that the temporary promotion authority contained in title III of that act would expire before any further use was made of the 1941 Act. During the Korean emergency, however, both title III and the 1941 act were used. Inasmuch as the promotion, retirement, and separation system prescribed in title III was intended to operate without regard to temporary promotions made under other authority, it appears necessary, in order to carry out the intent of Congess, to exclude from consideration all promotions made under the 1941 Act.

CROSS REFERENCES

Suspension of section during war or national emergency, see section 6386 (c) of this title.

§ 6386. Suspension: preceding sections.

(a) The President may suspend any provision of the preceding sections of this chapter relating to officers serving in the grades of lieutenant and lieutenant (junior grade) in the Navy, other than women officers appointed under section 5590 of this title, or relating to male officers serving in the grades of captain and first lieutenant in the Marine Corps during any period when—

(1) the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeds the number of male officers on the active list in the line of the Navy; and

(2) he determines that the needs of the service so require.

(b) Officers in the following categories are not counted as officers serving on active duty for the purpose of clause (1) of subsection (a):

(1) Retired officers.

(2) Officers of the Naval Reserve assigned to active duty for training.

(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve.

(4) Officers of the Naval Reserve ordered to temporary active duty to prosecute special work.

(c) During a war or national emergency, the President may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 408.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6386 (a)	34 U. S. C. 3d.	Aug. 7, 1947, ch. 512, § 301, 61 Stat. 829; June 30, 1951, ch. 196, § 1 (b), 65 Stat. 108.
6386 (b)	34 U. S. C. 3c (a) (as applicable to meaning of word "officers").	Aug. 7, 1947, ch. 512, § 302 (a) (as applicable to meaning of word "officers"), 61 Stat. 829.
6386 (c)	34 U. S. C. 3e.	Aug. 7, 1947, ch. 512, § 426 (c); added June 30, 1951, ch. 196, § 1 (h), 65 Stat. 109.
6386 (a), (b), and (c).	34 U. S. C. 626-1 (a) (1st sentence).	Aug. 7, 1947, ch. 512, § 314 (a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words "other than women officers appointed under section 5590 of this title" are inserted because § 215 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105j) makes title III of the Officer Personnel Act of 1947 inapplicable to women officers appointed under the 1948 act. Of the preceding sections only § 6384 is applicable to these women officers, and it is so applicable because the provision in title III on which it is based has identical counterparts in titles I and II. The latter are not subject to suspension under 34 U. S. C. 3d. They may, however, be suspended under 34 U. S. C. 3e; hence there is no exception as to women in subsection (c).

SUSPENSION OF SECTION

Section is inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

§ 6387. Regular Navy, male line officers; Regular Marine Corps, male officers: computation of total commissioned service.

(a) For the purpose of the preceding sections of this chapter, the total commissioned service of a male officer on the active list in the line of the Navy or of a male officer on the active list of the Marine Corps who has served continuously on the active list since his appointment in the grade of ensign or second lieutenant, either upon graduation from the Naval Academy or under section 2106, 2107, or 6909 of this title, is computed from June 30 of the fiscal year in which he accepted that appointment.

(b) Each other male commissioned officer on the active list in the line of the Navy or on the active list of the Marine Corps is considered to have the same total commissioned service, for the purpose of the preceeding sections of this chapter, as the officer described in subsection (a) with the maximum total commissioned service who—

(1) has not lost numbers or precedence; and

(2) is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during that other officer's latest period of continuous service on the active list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 408; Aug. 11, 1959, Pub. L. 86–155, § 6, 73 Stat. 337; June 30, 1960, Pub. L. 86–558, 74 Stat. 263; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(16), 78 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6387	34 U. S. C. 3a (d); 34 U. S. C. 626 (a).	Aug. 7, 1947, ch. 512, § 102 (d), 61 Stat. 798. Aug. 7, 1947, ch. 512 § 114 (a), 61 Stat. 811.

The word "male" is inserted to make clear the fact that this section does not apply to women officers. Section 215 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105j) states that the provisions of Title I of the Officer Personnel Act of 1947 which are not inconsistent with the Women's Act apply to women officers. However, § 102 (d) (34 U. S. C. 3a (d)) of the Officer Personnel Act of 1947 is inconsistent with the provisions of the Women's Armed Services Integration Act of 1948 relating to the computation of service of women officers.

In subsection (b) the words "with the maximum total commissioned service" are inserted, and in clause (2) the words "during that other officer's latest period of continuous service on the active list" are substituted for the words "since the date of the latter's first appointment to permanent commissioned rank in the Regular Navy above the grade of commissioned warrant officer, following which he shall have served continuously on the active list of the Regular Navy" for clarity.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88–647 substituted "2106, 2107" for "6904, 6906."

1960—Subsec. (b)(2). Pub. L. 86–558 substituted "is, or at any time has been," for "has been continuously."

1959—Subsec. (b). Pub. L. 86–155 substituted "has been continuously junior" for "is, or at any time has been, junior" in cl. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5780, 6371, 6372, 6373, 6376, 6377, 6378, 6379, 6380, 6382, 6383, 6395 of this title.

§ 6388. Regular Navy; certain staff corps officers: computation of total commissioned service.

(a) For the purpose of the preceding sections of this chapter, the total commissioned service of each officer on the active list of the Navy in the Supply Corps or the Civil Engineer Corps who was initially appointed as a Regular or as a Reserve in the grade of ensign in the line or any staff corps or in the grade of lieutenant (junior grade) in the Civil Engineer Corps and who has served continuously on active duty since that appointment shall be computed from June 30, of the fiscal year in which he accepted that appointment. The provisions of this sub-section are effective as of August 7, 1947.

(b) For the purpose of the preceding sections of this chapter, the total commissioned service of each officer initially appointed in the grade of lieutenant (junior grade) or ensign in any staff corps of the Navy except the Supply Corps and the Civil Engineer Corps, who has since that appointment served continuously on the active list of the Navy, is computed from June 30 of the fiscal year in which he accepted that appointment. However, this subsection does not apply to officers appointed under the Act of April 18, 1946, ch. 141 (60 Stat. 92).

(c) Each other commissioned officer on the active list of the Navy in any staff corps is considered to have the same total commissioned service for the purpose of the preceding sections of this chapter as the officer in his corps described in subsection (a) or (b) having the maximum total commissioned service who—

(1) has not lost numbers or precedence; and

(2) is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during that other officer's latest period of continuous service on the active list.

(d) Notwithstanding subsection (c), each officer on the active list of the Navy in the Medical Service Corps appointed under the Act of April 18, 1946, ch. 141 (60 Stat. 92), is considered to have, for the purpose of the preceding sections of this chapter, total commissioned service equivalent to that of his running mate.

(e) For the purpose of this chapter, the years of service to be credited to each officer on the active list of the Navy in the Nurse Corps is based on—

(1) the person's active service in the Nurse Corps and the Nurse Corps Reserve; and

(2) the person's active service in the Nurse Corps and the Nurse Corps Reserve abolished by the Army-Navy Nurses Act of 1947 (61 Stat. 41).

All such active service is considered commissioned service for the purpose of this chapter.

(f) Except as provided in subsection (d), this section does not apply to officers in the Nurse Corps or to women officers appointed under section 5590 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 409; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(20), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89–609, § 1 (20), (21), 80 Stat. 853; Sept. 20, 1968, Pub. L. 90–502, § 1, 82 Stat. 852; Dec. 24, 1970, Pub. L. 91–582, § 1, 84 Stat. 1574.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6388	34 U. S. C. 3b (d).	Aug. 7, 1947, ch. 512, § 202 (d), 61 Stat. 816.

Subsection (e) is supplied to make clear the fact that subsections (a) and (b) do not apply to officers in the Nurse Corps and that the entire section is inapplicable to women officers appointed under the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105, 105c).

The source text for subsections (a) and (b) (34 U. S. C. 3b (d) (1)) does not specifically exclude officers in the Nurse Corps. These provisions, however, are inconsistent with the provisions of the Army-Navy Nurses Act of 1947 (34 U. S. C. 43—43o) relating to the retirement of officers in that corps, and it is believed that they were not intended to apply to such officers. Specific provision, consistent with the Army-Navy Nurses Act, is made in § 202 (d) (2) (34 U. S. C. 3b (d) (2)) for lieutenants (junior grade) in the Nurse Corps (codified in subsection (d)). The absence of specific provisions for nurses in higher grades is doubtless due to the fact that such officers are not retired under the Officer Personnel Act. Section 215 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105j) states that the provisions of title II of the Officer Personnel Act of 1947 which are not inconsistent with the Women's Act apply to women officers. However, § 202 (d) (34 U. S. C. 3b (d)) of the Officer Personnel Act is inconsistent with the corresponding provisions of the Women's Armed Services Integration Act of 1948 relating to the computation of service of women officers appointed under the latter act.

Subsection (b) is worded to conform to § 6387 (b). The revision note on that section is applicable to this subsection also.

REFERENCES IN TEXT

The Act of April 18, 1946, ch. 141, referred to in text, is now covered by section 5401 et seq. of this title.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–582 inserted sentence making subsection effective as of August 7, 1947.

1968—Subsec. (a). Pub. L. 90–502, § 1(6), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 90–502, § 1(1), redesignated former subsec. (a) as (b), and substituted therein "initially" for "originally" and inserted "except the Supply Corps and the Civil Engineer Corps" after "any staff corps of the Navy". Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 90–502, § 1(2), redesignated former subsec. (b) as (c), and inserted therein reference to subsec. (b). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 90–502, § 1(3), redesignated former subsec. (c) as (d), and substituted therein reference to subsec. "(c)" for "(b)". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90–502, § 1(4), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 90–502, § 1(5), redesignated former subsec. (e) as (f), and substituted therein reference to subsec. "(e)" for "(d)".

1966—Subsec. (d)(1), (2). Pub. L. 89–609 substituted "the person's" for "her".

1957—Subsec. (d). Pub. L. 85–155 substituted "purpose of this chapter" for "purpose of the preceding sections of this chapter" in two instances, and eliminated "serving in the grade of lieutenant (junior grade)" which followed "active list of the Navy in the Nurse Corps".

SEVERANCE PAY FOR CERTAIN OFFICERS DISCHARGED PRIOR TO SEPTEMBER 20, 1968

Section 2 of Pub L. 91–582 provided that: "Notwithstanding any other provision of law, a former officer of the Navy in the Supply Corps and Civil Engineer Corps who is considered to have twice failed of selection for promotion to either the grade of lieutenant commander or the grade of lieutenant and who was discharged prior to September 20, 1968, is entitled to be credited with his total commissioned service in determining the amount of his severance pay and to submit a claim for payment prior to September 20, 1973, for any diminution thereof through a failure to be credited for prior service as an officer in the line."

RETIREMENT OF OFFICERS OF SUPPLY CORPS AND CIVIL ENGINEER CORPS OF NAVY

Section 2 of Pub. L. 90–502 provided that: "Notwithstanding any other provision of law, an officer of the Navy in the Supply Corps or the Civil Engineer Corps who is not selected for promotion to a higher grade after the enactment of this Act [Sept. 20, 1968] may not be retired under chapter 573 of title 10, United States Code [this chapter], earlier than he would have been retired had this Act not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6372, 6377, 6378, 6379, 6380, 6382, 6383, 6384, 6395, 6396 of this title.

§ 6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service.

(a) Subject to section 1005 of this title, an officer in an active status in the Naval Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade may, in the discretion of the Secretary of the Navy, be eliminated from an active status.

(b) An officer who is to be eliminated from an active status under subsection (a) shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve.

(c) An officer in an active status in the Naval Reserve in the permanent grade of lieutenant commander or above, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or above, who is considered as having twice failed of selection for promotion to the next higher grade shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Naval Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that specified below for the permanent grade in which he is serving:

Grade		Total commissioned service
Navy	Marine Corps	
Captain	Colonel	30 years.
Commander	Lieutenant colonel	26 years.
Lieutenant commander	Major	20 years.

Notwithstanding the first sentence of this subsection, the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve, but the duration of such deferment for any individual officer may not be in excess of five years. Notwithstanding the first two sentences of this subsection, the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or above in the Naval Reserve or in the permanent grade of major or above in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 1332 of this title during the period of such deferment. Notwithstanding the first two sentences of this subsection, the Secretary may defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of captain or commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Naval Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as any officer in the line on the active list of the Navy, not restricted in the performance of duty, or any officer

on the active list of the Marine Corps, not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as ensign on the active list of the Navy or as second lieutenant on the active list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W–4.

(e) This section applies to women officers appointed under section 5581 of this title, but not to other women reserve officers or to reserve officers in the Nurse Corps. (Added Pub. L. 85–861, § 1 (144) (A), Sept. 2, 1958, 72 Stat. 1509, and amended Pub. L. 86–559, § 1 (46), June 30, 1960, 74 Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6389 (a)	50: 1311 (c) (1st sentence).	Sept. 3, 1954, ch. 1257, § 411 (c) (1st sentence), 68 Stat. 1170.
6389 (b)	50: 1311 (a) (as applicable to 1311 (c)).	Sept. 3, 1954, ch. 1257, § 411 (a) (as applicable to 411 (c)), 68 Stat. 1169.
6389 (c)	50: 1311 (c) (2d sentence).	Sept. 3, 1954, ch. 1257, § 411 (c) (2d sentence), 68 Stat. 1170.
6389 (d)	50: 1311 (c) (less 1st and 2d sentences).	Sept. 3, 1954, ch. 1257, § 411 (c) (less 1st and 2d sentences), 68 Stat. 1170.
6389 (e)	[No source.]	[No source.]

In subsection (a), the words "who is considered as having twice failed of selection for promotion" are substituted for the words "after failing of selection for promotion * * * a second time" to conform to similar statements in this title. (See the revision note on section 5776.) The words "may be retained in" are omitted as surplusage, since the authority to eliminate such officers from an active status is discretionary with the Secretary.

Subsection (e) is added to avoid conflict with 50: 1311 (d) and (e), codified in sections 6397 and 6403 of this title. 50: 1311 (d) and (e) contain special provisions for "women officers" and officers in the Nurse Corps, respectively, so that officers in these categories must be excepted from this section. Women officers appointed under the act of June 24, 1952, ch. 457 (66 Stat. 155; 34 U. S. C. 21e) (codified in section 5581 of this title), are not "women officers" within the meaning of 50: 1311 (d), however, but are required to be promoted, retired, or eliminated from active status as if they were men. (See the revision note on section 5665 of this title.) The application of this section to these officers is therefore made explicit.

Both men and women are eligible for appointment as reserve officers in the Nurse Corps and are subject to the special provisions relating to that corps.

AMENDMENTS

1960—Subsec. (c). Pub. L. 86–559 empowered the Secretary to defer the retirement or discharge of officers serving in the grade of lieutenant commander in the Ready Reserve, in the permanent grade of lieutenant commander or above in the Naval Reserve, in the permanent grade of major or above in the Marine Corps Reserve, and in the permanent grade of captain or commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve.

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1006 of this title.

§ 6390. Regular Navy and Regular Marine Corps; officers: retirement at age 62.

(a) Each officer on the active list of the Navy or the Marine Corps serving in a grade below fleet admiral shall be retired by the President when he becomes 62 years of age unless the President defers his retirement. The President may defer the retirement of any such officer for as long as he considers advisable, subject to the following conditions:

(1) The retirement of any such officer may not be deferred beyond the date on which he becomes 64 years of age.

(2) Not more than ten officers whose retirement is so deferred may be on active duty at any one time.

(b) Each officer retired under this section is entitled—

(1) to the highest grade, permanent or temporary, held by him on active duty; and

(2) to retired pay at the rate of 2½ percent of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85–422, § 11 (a) (6) (E), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5 (h) (4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6390	34 U. S. C. 410d (less 1st proviso); 34 U. S. C. 410p (a).	Feb. 21, 1946, ch. 34, § 9 (less 1st proviso), 60 Stat. 28; Aug. 7, 1947, ch. 512, § 432 (b), 61 Stat. 881. Aug. 7, 1947, ch. 512, § 416 (a), 61 Stat. 877.

The words "on the active list" are inserted in subsection (a) to confine the operation of the section to permanent regular officers above the grade of chief warrant officer, W–4. So far as 34 U. S. C. 410d applied to warrant officers, it was superseded by § 14 (b) of the Warrant Officer Act of 1954 (34 U. S. C. 430 (b)). See § 1263 of this title.

The second and third provisos in 34 U. S. C. 410d, relating to the computation of retired pay for officers whose pay on the active list was not based on years of service, are omitted as obsolete, since under the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.) the active-duty pay of all officers is based on years of service. The fifth proviso, prohibiting retirements under this section until August 1, 1946, is omitted, since it was temporary and its termination date has passed.

In subsection (a) (2) the words "active duty" are substituted for the words "the active list" to indicate correctly the meaning of this provision and to avoid using the term "active list" in other than the defined sense.

Subsection (b) (2) is worded so as to conform to the terminology of the Career Compensation Act of 1949.

AMENDMENTS

1963—Subsec. (b) (2). Pub. L. 88–132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (b) (2). Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 410d of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6391. Naval Reserve and Marine Corps Reserve; officers: retirement at age 62.

(a) An officer in an active status or on the inactive status list in the Naval Reserve or the Marine Corps Reserve in a grade above chief warrant officer, W–4, shall, except as provided in subsections (b) and (c), be transferred to the Retired Reserve when he becomes 62 years of age.

(b) The Secretary of the Navy may defer the retirement under this section of any officer of the Naval Reserve in a grade above captain or any officer of the Marine Corps Reserve in a grade above colonel and retain him in an active status until he becomes 64 years of age. However, not more than ten officers may be so deferred at any one time, distributed between the Naval Reserve and the Marine Corps Reserve as the Secretary determines.

(c) An officer who was initially appointed in the Naval Reserve or the Marine Corps Reserve before January 1, 1953, and who cannot complete 20 years of service computed under section 1332 of this title before he becomes 62 years of age, but can complete this service by the time he becomes 64 years of age, may be retained in an active status not later than the date he becomes 64 years of age. (Added Pub. L. 85–861, § 1 (144) (B), Sept. 2, 1958, 72 Stat. 1510, and amended Pub. L. 86–559, § 1 (47), June 30, 1960, 74 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6391 (a)	50: 1312 (a) (1st sentence).	Sept 3, 1954, ch. 1257, § 412 (a) (1st sentence), 68 Stat. 1171.
6391 (b)	50: 1312 (b).	Sept. 3, 1954, ch. 1257, § 412 (b), 68 Stat. 1171.
6391 (c)	50: 1312 (a) (2d sentence).	Sept. 3, 1954, ch. 1257, § 412 (a) (2d sentence), 68 Stat. 1171.

In subsection (c), the words "20 years of service computed under section 1332 of this title" are substituted for the words "twenty years of satisfactory Federal service for retirement purposes" for clarity and accuracy.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559 included officers on the inactive status list.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 6392. Regular Navy and Regular Marine Corps, officers having less than three years of service: revocation of appointments; reversion of certain officers to prior status.

(a) The Secretary of the Navy, under regulations prescribed by him, may revoke the appointment of any officer on the active list of the Navy or the Marine Corps who has less than three years of continuous service as an officer on the active list of the Navy or the Marine Corps.

(b) Each officer whose appointment is revoked under this section shall be discharged from the service without advance pay or allowances.

(c) Any officer appointed in the Medical Service Corps under section 5579 of this title who had the permanent status of a warrant officer at the time of that appointment, and whose appointment is revoked under subsection (a), may be reappointed, without examination, to his former permanent status with the same lineal position and all other rights and benefits he would have had, or would have attained in due course, if he had not been appointed in the Medical Service Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 410.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6393 (a) and (b).	34 U. S. C. 405a; 34 U. S. C. 43c (as applicable to revocation and discharge).	Aug. 13, 1946, ch. 962, § 12, 60 Stat. 1061; Aug. 7, 1947, ch. 512, § 425, 61 Stat. 880.
6393 (c)	34 U. S. C. 30g.	Apr. 16, 1947, ch. 38, § 204 (as applicable to revocation and discharge), 61 Stat. 48; May 27, 1953, ch. 71, § 3, 67 Stat. 36. Aug. 4, 1947 ch. 459 § 206, 61 Stat. 737; renumbered § 205, Aug. 7, 1947, ch. 512, § 433 (b), (d), 61 Stat. 881.

In subsections (a) and (b) the word "appointment" is substituted for the word "commission" (used in 34 U. S. C. 405a and 34 U. S. C. 30g) since the intent of these provisions is to permit the Secretary to revoke the authority of a person to be an officer and not merely to revoke the written indicia of authority.

In subsection (c) the words "by the President" are omitted. Sections 3 (a) and 5 (a) of the Warrant Officer Act of 1954 (34 U. S. C. 135a (a) and 135c (a)), codified in § 555 of this title, provide that permanent appointments in the Navy and Marine Corps in the grades of chief warrant officer, W–2, W–3, and W–4, shall be made by the President, by and with the advice and consent of the Senate, and appointments in the grade of warrant officer, W–1, shall be made by the Secretary. That provision governs appointments under this section.

§ 6393. Regular Navy and Regular Marine Corps; women officers: termination of appointments.

The Secretary of the Navy, under regulations prescribed by the President, may terminate the appointment of any woman officer in the Regular Navy or the Regular Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 410.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6393	34 U. S. C. 105i (a); 34 U. S. C. 43i; 34 U. S. C. 21e (2d proviso).	June 12, 1948, ch. 449, § 214 (a), 62 Stat. 370. Apr. 16, 1947, ch. 38, § 209, 61 Stat. 50. June 24, 1952, ch. 457 (2d proviso), 66 Stat. 155.

Provisions relating to all women officers are consolidated for brevity. The word "appointment" is substituted for the words "commission or warrant" in § 214 (a) of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105i (a)) and for the word "commission" in § 209 of the Army-Navy Nurses Act of 1947 (34 U. S. C. 43i) and the Act of June 24, 1952 (34 U. S. C. 21e) since the intent of these provisions is to permit the Secretary to rescind the authority of a person to be an officer and not merely to revoke the written indicia of authority.

Provisions relating to the discharge of reserve officers are codified in subtitle A of this title.

SEPARATION FROM SERVICE

Regulations governing separation from service, see Ex. Ord. No. 10240, Apr. 27, 1951, 16 F. R. 3689, set out as a note under section 3818 of this title.

§ 6394. Regular Navy, rear admirals and commodores; Regular Marine Corps, major generals and brigadier generals: retirement on recommendation of board.

(a) The Secretary of the Navy may convene boards of officers to consider and recommend for retirement officers on the active list of the Navy serving in the grades of rear admiral and commodore and officers on the active list of the Marine Corps serving in the grades of major general and brigadier general.

(b) Each board convened under this section to consider and recommend rear admirals and commodores for retirement shall be composed of not less than five officers on the active list of the Navy serving in grades above rear admiral. However, rear admirals on the active list in any staff corps may be detailed as members of any such board to consider and recommend officers of the staff corps for retirement.

(c) Each board convened under this section to consider and recommend major generals for retirement shall be composed, as far as practicable, of three officers on the active list of the Marine Corps serving in grades above major general. If there is an insufficient number of such officers available, officers on the active list in the line of the Navy serving in grades above rear admiral may be detailed to complete the prescribed membership.

(d) Each board convened under this section to consider and recommend brigadier generals for retirement shall be composed, as far as practicable, of five officers on the active list of the Marine Corps serving in grades above brigadier general. If there is an insufficient number of such officers available, officers on the active list in the line of the Navy serving in the grade of rear admiral or above may be detailed to complete the prescribed membership.

(e) The recommendation of each board convened under this section shall be submitted by the Secretary with his recommendation to the President for approval or disapproval, in whole or in part.

(f) Each officer recommended for retirement by a board convened under this section, shall, if the recommendation is approved by the President, be retired on the first day of any month set by the Secretary, but not later than the first day of the seventh month after the date of the approval by the President.

(g) Unless otherwise entitled to a higher grade, each officer retired under this section shall be retired in—

(1) the highest grade, permanent or temporary, in which he served satisfactorily on active duty as determined by the Secretary; or

(2) if the Secretary determines that he did not serve satisfactorily in his highest grade, the next lower grade in which he has served, but not lower than his permanent grade.

(h) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay at the rate of 2½ percent of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based. (Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85-422, § 1(a)(6)(F), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85-861, § 1(144)(C), 72 Stat. 1511; Oct. 2, 1963, Pub. L. 88-132, § 5(h)(4), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6394 (a)	34 U. S. C. 419.	Feb. 21, 1946, ch. 34, § 1, 60 Stat. 26.
6394 (b)	34 U. S. C. 419a (a).	
6394 (c)	34 U. S. C. 419a (b).	Feb. 21, 1946, ch. 34, § 2 (a), 60 Stat. 26.
6394 (d)	34 U. S. C. 419a (c).	
6394 (e)	34 U. S. C. 419b.	Feb. 21, 1946, ch. 34, § 2 (b), 60 Stat. 26.
6394 (f)	34 U. S. C. 410a.	Feb. 21, 1946, ch. 34, § 2 (c), 60 Stat. 26.
6394 (g)	34 U. S. C. 389 (1st sentence as applicable to grade).	Feb. 21, 1946, ch. 34, § 4, 60 Stat. 27.
		Feb. 21, 1946, ch. 34, § 5, 60 Stat. 27.
		R. S. 1457 (1st sentence as applicable to grade).

In subsection (a) the words "may convene" are substituted for the words "shall, whenever he deems it advisable, appoint" for clarity and uniformity. The words "of the line and staff corps" are omitted as surplusage.

In subsections (a) through (d) the words "on the active list of the Navy" and "on the active list of the Marine Corps" are substituted for the words "the Regular Navy" and "the Regular Marine Corps" in view of the definition of "active list" in this title. The word "grades" is substituted for the word "ranks" for uniformity of expression. The word "line", in the phrase "line officers of the Marine Corps", is omitted as surplusage since all officers of the Marine Corps are line officers.

Subsection (g) states the basic rule that officers retire in the grade in which serving at the time of retirement. Section 7 of the act of February 21, 1946, ch. 34 (34 U. S. C. 410c), authorized an exception to this rule in the case of any officer, retired under that act, who at the time of retirement is serving in a grade lower than a grade he held during World War II. The section provided that such an officer, unless otherwise entitled to a higher grade, should be placed on the retired list in the highest grade satisfactorily held by him prior to July 1, 1946. This provision is codified in § 6381 of this title, and the words "unless otherwise entitled to a higher grade" are included in subsection (g) of this section to cover all exceptions to the general rule as to retired grade.

AMENDMENTS

1963—Subsec. (h). Pub. L. 88-132 substituted "of" for "to which he would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (g). Pub. L. 85-861 substituted provisions requiring retirement in the highest grade, temporary or permanent, in which an officer served satisfactorily on active duty, or if the Secretary determines that he did not serve satisfactorily in his highest grade, in the next lower grade in which he served, but not lower than his permanent grade, for provisions which required retirement in the grade in which he served at the time of retirement, and eliminated provisions which prescribed the

amount of retired pay to which an officer retired under this section was entitled.

Subsec. (g) (2). Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay". The provisions of subsec. (g) (2) are now contained in subsec. (h).

Subsec. (h). Pub. L. 85–861 added subsec. (h). Similar provisions were formerly contained in subsec. (g) (2) of this section.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (e) of this section delegated to the Secretary of Defense, see section 1(9) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6395. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge during war or emergency for unsatisfactory performance of duty.

(a) Each board of officers convened under section 5787 of this title to recommend officers for promotion shall report, from among the officers whose names are presented to it for consideration, the name of each officer on active duty with less than 20 years of service whose record, in the opinion of the board, indicates his unsatisfactory performance of duty in his present grade and, in the opinion of the board, indicates that he would not satisfactorily perform the duties of a higher grade.

(b) Each officer in the Regular Navy or the Regular Marine Corps not on a retired list holding a permanent appointment in the grade of warrant officer, W–1, or above, whose name is reported under this section, shall, except as otherwise provided in this section, be honorably discharged on the first day of the fourth month following that in which his name is so reported.

(c) An officer who is under consideration for or undergoing disciplinary action of any kind may not be discharged under this section before the final disposition of his case. Thereafter, such an officer shall be separated from the naval service either under this section or under another provision of law, in the discretion of the Secretary of the Navy.

(d) Each officer holding a permanent appointment as a warrant officer and temporarily appointed to a higher grade, whose name is reported under this section, has the option, instead of being discharged under this section, of reverting to the grade and status he would hold if he had not been so temporarily appointed.

(e) Each officer designated for limited duty who, when first appointed as an officer designated for limited duty, had the permanent status of a warrant officer, and whose name is reported under this section, has the option, instead of being discharged under this section, of reverting to the grade and status he would hold if he had not been so appointed. Each officer designated for limited duty who, when first appointed as an officer designated for limited duty, had a permanent grade below the grade of warrant officer, W–1, and whose name is reported under this section, has the option, instead of being discharged under this section, of reverting to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W–1.

(f) In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

(g) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of service, but such payment may not be more than one year's basic pay.

(h) The years of service that are counted under subsection (g) are—

(1) for a male line officer of the Navy or a male officer of the Marine Corps, his years of total commissioned service as computed under section 6387 of this title;

(2) for a staff corps officer, other than a woman officer appointed under section 5590 of this title and other than an officer in the Nurse Corps, his years of total commissioned service as computed under section 6388 of this title;

(3) for an officer in the Nurse Corps, the person's years of total commissioned service as computed under section 6388 of this title:

(4) for a woman officer appointed under section 5590 of this title, her years of active commissioned service in the Navy or the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 411; Aug. 21, 1957, Pub. L. 85–155, title II, § 201 (21), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89–609, § 1 (22), 80 Stat. 853.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6395	34 U. S. C. 350d (b).	July 24, 1941, ch. 320, § 5 (b), 55 Stat. 604; added June 30, 1951, ch. 196, § 2 (b), 65 Stat. 109.

The provisions codified in this section were added to the 1941 temporary promotion law (34 U. S. C. 350 et seq.) in 1951 in order that, when title III of the Officer Personnel Act of 1947 is suspended and promotions are being made under the 1941 act, the process of weeding out unsatisfactory officers may be continued. Accordingly these provisions were made very similar to the provisions of § 312 (h) of the Officer Personnel Act of 1947 (codified in § 6384 of this title). They are identical in the requirement that, for pay purposes, years of service shall be computed as provided in §§ 102 (d) and 202 (d) of the Officer Personnel Act of 1947 (34 U. S. C. 3a (d) and 3b (d)). As stated in the revision note on § 6384 of this title, these methods of computation are inappropriate in the case of women officers appointed under the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105, 105c) and in the case of officers in grades above lieutenant (junior grade) in the Nurse Corps. Hence, in this section as in § 6384 appropriate methods are supplied.

AMENDMENTS

1966—Subsec. (h) (3). Pub. L. 89–609 substituted "the person's" for "her".

1957—Subsec. (h) (3). Pub. L. 85–155, § 201 (21) (A), eliminated the words "serving in the grade of lieutenant (junior grade)" which preceded "in the Nurse Corps".

Subsec. (h) (4). Pub. L. 85–155, § 201 (21) (B), redesignated former subsec. (h) (5) as (h)(4). Former subsec. (h) (4), which related to years of service for officers serving in a grade above lieutenant (junior grade) in the Nurse Corps, was repealed by Pub. L. 85–155, § 201 (21) (B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5787 of this title.

§ 6396. Regular Navy; officers in Nurse Corps in grades below commander: retirement or discharge.

(a) An officer on the active list of the Navy serving in the grade of lieutenant commander in the Nurse Corps shall, subject to the provisions of section 5777 of this title, be retired on June 30 of the fiscal year in which the officer

(1) is not on a promotion list:

(2) is considered as having twice failed of selection for promotion to the grade of commander: and

(3) has completed at least twenty years of active commissioned service as computed under section 6388 of this title.

(b) An officer retired under this section shall be retired—

(1) in the highest grade satisfactorily held by her on active duty as determined by the Secretary, but not lower than her permanent grade; and

(2) with retired pay at the rate of 2½ per centum of the basic pay of the grade in which retired multipled by the number of years of service that may be credited to her under section 1405 of this title, but the retired pay may not be more than 75 per centum or less than 50 per centum of the basic pay upon which the computation of retired pay is based.

(c) An officer on the active list of the Navy serving in the grade of lieutenant in the Nurse Corps shall be honorably discharged on June 30 of the fiscal year in which the officer

(1) is not on a promotion list; and

(2) has completed thirteen years of active commissioned service as computed under section 6388 of this title.

However, if she so requests she may be honorably discharged at any time during that fiscal year.

(d) An officer on the active list of the Navy serving in the grade of lieutenant (junior grade) in the Nurse Corps shall be honorably discharged on June 30 of the fiscal year in which the officer—

(1) is not on a promotion list; and

(2) has completed seven years of active commissioned service as computed under section 6388 of this title.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

(e) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of active commissioned service as computed under section 6388 of this title, but the payment may not be more than two years' basic pay or more than $15,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 413; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(22), 71 Stat. 385; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(G), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Sept. 30, 1966, Pub. L. 89–609, § 1(23)—(26), 80 Stat. 853, 854; Nov. 8, 1967, Pub. L. 90–130, § 1(24)(E), 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6396 (a) and (b).	34 U. S. C. 43g (a) (1st sentence).	Apr. 16, 1947, ch. 38, § 207 (b) (1st sentence), 61 Stat. 49; redesignated (a), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (g), 64 Stat. 162.
6396 (c)	34 U. S. C. 43g (h).	Apr. 16, 1947, ch. 38, § 207 (i), 61 Stat. 50; redesignated (h), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882.
6396 (d)	34 U. S. C. 43g (a) (less 1st sentence); 34 U. S. C. 43g (d); 34 U. S. C. 43g (f).	Apr. 16, 1947, ch. 38, § 207 (b) (less 1st sentence), 61 Stat. 49; redesignated (a), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (g), 64 Stat. 162. Apr. 16, 1947, ch. 38, § 207 (e), 61 Stat. 49; redesignated (d), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (i), 64 Stat. 162. Apr. 16, 1947, ch. 38, § 207 (g), 61 Stat. 49; redesignated (f), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882.

In subsection (a) the words "An officer * * * serving in the grade of commander or lieutenant commander" are substituted for the words "Each commander and lieutenant commander" and in subsection (b) the words "An officer * * * serving in a grade below lieutenant commander" are substituted for the words "each lieutenant or officer of lower grade" for clarity and to conform to the terminology used in the earlier sections of this chapter in which the retirement provisions of title III of the Officer Personnel Act of 1947 are codified. Title III does not provide for the retirement of officers in the Nurse Corps, that subject having been previously covered in the Army-Navy Nurses Act of 1947 (34 U. S. C. 43g), but it does provide for their temporary promotion. Section 316 (j) of the Officer Personnel Act of 1947 (34 U. S. C. 410m) provides that officers retired while serving in grades to which they were temporarily promoted under title III are entitled to retire in those grades.

In subsection (d) the provisions of § 207 (d) and 207 (f) of the Army-Navy Nurses Act of 1947, as amended (34 U. S. C. 43g) (d) and (f) are consolidated inasmuch as the retired pay formula used is the same, whether the officer is placed on the retired list in her permanent grade or in a higher temporary grade. The multiplicand used in each case is 2½ percent of the basic pay of the grade in which placed on the retired list. The phrase "other than by reason of physical disability" is eliminated as surplusage inasmuch as the section deals only with retirement for age and length of service. The words "basic pay to which she would be entitled if serving on active duty in the grade in which retired" are substituted for the words "active-duty pay to which entitled at the time of retirement" in 34 U. S. C. 43g (d) and for the words "active-duty pay to which she would be entitled if serving, at the time of retirement, on active duty in the rank in which placed on the retired list", since § 431 of the Officer Personnel Act of 1947 (34 U. S. C. 410q) provides that retired pay shall be based on rates of pay "now or hereafter provided by law for officers on the active list." The words "basic pay" are substituted for the words "active-duty pay" to conform to the terminology used in the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 substituted failure to appear on a promotion list, being considered as having twice failed of selection for promotion to the grade of commander, and completion of at least 20 years of active commissioned service as computed under section 6388 of this title for attainment of age 55 or completion of 30 years of service computed under section 6388 of this title as the conditions for determining whether lieutenant commanders in the Nurse Corps shall be retired on June 30 of any fiscal year.

Subsec. (b). Pub. L. 90–130 redesignated former subsec. (c) as subsec. (b). Former subsec. (b) transferred to subsecs. (c) and (d) and amended.

Subsec. (c). Pub. L. 90–130 redesignated as subsec. (c) that portion of the substance of former subsec. (b) relating to officers serving in the grade of lieutenant and amended such provisions by substituting discharge for retirement as the personnel action to be taken, striking out reference to section 5777 of this title, substituting failure to appear on a promotion list and completion of 13 years of active commissioned service for attainment of age 50 or completion of 20 years of service as the conditions determining the timing of discharge, and inserting provision for honorable discharge on request of the officer involved. Former subsec. (c) redesignated as subsec. (b).

Subsec. (d). Pub. L. 90–130 redesignated as subsec. (d) that portion of the substance of former subsec. (b) relating to officers serving in the grade of lieutenant (junior grade) and amended such provisions by substituting discharge for retirement as the personnel action to be taken, striking out reference to section 5777 of this title, substituting failure to appear on a promotion list and completion of 7 years of active commissioned service for attainment of age 50 or completion of 20 years of service as the conditions determining the timing of discharge, and inserting provision for honorable discharge on request of the officer involved.

Subsec. (e). Pub. L. 90–130 added subsec. (e).

1966—Subsecs. (a), (b). Pub. L. 89–609, § 1(23), (24), substituted "the person" for "she".

Subsec. (c)(1). Pub. L. 89–609, § 1(25), struck out "by her" following "held" and substituted "the person's" for "her".

Subsec. (c)(2). Pub. L. 89–609, § 1(26), struck out "she would be" and "to him" preceding "entitled" and following "credited", respectively.

1963—Subsec. (c)(2). Pub. L. 88–132 substituted "of" for "to which she would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (c)(2). Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

1957—Subsec. (a). Pub. L. 85–155, § 201 (22) (A), substituted "lieutenant commander in the Nurse Corps shall, subject to the provisions of section 5777 of this title, be retired on June 30 of the fiscal year in which she becomes 55 years of age or completes 30 years of service computed under section 6388 of this title, whichever is earlier" for "commander or lieutenant commander in the Nurse Corps may be retired by the Secretary of the Navy on the first day of any month following that in which she becomes 55 years of age or completes 20 years of service, whichever is later".

Subsec. (b). Pub. L. 85–155, § 201 (22) (B), substituted "shall, subject to section 5777 of this title, be retired on June 30 of the fiscal year in which she becomes 50 years of age or completes 20 years of service computed under section 6388 of this title, whichever is later" for "may be retired by the Secretary on the first day of any month following that in which she becomes 50 years of age or completes 20 years of service, whichever is later".

Subsec. (c). Pub. L. 85–155, § 201 (22) (C) redesignated former subsec. (d) as (c), and Pub. L. 85–155, § 201 (22) (D), substituted "more than 75 percent or less than 50 percent" for "more than 75 percent" in clause (2). Former subsec. (c), which related to computation of years of service for the purpose of determining the eligibility of an officer for retirement under this section, was repealed by Pub. L. 85–155, § 202 (22) (C).

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4(b) of Pub. L. 90–130 provided that: "The amendments made by this Act to section 6396 of title 10, United States Code [this section], do not become effective with respect to officers of the Regular Navy in the Nurse Corps serving in the grade of lieutenant commander until June 30 of the second fiscal year following the fiscal year in which this Act is approved."

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

DISCHARGE OF REGULAR NAVY OFFICERS SERVING AS LIEUTENANTS (JUNIOR GRADE) IN NURSE CORPS ON NOV. 8, 1967

Section 4(c) of Pub. L. 90–130 provided that: "Notwithstanding section 6396 of title 10, United States Code, as amended by this Act [this section], an officer of the Regular Navy in the Nurse Corps who is serving in the grade of lieutenant (junior grade) on the effective date of this Act [Nov. 8, 1967] may not be discharged under that section until June 30 of the second fiscal year following the fiscal year in which this Act is approved."

RETIREMENT OF REGULAR NAVY OFFICERS WITH OVER 13 YEARS OF COMMISSIONED SERVICE SERVING AS LIEUTENANTS IN NURSE CORPS ON NOV. 8, 1967

Section 4(d) of Pub. L. 90–130 provided that: "Notwithstanding any other provision of law, an officer of the Regular Navy in the Nurse Corps who is serving in the grade of lieutenant on the effective date of this Act [Nov. 8, 1967] and who on that date has completed more than thirteen years of active commissioned service may not be involuntarily discharged under section 6396 of title 10, United States Code, as amended by this Act [this section] but shall, unless sooner selected for promotion to the grade of lieutenant commander, be retired on June 30 of the fiscal year in which she completes at least twenty years of active commissioned service. Each officer retired under this subsection shall be retired with the retired grade and pay prescribed in section 6396(c) of title 10, United States Code, as it existed before the enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1405, 6384 of this title.

§ 6397. Naval Reserve; officers in the Nurse Corps; elimination from active status.

(a) An officer of the Naval Reserve in any grade in the Nurse Corps may be eliminated from an active status under the conditions prescribed by this chapter for the separation from the active list of an officer on the active list of the Navy in the same grade in the Nurse Corps.

(b) An officer who is to be eliminated from an active status under this section shall, if qualified, be given an opportunity to request transfer to the Retired Reserve and, if the person requests it, shall be so transferred. If the person is not transferred to the Retired Reserve, the person shall, in the discretion of the Secretary of the Navy, be transferred to the inactive status list or be discharged from the Naval Reserve.

(c) An officer may be eliminated from an active status under this section, only upon the recommendation of board appointed by the Secretary and convened at such times as he directs. (Added Pub. L. 85–861, § 1 (144) (D), Sept. 2, 1958, 72 Stat. 1511, and amended Pub. L. 89–609, § 1(27), Sept. 30, 1966, 80 Stat. 854.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6397 (a)	50: 1311 (e).	Sept. 3, 1954, ch. 1257, § 411 (e), 68 Stat. 1170.
6397 (b)	50: 1311 (a) (as applicable to 1311 (e)).	Sept. 3, 1954, ch. 1257, § 411 (a) (as applicable to § 411 (e)), 68 Stat. 1169.
6397 (c)	50: 1311 (f) (as applicable to 1311 (e)).	Sept. 3, 1954, ch. 1257, § 411 (f) (as applicable to § 411 (e)), 68 Stat. 1170.

The act of August 9, 1955, ch. 654, section 1 (69 Stat. 579) authorized the appointment of men as commissioned officers in the Nurse Corps of the Naval Reserve. Even though it is assumed that men will be a small minority in the corps, the masculine pronoun is used throughout since under 1 U. S. C. 1 words importing the masculine gender include the feminine. The converse is not true.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-609 substituted "the person" for "he" in three instances.

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006 of this title.

§ 6398. Regular Navy; women captains and commanders; Regular Marine Corps, women colonels and lieutenant colonels: retirement for length of service; retired grade and pay.

(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of captain and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of colonel shall be retired by the President on the first day of the month following the month in which she completes thirty years of active commissioned service in the Navy or the Marine Corps.

(b) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of commander and is not on a promotion list for a higher permanent grade and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of lieutenant colonel and is not on a promotion list for a higher permanent grade shall be retired by the President on the first day of the month following the month in which she completes twenty-six years of active commissioned service in the Navy or the Marine Corps.

(c) Each officer retired under this section—

(1) unless otherwise entitled to a higher grade shall be retired in the permanent grade held by her at the time of retirement; and

(2) is entitled to retired pay at the rate of 2½ per centum of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to her under section 1405 of this title, but the retired pay may not be more than 75 per centum or less than 50 per centum of the basic pay upon which the computation of retired pay is based.

(Aug. 10, 1956, ch. 1041, 70A Stat. 413; May 20, 1958, Pub. L. 85-422, § 11 (a) (6) (H), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88-132, § 5 (h) (6), 77 Stat. 214; Nov. 8, 1967, Pub. L. 90-130, § 1(24) (F), 81 Stat. 381.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6398	34 U. S. C. 410r (b) (less applicability to assistant to ChNavPers), (e), (k); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 207 (b) (less applicability to assistant to ChNavPers), (e), (k), 62 Stat. 366. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

In subsection (a) the words "appointed under section 5590 of this title" are inserted to make clear the fact that this section is not applicable to women officers appointed under other law. The words "who holds a permanent appointment in the grade of commander" are substituted for the words "of the grade of commander" for clarity. The application of the section to women lieutenant colonels in the Marine Corps is spelled out. The words "the Navy" are substituted for the words "the Navy and the Naval Reserve" since, by definition, "the Navy" includes both regular and reserve components.

In subsection (b) the words "basic pay to which she would be entitled if serving on active duty in the grade in which retired" are substituted for the words "active-duty pay to which entitled at the time of retirement" for clarity and accuracy. The amount of retired pay is subject to variations when the rates of basic pay are changed, as provided in § 431 of the Officer Personnel Act of 1947 (34 U. S. C. 410q). The words "basic pay" are substituted for the words "active-duty pay" to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.). In connection with the minimum rate of retired pay, reference to the act of April 18, 1946, ch. 141 (34 U. S. C. 15) is omitted as unnecessary. Section 204 of the Women's Armed Services Integration Act of 1948 (34 U. S. C. 105c) provides that women appointed in the Regular Navy shall be between 21 and 30 years of age, except those transferred from the Naval Reserve under the act of April 18, 1946, supra. A woman who is under 30 when commissioned will complete at least 25 years of service before reaching 55 and, when retired under this section, will have sufficient service to qualify for retired pay at a rate higher than 50 percent of basic pay. Stating a 50 percent minimum for all officers retired under this section, rather than solely for those who might not otherwise qualify for it, does not change the law.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-130 substituted "captain" for "commander" in the reference to the woman officer on the active list of the Navy and "colonel" for "lieutenant colonel" in the reference to the woman officer in the Marine Corps and struck out attainment of age 55 as an alternative condition requiring retirement.

Subsec. (b). Pub. L. 90-130 added subsec. (b). Former subsec. (b) redesignated as subsec. (c).

Subsec. (c). Pub. L. 90-130 redesignated former subsec. (b) as subsec. (c).

1963—Subsec. (b)(2). Pub. L. 88-132 substituted "of" for "to which she would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (b) (2). Pub. L. 85-422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-422 effective on June 1, 1958.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(12) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1405 of this title.

§ 6399. Repealed. Pub. L. 90-130, § 1(24)(G), Nov. 8, 1967, 81 Stat. 382.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 414; May 20, 1958, Pub. L. 85-422, § 11(a) (6) (I), 71 Stat. 131; Oct. 2, 1963, Pub. L. 88-132, § 5(h) (6), 77 Stat. 214, provided for the retirement of women lieutenant commanders and below of the Regular Navy and women majors and below of the Regular Marine Corps at age 50 and their retired grade and pay.

§ 6400. Regular Navy, women lieutenant commanders; Regular Marine Corps, women majors: retirement for length of service; retired grade and pay.

(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant commander and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of major shall be retired on June 30 of the fiscal year in which—

(1) she is not on a promotion list; and

(2) she has completed 20 years of active commissioned service in the Navy or in the Marine Corps.

(b) Each officer retired under this section—

(1) unless otherwise entitled to higher grade, shall be retired in the permanent grade held by her at the time of retirement; and

(2) is entitled to retired pay at the rate of 2½ percent of the basic pay of the grade in which retired multiplied by the number of years of service that may be credited to him [1] under section 1405 of this title, but the retired pay may not be more than 75 percent of the basic pay upon which the computation of retired pay is based.

(Aug. 10, 1956, ch. 1041, 70A Stat. 414; May 20, 1958, Pub. L. 85–422, § 11 (a) (6) (J), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5 (h) (6), 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6400 (a)	34 U. S. C. 410r (i); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 207 (i), 62 Stat. 368.
6400 (b)	34 U. S. C. 410r (a); 34 U. S. C. 389 (1st sentence as applicable to grade).	June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369. June 12, 1948, ch. 449, § 207 (a), 62 Stat. 366. R. S. 1457 (1st sentence as applicable to grade).

In subsection (a) the words "appointed under section 5590 of this title" are inserted to make clear the fact that this section is not applicable to women officers appointed under other law. The words "who holds a permanent appointment in the grade of lieutenant commander" are substituted for the words "of the grade of lieutenant commander" for clarity. The words "in the Navy" are substituted for the words "in the Regular Navy and the Naval Reserve" since, by definition, "the Navy" includes both regular and reserve components.

The Women's Armed Services Integration Act of 1948 is silent as to the retired pay of women officers retired in the grade of lieutenant commander or major under § 207 (i) of the act (34 U. S. C. 410r (i)). Section 207 (a) (34 U. S. C. 410r (a)) makes applicable to women retired officers all provisions of law relating to male retired officers except those relating to the same subject matter provided for in the Women's Act. Section 215 of the Women's Act (34 U. S. C. 105j) provides that title III of the Officer Personnel Act of 1947 does not apply to women officers but that the provision of titles I and II which are not inconsistent with the Women's Act do apply to them. Section 112 (f) in title I and § 212 (f) in title II, 34 U. S. C. 410 (f), 410h (f), provide for the retired pay of male officers retired in grades above lieutenant. These provisions are applicable to women since they are consistent with the provisions of § 207 (e) (34 U. S. C. 410r (e)) of the Women's Act. Their application to women officers retired under this section is stated in clause (2) of subsection (b).

[1] So in original. Probably should be "her".

AMENDMENTS

1963—Subsec. (b) (2). Pub. L. 88–132 substituted "of" for "to which she would be entitled if serving on active duty in" following "2½ percent of the basic pay."

1958—Subsec. (b) (2). Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "creditable for basic pay".

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 6401. Regular Navy, women lieutenants; Regular Marine Corps, women captains: discharge for length of service; severance pay.

(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which—

(1) she is not on a promotion list; and

(2) she has completed 13 years of active commissioned service in the Navy or in the Marine Corps.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

(b) Each officer discharged under this section is entitled to a lump-sum payment equal to 24 times the monthly basic pay to which she was entitled at the time of discharge. However, no person is entitled to a lump-sum payment under this section that is more than $15,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 415; July 12, 1960, Pub. L. 86–616, § 5(4), 74 Stat. 390; June 28, 1962, Pub. L. 87–509, § 4(b), 76 Stat. 121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6401	34 U. S. C. 410r (j) (less proviso, as applicable to lieutenants); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 207 (j) (less proviso, as applicable to lieutenants), 62 Stat. 368. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

In subsection (a) the words "appointed under section 5590 of this title" are inserted to make it clear that this section does not apply to women officers appointed under other law. The words "who holds a permanent appointment in the grade of lieutenant" are substituted for the words "of the grade(s) of lieutenant" for clarity. The words "in the Navy" are substituted for the words "in the Regular Navy and the Naval Reserve" since, by definition, the Navy includes both regular and reserve components.

In subsection (b) the words "equal to 24 times the monthly basic pay to which she was entitled" are substituted for the words "computed on the basis of two months active-duty pay * * * for each year of commissioned service, but not to exceed a total of two years' pay" for brevity and clarity. Application of the formula in the case of an officer having 13 years of service could not result in a payment of less than the maximum, i. e., 2 years' pay. The amount is stated as 24 times the monthly pay instead of 2 years' pay because the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.) fixes

pay scales on a monthly rather than a yearly basis. The phrase "basic pay" is substituted for "active-duty pay" to conform to the terminology of the Career Compensation Act of 1949.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–509 limited the lump-sum payment to not more than $15,000.

1960—Subsec. (a). Pub L. 86–616 permits an officer, if she so requests, to be honorably discharged at any time during the fiscal year.

RETENTION OF WOMEN LIEUTENANTS ON THE ACTIVE LIST AFTER 13 YEARS OF ACTIVE COMMISSIONED SERVICE

Section 23 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1561, provided that:

"(a) Until June 15, 1960, the Secretary of the Navy, when he determines that the needs of the service so require, shall furnish to each selection board convened under section 5704 (a) or (b) of title 10, United States Code, the number of women officers in the grade of lieutenant who will complete 13 years of active commissioned service in the Navy in the current fiscal year and who, if not selected for promotion to the next higher grade, may be recommended to be retained on the active list until June 30 of the fiscal year in which they complete 15 years of active commissioned service in the Navy.

"(b) A woman officer who is recommended by a selection board for retention on the active list under subsection (a) may not be discharged under section 6401 of title 10, United States Code [this section].

"(c) Each woman officer on the active list of the Navy in the grade of lieutenant who is recommended by a selection board for retention on the active list under subsection (a) shall, if not sooner selected for promotion to the next higher grade, be honorably discharged on June 30 of the fiscal year in which she completes 15 years of active commissioned service in the Navy. Each officer discharged under this section is entitled to a lump-sum payment equal to 24 times the monthly basic pay to which she was entitled at the time of discharge."

§ 6402. Regular Navy, women lieutenants (junior grade); Regular Marine Corps, women first lieutenants: discharge for length of service; severance pay.

(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant (junior grade) and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which—

(1) she is not on a promotion list; and

(2) she has completed seven years of active commissioned service in the Navy or in the Marine Corps.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

(b) Each officer discharged under this section is entitled to a lump-sum payment equal to two months' basic pay at the time of discharge multiplied by the number of years of commissioned service in the Navy or the Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 415; July 12, 1960, Pub. L. 86–616, § 5(5), 74 Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6402	34 U. S. C. 410r (j) (less proviso, and less applicability to lieutenants); 34 U. S. C. 625h (a).	June 12, 1948, ch. 449, § 207 (j) (less proviso, and less applicability to lieutenants), 62 Stat. 368. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

In subsection (a) the words "appointed under section 5590 of this title" are inserted to make clear the fact that the section is not applicable to women officers appointed under other law. The words "who holds a permanent appointment in the grade of lieutenant (junior grade)" are substituted for the words "of the grade(s) of * * * lieutenant (junior grade)" for clarity. The words "in the Navy" are substituted for the words "in the Regular Navy and the Naval Reserve" since, by definition, "the Navy" includes both regular and reserve components.

In subsection (b) the words "but not to exceed a total of two years' pay" are omitted as unnecessary, since application of the formula in the case of an officer having only 7 years of commissioned service could not result in a payment of as much as 2 years' pay. The phrase "basic pay" is substituted for "active-duty pay" to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–616 permits an officer, if she so requests, to be honorably discharged at any time during the fiscal year.

§ 6403. Naval Reserve and Marine Corps Reserve; women officers: elimination from active status.

(a) A women officer in any grade in the Naval Reserve, other than an officer in the Nurse Corps or an officer appointed under section 5581 of this title, may, in the discretion of the Secretary of the Navy, be eliminated from an active status under the conditions prescribed by this chapter for the retirement or discharge of a woman line officer in the same grade on the active list of the Navy, or at any time after those conditions are met.

(b) A woman officer in any grade in the Marine Corps Reserve may, in the discretion of the Secretary, be eliminated from an active status under the conditions prescribed by this chapter for the retirement or discharge of a woman officer in the same grade on the active list of the Marine Corps, or at any time after those conditions are met.

(c) For the purposes of subsections (a) and (b) all commissioned service is considered active commissioned service.

(d) An officer who is to be eliminated from an active status under this section shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if she requests it, shall be so transferred. If she is not transferred to the Retired Reserve, she shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve.

(e) An officer may be eliminated from an active status under this section, only upon the recommendation of a board appointed by the Secretary and convened at such times as he directs. (Added Pub. L. 85–861, § 1 (144) (E), Sept. 2, 1958, 72 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6403 (a), (b), (c).	50: 1311 (d).	Sept. 3, 1954, ch. 1257, § 411 (d), 68 Stat. 1170.
6403 (d)	50: 1311 (a) (as applicable to 1311 (d)).	Sept. 3, 1954, ch. 1257, § 411 (a) (as applicable to § 411 (d)), 68 Stat. 1169.
6403 (e)	50: 1311 (f) (as applicable to 1311 (d))	Sept. 3, 1954, ch. 1257, § 411 (f) (as applicable to § 411 (d)), 68 Stat. 1170.

In subsection (a), the words "other than an officer in the Nurse Corps" are substituted for the words "Except

as otherwise provided in this chapter". The words "or an officer appointed under section 5581 of this title" are inserted to except from the operation of this section women appointed in the Medical, Dental, and Medical Service Corps under the Act of June 24, 1952, ch. 457 (66 Stat. 155; 34 U. S. C. 21e). These women are not "women officers" within the meaning of the Reserve Officer Personnel Act of 1954 (see the revision note on section 5665 of this title), and are therefore subject to elimination from an active status under section 6389, rather than under this section.

In subsections (a) and (b), the words "retained in or" are omitted as surplusage, since the Secretary has discretion as to whether officers are to be eliminated from an active status. The word "discharge" is substituted for the words "separation from the active list" to conform to the language used in sections 6401 and 6402 of this title. The words "under the conditions prescribed by this chapter for the retirement * * * of a woman line [the word "line" is omitted in subsection (b)] officer in the same grade on the active list" are substituted for the words "at the times prescribed by law for the retirement * * * of the woman line officer * * * next junior to her" for clarity. The source is ambiguous and subject to misinterpretation as is shown by testimony before the Committee on Armed Services, United States Senate, on May 5, 1955.

Bills to amend the Reserve Officer Personnel Act of 1954, introduced in the 84th Congress, 1st Session, contained a proposed amendment to section 411 (d) that would have provided that women reserve officers could be eliminated from an active status under the same relative conditions as would require the retirement or discharge of a contemporary male officer on the active list. The proposed amendment was rejected by the Committee on Armed Services, United States Senate, and was not incorporated in the bill as sent to the House and enacted (act of June 30, 1955, ch. 247, 69 Stat. 218). During the hearings, however, it was brought out that certain reserve officers and others had interpreted section 411 (d) as authorizing the elimination of a woman reserve officer from active status upon the happening of some event to the woman regular officer who chanced to be her running mate at the moment, regardless of the reserve officer's own age, length of service, or promotion status. That this is not the intended meaning is shown by the provision that all commissioned service is considered active commissioned service for the purpose of this subsection, a provision that would be meaningless if the reserve officer's status were dependent on that of her running mate. The interpretation placed on the subsection by the Department of the Navy was explained by the Assistant Secretary of the Navy (Personnel and Reserve Forces) as follows: "Under the present language of this section, women Reserve officers may be retained in or eliminated from active status, in the discretion of the Secretary, under conditions similar to those prescribed for the separation or retirement of a woman Regular officer." In addition, information furnished to the Committee by the Department of the Navy contained the following comments on specific questions:

"2. 'Under section 411 (d) as now contained in Public Law 773, 83d Congress, could a woman officer of the Naval or Marine Corps Reserve become ineligible to earn credit toward retirement as provided by title III of Public Law 810, 80th Congress, at the time that the female Regular officer next junior to her is separated for statutory reason—or at any time thereafter?'

"*Comment.*—No; unless by sheer coincidence the rules which prescribe the time of separation of the woman Regular officer would produce exactly the same date when applied to the facts pertaining to the woman Reserve officer. This provision assimilates the rules applying to contemporary women regulars, rather than the mere fact of separation for any statutory reason.

"3. 'Would the loss of retirement opportunities by a Naval or Marine Corps Reserve officer under the provision of section 411 (d) * * * as now contained in Public Law 773 be for any reason related to her own age, performance, qualifications, or availability?'

"*Comment.*—Yes; under section 411 (d) as contained in Public Law 773, the facts of the woman Reserve officer's own situation would determine liability for elimination from active status." (Hearings on S. 1718 before the Committee on Armed Services, United States Senate, May 5, 1955, pp. 5, 9.)

The revised section is accordingly worded so as to make this meaning clear.

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006 of this title.

§ 6404. Treatment of fractions of years of service in computing retired pay and severance pay.

In determining the total number of years of service to be used as a multiplier in computing retired pay and lump-sum payments on discharge under this chapter, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 415.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6404	34 U. S. C. 410c (a) (1st proviso); 34 U. S. C. 410j (g) (1st proviso); 34 U. S. C. 410d (1st proviso); 34 U. S. C. 410j (h) (1st proviso); 34 U. S C. 410r (h); 34 U. S. C. 410r (j) (proviso); 34 U. S. C. 43g (g); 34 U. S. C. 625h (a).	Feb. 21, 1946, ch. 34, § 7 (a) (1st proviso), 60 Stat. 27; Aug. 7, 1947, ch. 512; § 432 (a), 61 Stat. 881. Aug. 7, 1947, ch. 512, § 312 (g) (1st proviso), 61 Stat. 860. Feb. 21, 1946, ch. 34, § 9 (1st proviso), 60 Stat. 28; Aug. 7, 1947, ch. 512, § 432 (b), 61 Stat. 881. Aug. 7, 1947, ch. 512, § 312 (h) (1st proviso), 61 Stat. 860. June 12, 1948, ch. 449, § 207 (h), 62 Stat. 368. June 12, 1948, ch. 449, § 207 (j) (proviso), 62 Stat. 366. Apr. 16, 1947, ch. 38, § 207 (h), 61 Stat. 50; redesignated (g), Aug. 7, 1947, ch. 512, § 434 (d), 61 Stat. 882; May 16, 1950, ch. 186, § 3 (j), 64 Stat. 162. June 12, 1948, ch. 449, § 213 (a), 62 Stat. 369.

The words "and a part of a year that is less than six months is disregarded" are added for clarity. The legislative history of the Career Compensation Act of 1949, which contains a provision identical to those codified in this section, indicates that all of these provisions are construed as requiring a fractional year of less than six months to be disregarded (hearing before the Committee on Armed Services of the Senate on H. R. 5007, 81st Cong., 1st sess., p. 313, July 6, 1949).

§ 6405. Repealed. Pub. L. 90–235, § 4(a)(12), Jan. 2, 1968, 81 Stat. 760.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 415, provided that an officer of the Regular Navy, other than a retired officer, who accepted an appointment in the Foreign Service was considered as having resigned from the Navy. See section 973 of this title.

§ 6406. Repealed. Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 415, provided that the Secretary of the Navy could furlough any officer of the Regular Navy or the Regular Marine Corps, other than a retired officer.

§ 6407. Communication with selection board.

Each officer eligible for consideration for continuation on the active list by a selection board con-

vened under chapter 543 of this title has the right to send a communication through official channels at any time not later than ten days after the convening of that board inviting attention to any matter of record in the Department of the Navy concerning himself which he considers important in his case. The communication may not criticize any officer or reflect upon the character, conduct, or motive of any officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6407	34 U. S. C. 306c (c) (1).	Aug. 7, 1947, ch. 512, § 308 (c) (1), 61 Stat. 349.

The words "for continuation on the active list" are inserted, since the rule stated in 34 U. S. C. 306c (c) (1) is stated here only as it applies to boards considering officers for continuation on the active list. The same rule as it applies to boards considering officers for promotion is set out in § 5755 of this title. The words "written" and "the consideration of" are omitted as surplusage.

SUSPENSION OF SECTION

Section as inoperative whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy, see subsecs. (a) and (b) of section 48 of act Aug. 10, 1956, set out as a note under section 5505 of this title.

§ 6408. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal.

(a) No officer who holds the grade of warrant officer, W-1, may be dismissed from the Navy or the Marine Corps except in time of war, by order of the President.

(b) The President may drop from the rolls of the Navy or the Marine Corps any officer who holds the grade of warrant officer, W-1, who—

(1) has been absent without authority for at least three months; or

(2) is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6408	50 U. S. C. 739 (as applicable to warrant officers, W-1, of the Navy and the Marine Corps).	May 5, 1950, ch. 169, § 10 (as applicable to warrant officers, W-1, of the Navy and the Marine Corps), 64 Stat. 146.

This section reflects the opinion of the Judge Advocate General of the Navy (JAG: I: 2: ERS: cmr, dtd. 13 April 1954) that 50 U. S. C. 739 applies to warrant officers (now warrant officers, W-1), of the Navy and the Marine Corps. The Warrant Officer Act of 1954 established the grade of warrant officer, W-1, in lieu of the former warrant officer (as distinguished from commissioned warrant officer) grades. 50 U. S. C. 739, as applicable to officers above the grade of warrant officer, W-1, is codified in § 1161 of this title.

In subsection (a) the words "by sentence of a general court-martial, or in commutation thereof" are omitted since the separation from the service of a warrant officer, W-1, by sentence of court-martial is effected by dishonorable discharge.

In subsection (b) the words "from his place of duty" are omitted as surplusage. The words "at least" are substituted for the words "or more". The words "by a court other than a court-martial or other military court" are substituted for the words "by the civil authorities".

§ 6409. Repealed. Pub. L. 90-235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, provided for the suspension of laws for mandatory retirement or separation during war or emergency of temporary warrant officers of the Navy and Marine Corps.

§ 6410. Naval Reserve and Marine Corps Reserve; officers: elimination from active status to provide a flow of promotion.

(a) Whenever he determines that such action is necessary to provide a steady flow of promotion for officers in an active status in the Naval Reserve or the Marine Corps Reserve, the Secretary of the Navy may convene a board to recommend an appropriate number of these officers for elimination from an active status. Subject to section 1005 of this title, officers so recommended may be eliminated from an active status as provided in subsection (b).

(b) An officer who is to be eliminated from an active status under this section shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not transferred to the Retired Reserve, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve. (Added Pub. L. 85-861, § 1 (144) (F), Sept. 2, 1958, 72 Stat. 1512.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6410 (a)	50: 1311 (b), (f) (less applicability to 1311 (d) and (e)).	Sept. 3, 1954, ch. 1257, § 411 (b), (f) (less applicability to § 411 (d) and (e)), 68 Stat. 1170.
6410 (b)	50: 1311 (a) (less applicability to 1311 (c), (d), and (e)).	Sept. 3, 1954, ch. 1257, § 411 (a) (less applicability to § 411 (c), (d), and (e)), 68 Stat. 1169.

In subsection (a), the words "Notwithstanding any other provision of this chapter" are omitted as unnecessary.

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006 of this title.

Chapter 575.—RECALL TO ACTIVE DUTY

Sec.
6481. Retired officers of the Regular Navy and Regular Marine Corps: authority to recall.
6482. Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall.
6483. Retired members: grade.
6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.
6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.

Sec.
6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.
6487. Retired rear admirals: retired pay after two years of active duty.
6488. Wartime appointments or promotions: retention of grade upon release from active duty.

§ 6481. Retired officers of the Regular Navy and Regular Marine Corps: authority to recall.

In time of war or national emergency declared by the President, the Secretary of the Navy may order any retired officer of the Regular Navy or the Regular Marine Corps to active duty at sea or on shore. At any other time the Secretary may order such a retired officer to active duty at sea or on shore only with his consent. (Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6481	34 U. S. C. 421; 34 U. S. C. 422; 34 U. S. C. 423.	R. S. 1462. Aug. 22, 1912, ch. 335, 37 Stat. 329 (1st 38 words of 3d par.). July 1, 1918, ch. 114, 40 Stat. 717 (3d and 4th pars.); Aug. 4, 1949, ch. 393, § 8, 63 Stat. 558.

The word "Regular" is inserted before the word "Navy" and the words "Marine Corps" since the section is applicable only to retired officers of the Regular Navy and the Regular Marine Corps. The recall to active duty of retired officers of the Naval Reserve and the Marine Corps Reserve is covered by §§ 672 and 675 of this title. The provisions of 34 U. S. C. 423 after the first 55 words are omitted for the reasons stated in the following paragraphs.

The act of July 1, 1918, ch. 114, 40 Stat. 717 (3d and 4th pars.), as originally enacted, provided that during any war or national emergency the Secretary of the Navy could order any retired commissioned officer or warrant officer of the Navy, Marine Corps, or Coast Guard to active duty and that any officer so ordered could be promoted on the retired list to the grade or rank, not above that of lieutenant commander or major, which his total active service as an officer both prior and subsequent to retirement would have enabled him to attain in due course of promotion had such service been rendered continuously on the active list. This act further provided that any such officer could be temporarily promoted to a higher grade on the retired list, not above that of lieutenant commander or major, but that upon his relief from active duty he should revert to the grade on the retired list he would have held had he not been so temporarily advanced, with retired pay based on the latter grade.

The act of July 24, 1941, ch. 320, 55 Stat. 603, impliedly repealed the temporary promotional authority contained in the act of July 1, 1918. The act of July 24, 1941, established a uniform system for the temporary promotion during war or national emergency of all officers of the Navy, Marine Corps, or Coast Guard on active duty. It specifically provided for the promotion of retired officers, placed no limitation on the grades to which they could be promoted, and authorized such officers, when returned to an inactive status, to have on the retired list the highest grade satisfactorily held on active duty. The 1946 edition of the U. S. Code, in 34 U. S. C. 423, carries only so much of the 1918 act as authorizes the recall of retired officers to active duty. A note on that section states that the provisions relating to the promotion of retired officers were superseded by the act of July 24, 1941, ch. 320 (34 U. S. C. 350 et seq.).

The act of August 4, 1949, ch. 393, 63 Stat. 495, enacted Title 14 of the United States Code. Section 8 of that act amended the act of July 1, 1918, ch. 114 (34 U. S. C. 423), by reenacting so much of the act as provided for the recall of retired officers to active duty during war or national emergency and as provided for their promotion and subsequent return to inactive duty except that all reference to officers of the Coast Guard was deleted. However, in so doing it is clear that there was no intent on the part of Congress to repeal those parts of the 1941 act that provided for the promotion during war or national emergency of retired officers on active duty, but that it was merely the intent of Congress to restate the applicable provisions of the act of July 1, 1918 with the meaning they had on August 4, 1949, less any application to the Coast Guard.

The report of the Committee on the Judiciary of the House of Representatives which accompanied the act of August 4, 1949, clearly supports this view. It states that the purpose of § 8 of the act of August 4, 1949, was to amend the act of July 1, 1918, to "eliminate references to the Coast Guard", and clearly indicates that there was no intent to change existing laws relating to the Navy. The report in speaking of substantive changes in existing law brought about by the revision of Title 14 states as follows: "Throughout this revision an effort has been made to make only those substantive changes which are noncontroversial, which seem to be necessary due to changes in the Coast Guard, its functions, or its relationship to other departments of the Government; which are necessary in order to reconcile inconsistent provisions and remove obsolete and redundant language; and which seem desirable in order to parallel similar provisions having application to the Navy". The only provision from the act of July 1, 1918, codified in Title 14 was the authority for the involuntary recall to active duty of commissioned officers and warrant officers on the retired list during war or national emergency, similar to the authority in this section.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 421 of former Title 34, the date July 25, 1947, should be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939 and May 27, 1941.

The state of war with Japan actually ended on Apr. 28, 1952, by the coming into effect of the Treaty of Peace with Japan on that date. The state of war with Germany had ended on Oct. 19, 1951. See notes preceding section 1 of Appendix to Title 50, War and National Defense.

§ 6482. Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall.

In time of war or national emergency the Secretary of the Navy may order to active duty any retired enlisted member of the Regular Navy or the Regular Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6482	34 U. S. C. 433.	Mar. 3, 1915, ch. 83, 38 Stat. 941 (6th par.); Aug. 29, 1916, ch. 417, 39 Stat. 591 (2d par.).

The words "for such service as he may be able to perform" are omitted as surplusage. The words "of the Regular Navy or the Regular Marine Corps" are inserted for clarity, since this section is applicable only to retired enlisted members of the Regular Navy and the Regular Marine Corps. The recall to active duty of retired enlisted members of the Naval Reserve and the Marine Corps Reserve is covered by §§ 672 and 675 of this title. Reference to pay and allowances is omitted as superseded by § 201 of the Career Compensation Act of 1949 (37 U. S. C. 232).

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 433 of former Title 34, authorizing the Secretary of the Navy to call retired enlisted men into active service, the date July

25, 1947, should be demed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

The state of war with Japan actually ended Apr. 28, 1952, by the coming into effect of the Treaty of Peace with Japan on that date. The state of war with Germany had ended on Oct. 19, 1951. See notes preceding section 1 of Appendix to Title 50, War and National Defense.

§ 6483. Retired members: grade.

(a) Except as provided in subsection (b), each retired member of the naval service, when recalled to active duty, shall be recalled in the grade held by him on the retired list.

(b) An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced. (Aug. 10, 1956, ch. 1041, 70A Stat. 417; May 20, 1958, Pub. L. 85–422, § 6(5), 72 Stat. 129; Oct. 2, 1963, Pub. L. 88–132, § 5(m), 77 Stat. 215; Oct. 22, 1968, Pub. L. 90–623, § 2(10), 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6483	34 U. S. C. 410n (1st proviso); 50 U. S. C. 1052 (c) (2d sentence).	Aug. 7, 1947, ch. 512, § 412 (a) (1st proviso), 61 Stat. 874; Oct. 12, 1949, ch. 681, § 522 (a), 63 Stat. 835. July 9, 1952, ch. 608, § 413 (c) (2d sentence), 66 Stat. 500.

Subsection (a) states the general rule that a retired officer, when recalled to active duty, shall be recalled in the grade he holds on the retired list. The rule is derived, not from a specific provision of law, but from the fact that special legislative authority is required to recall a retired officer in any other grade.

The desirability of including a positive statement of the rule is pointed up by the legislative history of the act of February 21, 1946, ch. 34, § 8 (a), 60 Stat. 28, amending the act of July 24, 1941, ch. 320, § 10 (d), 55 Stat. 605 (34 U. S. C. 350i (d)). The 1946 amendment states the rule, but only as to a limited class of retired personnel, namely persons temporarily appointed or promoted under the 1941 act while on the retired list. The amendment provided that such persons, when released to inactive duty, should be given the highest grade in which they had served satisfactorily and, if subsequently recalled to active duty, should be recalled in the grade so accorded them. The legislative history shows that the bill (S. 1405, 79th Cong., 1st sess.), originally was written so as to provide that retired personnel should be recalled in their prior permanent grades or ratings instead of in the higher grades accorded them on the retired list while on inactive duty. When a member of the Naval Affairs Committee of the House of Representatives suggested an amendment to allow retired personnel to be recalled in the higher grades, the Navy spokesman pointed out that no law was required to permit this; in fact, retired personnel would be *required* to be recalled in the grades they hold on the retired list in the absence of any law to the contrary. Thus the result desired by the committee member could be achieved simply by deleting the provision instead of amending it. After some discussion, however, it was decided to adopt the suggested amendment in order not to "leave things to inference" (H. Rept. No. 158, December 6, 1945, pp. 2290–2292).

Section 412 (a) of the Officer Personnel Act of 1947 (34 U. S. C. 410n) (codified, except for the first proviso, in § 6150 of this title), supplies a further reason why a positive statement of the rule is desirable. That section provides that an officer who has been specially commended for the performance of duty in actual combat shall, when retired, be placed on the retired list in the grade next higher than that in which serving at the time of retirement. The first proviso, codified in subsection (b) of this section, provided further that an officer advanced under § 412 (a) to a flag or general officer grade could be recalled either in the advanced grade or in the grade from which advanced. The law was silent as to the grade in which other officers advanced under § 412 (a) should be recalled. It was understood that they would be recalled in the advanced grade accorded them on the retired list, because there was no authority to recall them in any other grade. However, the Comptroller General raised a question as to their right to the pay of the higher grade when recalled. Although the final decision of the Comptroller General was in favor of the higher pay (30 Comp. Gen. 242, December 20, 1950), the fact that the question was raised indicates the confusion that results from leaving the rule to inference.

It appears that the rule was never in doubt until after the enactment of the two recent laws cited above, one applying the rule to a limited class, and one stating a discretionary exception without stating the rule itself. These two laws make it more difficult than it was formerly to derive the correct conclusion by inference alone.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–623 inserted "former" before "section 6150".

1963—Subsec. (c). Pub. L. 88–132 repealed subsec. (c) which provided for recomputation of retired pay of retired members of the naval service, recalled to active duty in the higher grade for officers specially commended and released from such duty, on basis of the then monthly basic pay of the grade held on the retired list after continuous 2-year period of service. See section 1402 of this title.

1958—Subsec. (c). Pub. L. 85–422 added subsec. (c).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.

When on active duty, retired enlisted members of the Navy or the Marine Corps are eligible for promotion to higher enlisted grades or ratings. When released from active duty, they shall, unless entitled to a higher grade under another provision of law, retain the grades or ratings they hold at the time of their release. (Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6484	34 U. S. C. 434.	July 1, 1918, ch. 114, 40 Stat. 719 (1st 9 lines of 2d par.).

The words "who has been ordered into active service since April 6, 1917" are omitted as executed. The words "to higher enlisted grades or ratings" are inserted for clarity. The eligibility of retired enlisted men for appointments to warrant and commissioned grades is covered by chapter 539 of this title where the requirements for these appointments are set forth. The words "unless entitled to a higher grade under another provision of law" are inserted to make it clear that retired enlisted members are not precluded by this section from obtaining the benefits of other provisions of law that may give a higher grade to them on their release from active duty.

The provision relating to pay, allowances, and benefits is omitted because it was superseded by §§ 514 and 516 of the Career Compensation Act of 1949 (37 U. S. C. 314 and 316).

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent—

(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period and shall be physically examined at least once during each four-year period. If any member fails to report for the physical examination, the Secretary may order any pay due that member forfeited. (Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6485	34 U. S. C. 854d (1st 87 words of 2d proviso); 34 U. S. C. 854e (less 2d through 5th provisos); 34 U. S. C. 854 (note).	June 25, 1938, ch. 690, § 205 (1st 87 words of 2d proviso), 52 Stat. 1179; July 9, 1952, ch. 608, § 808, 66 Stat. 508. June 25, 1938, ch. 690, § 206 (less 2d through 5th provisos), 52 Stat. 1179; Apr. 25, 1940, ch. 153, 54 Stat. 162. July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words "A member of the Fleet Reserve or the Fleet Marine Corps Reserve" are substituted for the words "That men so transferred to the Fleet Reserve * * * or other provision of law" for clarity. It is clear from the legislative history of the Armed Forces Reserve Act of 1952 that the amendment to the second proviso of 34 U. S. C. 854d made by that Act was intended to cover all members of the Fleet Reserve and Fleet Marine Corps Reserve.

In subsection (b) the word "enlisted" is omitted as surplusage since only enlisted members may transfer to the Fleet Reserve and Fleet Marine Corps Reserve. The words "after 16 years' or more service" are omitted as surplusage since all the members of the Fleet Reserve and Fleet Marine Corps Reserve are in that category. The words "If any member fails to report for the physical examination" are substituted for the words "upon failure * * * of such member to report for inspection" to reflect the true meaning of the section. The words "Under such conditions as may be prescribed by the Secretary of the Navy" are omitted as unnecessary since the authority to order a forfeiture is entirely within the Secretary's discretion.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6331 of this title.

§ 6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.

(a) Except as provided in subsection (b), the Secretary of the Navy may, at any time, release any member of the Fleet Reserve or the Fleet Marine Corps Reserve from active duty.

(b) In time of war or national emergency declared by Congress or by the President after January 1, 1953, a member of the Fleet Reserve or the Fleet Marine Corps Reserve, without his consent, may be released from active duty other than from active duty for training only if—

(1) a board of officers convened at his request by an authority designated by the Secretary recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply during a period of demobilization or reduction in strength of the Navy or the Marine Corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6486	34 U. S. C. 854d (3d proviso); 34 U. S. C. 854 (note).	June 25, 1938, ch. 690, § 205 (3d proviso); added July 9, 1952, ch. 608, § 808, 66 Stat. 508. July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words "or active duty for training" are omitted as covered by the term "active duty" as used in this revised title.

In subsection (b) the words "other than from active duty for training" are inserted since the term "active duty" as used in 34 U. S. C. 854d (3d proviso) does not include active duty for training. Clause (3) is inserted, since other provisions of law are necessarily exceptions to the general rule here stated. The words "or the Marine Corps" are inserted in the last sentence of subsection (b) to reflect the applicability of the section to the Fleet Marine Corps Reserve.

§ 6487. Retired rear admirals: retired pay after two years of active duty.

Each officer holding a permanent appointment in the grade of rear admiral on the retired list who is entitled to the pay of the lower half of that grade, and who, in time of war or national emergency, serves satisfactorily on active duty for two years in that grade or in a higher grade, is thereafter entitled, when on inactive duty, to retired pay equal to 75 percent of the basic pay of a rear admiral in the upper half of that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 418.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6487	34 U. S. C. 428 (as applicable to Navy retired pay).	Apr. 8, 1946, ch. 120, 60 Stat. 86 (as applicable to Navy retired pay).

The words "and who is, has been, or may be recalled to active duty" are omitted as surplusage. The words "unless he is entitled under other provisions of law to higher retired pay or allowances" are omitted since there is no law that authorizes retired pay, for persons who could benefit from this section, higher than 75 percent of the pay of a rear admiral of the upper half. The proviso of 34 U. S. C. 428 is omitted as executed.

§ 6488. Wartime appointments or promotions: retention of grade upon release from active duty.

(a) A retired member of the Regular Navy or the Regular Marine Corps or a member of—

(1) the Naval Reserve;

(2) the Marine Corps Reserve;

(3) the Fleet Reserve; or

(4) the Fleet Marine Corps Reserve;

who, while on active duty, is promoted under section 5787 of this title or appointed under section 5597 of this title, is entitled, upon release from that duty, to the highest grade satisfactorily held under such a promotion or appointment as determined by the Secretary of the Navy.

(b) If a member covered by subsection (a) is later recalled to active duty, he shall, unless otherwise entitled to a higher grade, be recalled in the grade given him under that subsection. (Aug. 10, 1956, ch. 1041, 70A Stat. 418.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6488	34 U. S. C. 350i (a) (2d sentence, less 1st 25 words); 34 U. S. C. 350i (d).	July 24, 1941, ch. 320, § 10 (a) (2d sentence, less 1st 25 words), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28. July 24, 1941, ch. 320, § 10 (d), 55 Stat. 605; Feb. 21, 1946, ch. 34, § 8 (a), 60 Stat. 28.

In subsection (a) the words "unless entitled to the same or higher grade and rank pursuant to section 350g of this title" are omitted since § 350g was repealed by the Career Compensation Act of 1949.

Chapter 577.—DEATH BENEFITS; CARE OF THE DEAD

Sec.
6522. Disposition of effects.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (145), Sept. 2, 1958, 72 Stat. 1512, struck out item 6521.

§ 6521. Repealed. Pub. L. 85-861, § 36B (21), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to allowances to dependents, and to designation of beneficiary, and is now covered by sections 1475—1480 of this title.

§ 6522. Disposition of effects.

(a) If money or other personal property of a deceased member of the naval service is in the custody of the Department of the Navy, the Secretary of the Navy shall keep it in safe custody and make a diligent effort to determine and locate the heirs or next of kin of the deceased member. Property remaining unclaimed two years after the death of the member shall be sold, and the proceeds, together with any of his money held in custody, shall be covered into the Treasury.

(b) Within five years after the date the money and proceeds are covered into the Treasury, any claim that is presented therefor supported by competent proof shall be certified to Congress for consideration.

(c) The Secretary shall prescribe regulations for the administration of this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 419.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6522	34 U. S. C. 942.	Mar. 29, 1918, ch. 31, 40 Stat. 499.

In subsection (a) the word "shall" is substituted for the words "authorized and directed"; the word "effort" is substituted for the word "inquiry"; the words "determine and locate" are substituted for the words "ascertain the whereabouts"; the words "personal property" are substituted for the words "all articles of value, papers, keepsakes, and other similar effects". The phrase "to the credit of the Navy pension fund" is omitted since this fund was abolished by § 9 of the act of June 26, 1934, ch. 756, 48 Stat. 1229. The application of this section is confined to the money and other personal property of the deceased member in the custody of the Department of the Navy to make it clear that disposition is made only of property held by the Department of the Navy and not of property which may be under other custody, over which the Department of the Navy would have no control.

In subsection (b) the word "covered" is substituted for the word "deposited".

CROSS REFERENCES

Disposition of unclaimed property, see section 2575 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2575 of this title; title 5 section 5564; title 37 section 554.

Part III.—EDUCATION AND TRAINING

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Chapter 601.—OFFICER PROCUREMENT PROGRAMS

Sec.
6909. Direct procurement: qualifications; retention or transfer to Reserve.
6911. Aviation cadets: grade; procurement; transfer.
6912. Aviation cadets: benefits.
6913. Aviation cadets: appointment as reserve officers.
6914. Reserve naval aviators: appointment in Regular Navy and Regular Marine Corps; eligibility; grade; rank.
6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade.

AMENDMENTS

1964—Pub. L. 88-647, title III, § 301(18), Oct. 13, 1964, 78 Stat. 1072, deleted items 6901-6906, 6908 and 6910.

1961—Pub. L. 87-100, § 1(2), July 21, 1961, 75 Stat. 218, struck out item 6907.

1958—Pub. L. 85-861, § 1(147)(B), Sept. 2, 1958, 72 Stat. 513, substituted "benefits" for "pay and allowances" in item 6912.

§§ 6901 to 6906. Repealed. Pub. L. 88-647, title III, § 301(17), Oct. 13, 1964, 78 Stat. 1072.

Section 6901, acts Aug. 10, 1956, ch. 1041, 70A Stat. 420; Sept. 2, 1958, Pub. L. 85-861, § 1(146), 72 Stat. 1512, related to administration of the Naval Reserve Officers' Training Corps.

Sections 6902, 6903, act Aug. 10, 1956, ch. 1041, 70A Stat. 420, 421, related to the transfer of graduates of Naval Reserve Officers' Training Corps to the Regular Navy, the administration of the officer candidate training program, and to qualifications for enrollment. See sections 2104 and 2106 of this title.

Sections 6904—6906, acts Aug. 10, 1956, ch. 1041, 70A Stat. 421, 422, 423; Sept. 7, 1962, Pub. L. 87-649, § 14c(48)-(50), 76 Stat. 501, related to the officer candidate training program and the qualifications and training of members. See chapters 102 and 103 of this title.

§ 6907. Repealed. Pub. L. 87-100, § 1(1), July 21, 1961, 75 Stat. 218.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 424, related to retention or transfer to Reserve of officers other than naval aviators under officer candidate training program.

§ 6908. Repealed. Pub. L. 88-647, title III, § 301(17), Oct. 13, 1964, 78 Stat. 1072.

Section, act Aug. 10, 1956, 1041, 70A Stat. 424, related to the selection of naval aviators for retention of transfer to the Reserve.

§ 6909. Direct procurement: qualifications; retention or transfer to Reserve.

(a) Appointments to the active list of the Navy in the grade of ensign in the line, the Supply Corps, the Civil Engineer Corps, and the Medical Service Corps and to the active list of the Marine Corps in the grade of second lieutenant may be made from male citizens who are under 25 years of age on June 30 of the calendar year in which appointed and who—

(1) have satisfactorily completed a four-year course at an accredited college or university; or

(2) are enlisted members of the Regular Navy or the Regular Marine Corps who demonstrate in a test that they have attained an educational level equivalent to that of a person who has satisfactorily completed a four-year course at an accredited college or university.

(b) The date of rank of officers appointed under this section in any year is the date of graduation of midshipmen from the Naval Academy in that year. Selection for appointment in a staff corps under this section shall be made by a board of commissioned officers in the staff corps concerned.

(c) When any officer appointed under this section has at least two years of satisfactory service as a commissioned officer, he may, on his application, have his appointment on the active list of the Navy or the active list of the Marine Corps terminated and may be appointed in the Naval Reserve or the Marine Corps Reserve, as appropriate, in the same grade and with the same date of rank that he had as a regular officer. In the discretion of the Secretary of the Navy, such a reserve officer may be released from active duty.

(d) During the second quarter of each calendar year, the Secretary shall examine the record of each officer on the active list of the Navy or on the active list of the Marine Corps appointed under this section who—

(1) in that year will have the third anniversary of the acceptance of his appointment; and

(2) applies for retention as a permanent officer before that anniversary, but not later than March 31 of that year.

(e) From among the officers whose records are so examined the Secretary shall select for retention as many as he considers necessary. The appointment of each officer not selected shall be terminated before July 1 of the calendar year of the third anniversary of the acceptance of his appointment, or not later than that anniversary if it occurs after June 30.

(f) The appointment of each officer on the active list of the Navy or on the active list of the Marine Corps appointed under this section who does not apply for retention under this section shall be terminated not later than the third anniversary of the acceptance of his appointment.

(g) Upon the termination of his appointment under subsection (e) or (f), a person may be appointed a lieutenant (junior grade) in the line or in a staff corps of the Naval Reserve or a first lieutenant in the Marine Corps Reserve, as appropriate, with a date of rank three years after the date of rank of his original commission. (Aug. 10, 1956, ch. 1041, 70A Stat. 425.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6909 (a) and (b).	34 U. S. C. 1020e (b), (c), (d) (1st 38 words of 1st sentence).	Aug. 13, 1946, ch. 962, § 6 (b), (c), (d) (1st 38 words of 1st sentence), 60 Stat. 1059; May 16, 1947, ch. 77, § 1 (f—i), 61 Stat. 100.
6909 (c)	34 U. S. C. 1020f (less applicability to 34 U. S. C. 1020e (a) (par. 1)).	Aug. 13, 1946, ch. 962, § 7 (less applicability to § 6 (a) (par. 1)), 60 Stat. 1060; May 16, 1947, ch. 77, § 1 (j), 61 Stat. 100.
6909 (d) and (e).	34 U. S. C. 1020g (less applicability to 34 U. S. C. 1020e (a) (par. 1 and par. 2)).	Aug. 13, 1946, ch. 962, § 8 (less applicability to § 6 (a) (par. 1 and par. 2)), 60 Stat. 1060; May 16, 1947, ch. 77, § 1 (k), 61 Stat. 100; June 19, 1948, ch. 506, § 1 (c), 62 Stat. 485.
6909 (e), (f), and (g).	34 U. S. C. 1020h (b) (as applicable to 34 U. S. C. 1020e (b)).	Aug. 13, 1946, ch. 962, § 9 (b) (as applicable to § 6 (b)), 60 Stat. 1060; May 16, 1947, ch. 77, § 1 (*l*), (m), 61 Stat. 100; June 19, 1948, ch. 506, § 1 (d), 62 Stat. 486.

In subsection (a) the words "the Supply Corps, the Civil Engineer Corps, and the Medical Service Corps" are substituted for the words "in the appropriate commissioned grade in such staff corps of the Navy in which the rank of ensign was on August 13, 1946, or may after August 13, 1946, be authorized" to correct the implication that the section authorizes appointments in the Nurse Corps. Such appointments are excluded by the requirement that the appointees must be male citizens. This subsection is made applicable to the Supply Corps notwithstanding the opinion of The Judge Advocate General of the Navy (JAG:II:KES:eo) dated December 22, 1949. In that opinion it is stated that the upper limit of 25 years does not apply to appointments in the Supply Corps. The effect of this opinion, that is, to authorize appointment in the Supply Corps of officers over 25, is preserved by § 5575 of this title, which contains basic authority to make appointments in the Supply Corps. As stated in the note on that section, the earlier provisions upon which it is based were considered as positive authority to appoint and, in fact, originally constituted the only authority to appoint officers in the Supply Corps. The effect of the dual statement of authority to appoint is to except appointees under § 5575 from the provisions in this section relating to selection for and retention as permanent officers.

In subsection (d) the words "whichever is earlier" are omitted and the rule is spelled out.

In subsection (e) the words "whichever is the later date" are omitted and the rule is spelled out.

CROSS REFERENCES

Lineal lists, placement and position on, see section 5504 (h) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5652b, 6387 of this title.

§ 6910. Repealed. Pub. L. 88-647, title III, § 301(17), Oct. 13, 1964, 78 Stat. 1072.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 426, authorized the payment of expenses of the officer procurement program.

§ 6911. Aviation cadets: grade; procurement; transfer.

(a) The grade of aviation cadet is a special enlisted grade in the naval service. Under such regulations as the Secretary of the Navy prescribes, male citizens in civil life may be enlisted as, and male enlisted members of the naval service with their consent may be designated as, aviation cadets.

(b) Except in time of war or emergency declared by Congress, 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps.

(c) No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, and will serve on active duty as such for at least three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(d) Under such regulations as the Secretary prescribes, an aviation cadet may be transferred to another enlisted grade or rating in the naval service, released from active duty, or discharged. (Aug. 10, 1956, ch. 1041, 70A Stat. 426; July 31, 1958, Pub. L. 85-578, 72 Stat. 456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6911 (a), (c), and (d).	34 U. S. C. 850a, 850b.	Aug. 4, 1942, ch. 547, §§ 2, 3. 56 Stat. 737.
6911 (b)	34 U. S. C. 735b.	June 13, 1949, ch. 199, § 3, 63 Stat. 175.

In subsection (a) the words "in civil life" are added to indicate that regular enlisted members, to be eligible, must be discharged as is required by subsection (b).

In subsection (b) the words before the first proviso are omitted as executed. The words "after June 13, 1949" in the first proviso, relating to a declaration of emergency by Congress, are omitted as executed. The emergencies existing on June 13, 1949, have expired, as indicated in the act of July 3, 1952, ch. 570, 66 Stat. 333. The word "Regular" is inserted before "Navy" and "Marine Corps" to preserve the meaning of this provision which distinguishes members of the reserve components from members of the Navy and the Marine Corps. The words "who are discharged for the purpose of enlisting as aviation cadets" are added. Since discharge from a regular component must precede enlistment in a reserve component, the designation language of 34 U. S. C. 735b, although appropriate to the Air Force counterpart to which it also applies, is inappropriate to this section.

Subsection (c) is written as a condition precedent to enlistment or transfer, and not as a requirement, to conform with interpretation of the provision.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-578 substituted "naval service" for "Naval Reserve and the Marine Corps Reserve", made changes in phraseology including the substitution of "designated" for "transferred", and specified consent as requisite for designation as aviation cadet.

Subsec. (b). Pub. L. 85-578 deleted "at least" preceding "20 percent" and "who, with their consent, are discharged for the purpose of enlisting as aviation cadets" following "Regular Marine Corps".

Subsec. (c). Pub. L. 85-578 designated existing provisions as clauses (1) and (2), made phraseological changes including the substitution of "designated" for "transferred", and prescribed consent for one under 21 years of age instead of one described as minor and active duty service with commissioned status for minimum three year period instead of maximum four year period in unspecified grade.

Subsec. (d). Pub. L. 85-578 substituted "naval service" for "Naval Reserve or the Marine Corps Reserve" and deleted "as appropriate" following such term.

§ 6912. Aviation cadets: benefits.

Except as provided in section 402 (a) and (b) of title 37, aviation cadets or their beneficiaries are entitled to the same allowances, pensions, gratuities, and other benefits as are provided for enlisted members in pay grade E-4. While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 426; Sept. 2, 1958, Pub. L. 85-861, § 1(147)(A), 72 Stat. 1513; Sept. 7, 1962, Pub. L. 87-649, § 6(f)(6), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6912 (a) and (b).	34 U. S. C. 850c.	Aug. 4, 1942, ch. 547, § 4, 56 Stat. 737; Oct. 12, 1949, ch. 681, § 527, 63 Stat. 837; May 19, 1952, ch. 310, § 1 (e) (as applicable to § 527), 66 Stat. 80.
6912 (c)	34 U. S. C. 850e.	Aug. 4, 1942, ch. 547, § 6, 56 Stat. 738.

In subsection (b) the words "and at the same rates" are omitted as covered by the words "on the same basis".

In subsection (c) the words "enlisted members in pay grade E-4" are substituted for "enlisted men of the fourth pay grade" to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.). The words "by law or regulation" are omitted as surplusage. The words "and the premiums on their life insurance" are omitted as impliedly repealed by § 10 of the Insurance Act of 1951, 65 Stat. 37, which provided that such premium payments shall not be made by the Government.

AMENDMENTS

1962—Pub. L. 87-649 substituted "section 402 (a) and (b) of title 37" for "section 251(a) of title 37."

1958—Pub. L. 85-861 substituted "benefits" for "pay and allowances" in the catchline, and eliminated provisions which prescribed the rate of pay of cadets, which authorized them to receive the same allowances for subsistence as prescribed for officers, which related to the furnishing of quarters, medical care and hospitalization, and which authorized transportation and expenses while traveling under orders.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Allowance for quarters for cadets with dependents for duration of Dependents Assistance Act of 1950, see section 2208 of Appendix to Title 50, War and National Defense.

§ 6913. Aviation cadets: appointment as reserve officers.

(a) An aviation cadet who fulfills the requirements of section 6023 (b) of this title may be

appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve and designated a naval aviator.

(b) Aviation cadets who complete their training at approximately the same time are considered for all purposes to have begun their commissioned service on the same date, and the decision of the Secretary of the Navy in this regard is conclusive. (Aug. 10, 1956, ch. 1041, 70A Stat. 427.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6913 (a)	34 U. S. C. 850f.	Aug. 4, 1942, ch. 547, § 7, 56 Stat. 738.
6913 (b)	34 U. S. C. 850g.	Aug. 4, 1942, ch. 547, § 8, 56 Stat. 738.

In subsection (a) the proviso is omitted as unnecessary. Section 1 of the act of April 28, 1950, ch. 120, 64 Stat. 90, terminated service credit for lump-sum payments granted under § 12 of the act of August 4, 1942, ch. 574, 56 Stat. 738, and thereby removed the only consequences of the proviso. The words "section 6023 (b) of this title" are substituted for the words "law for designation or appointment as naval aviators" to provide specific reference to those requirements. The words "and designated a naval aviator" are added for clarity and to authorize specifically the designation, which is implied in 34 U. S. C. 850f.

§ 6914. Reserve naval aviators: appointment in Regular Navy and Regular Marine Corps; eligibility; grade; rank.

(a) The President, by and with the advice and consent of the Senate, may appoint to the active list in the line of the Navy as many officers of the Naval Reserve, and may appoint to the active list of the Marine Corps as many officers of the Marine Corps Reserve, as he considers necessary. To be eligible for an appointment under this section an officer must—

(1) be a naval aviator;

(2) have successfully completed aviation cadet training when he was under 25 years of age;

(3) establish his mental, moral, professional, and physical qualifications under such regulations as the Secretary of the Navy prescribes; and

(4) have completed, on June 30 of the calendar year in which appointed, at least 18 months of continuous active service after he completes his aviation cadet training.

(b) Each officer appointed under this section shall be appointed in the same grade that he holds in the Naval Reserve or the Marine Corps Reserve. An officer appointed in the grade of ensign or second lieutenant ranks from the date he reported for continuous active duty as an officer of the Naval Reserve or the Marine Corps Reserve. An officer appointed in a grade above ensign or above second lieutenant ranks according to his date of rank in that grade in the Naval Reserve or the Marine Corps Reserve, as the case may be.

(c) While an officer is serving in the grade in which appointed under subsection (a), the requirement of sea service under section 5770 of this title does not apply. (Aug. 10, 1956, ch. 1041, 70A Stat. 427.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6914 (a) and (b).	34 U. S. C. 737; 34 U. S. C. 737a.	Aug. 27, 1940, ch. 694, § 2, 54 Stat. 864; Aug. 7, 1947, ch. 512, § 418, 61 Stat. 877.
6914 (c)	34 U. S. C. 738 (last sentence).	June 30, 1942, ch. 462, § 4, 56 Stat. 464. Aug. 27, 1940, ch. 694, § 3 (last sentence), 54 Stat. 864.

In subsections (a) and (b) the third and fourth provisos of 34 U. S. C. 737 are omitted as executed; the fifth proviso is omitted as surplusage in view of paragraph (1) of subsection (a) of § 202 of the Career Compensation Act of 1949 (37 U. S. C. 233), which covers the subject of longevity credit for pay purposes.

Subsection (a) preserves the effect of the act of June 30, 1942, ch. 462 (34 U. S. C. 737a), by authorizing the appointment in the Regular Navy or the Regular Marine Corps at any time of an officer who met the age limitation at the time he completed training as an aviation cadet. The first proviso of 34 U. S. C. 737 is in part superseded by this later provision. The words "ranks from" are substituted for the words "take precedence according to" in 34 U. S. C. 737a.

In subsection (c) the sea service requirement referred to is derived from 34 U. S. C. 306f (a) (3), which supersedes 34 U. S. C. 311.

§ 6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade.

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the Naval Reserve and the Marine Corps Reserve may be designated as student aviation pilots.

(b) A member who is not a qualified civilian aviator may not be designated as a student aviation pilot unless he agrees in writing, with the consent of his parent or guardian if he is a minor, to serve on active duty for a period of two years after successfully completing flight training, unless sooner released. Such a student aviation pilot may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(c) If he is a qualified civilian aviator, a student aviation pilot may be given a brief refresher course in flight training.

(d) While he is in flight training, a student aviation pilot shall have uniforms and equipment issued to him at Government expense.

(e) Under regulations prescribed by the Secretary, a student aviation pilot of the Naval Reserve or the Marine Corps Reserve may be designated an aviation pilot upon successfully completing flight training.

(f) Repealed. Pub. L. 87-649, § 14c(51), Sept. 7, 1962, 76 Stat. 501.

(g) In time of peace, an aviation pilot who is obligated under subsection (b) to serve on active duty for a period of two years may serve, with his consent, for an additional period of not more than two years.

(h) An aviation pilot of the Naval Reserve or the Marine Corps Reserve may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(i) An aviation pilot of the Naval Reserve or the Marine Corps Reserve may, if qualified under regulations prescribed by the Secretary, be appointed an ensign in the Naval Reserve or a second lieutenant

in the Marine Corps Reserve, as appropriate. (Aug. 10, 1956, ch. 1041, 70A Stat. 427; Sept. 7, 1962, Pub. L. 87-649, § 14c(51), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6915	34 U. S. C. 841a-841e; 34 U. S. C. 841h.	Nov. 5, 1941, ch. 468, §§ 1-5, 55 Stat. 759. Nov. 5, 1941, ch. 468, § 8; added Aug. 4, 1942, ch. 547, § 15 (h), 56 Stat. 740.

In subsection (a) the authority to designate student aviation pilots is expressly set forth.

The portion of 34 U. S. C. 841h that provides that student aviation pilots who are qualified civilian aviators shall be given a brief refresher course in flight training is contained in subsection (c). The remainder of 34 U. S. C. 841h, which provides that such pilots shall not be considered as having been designated pursuant to 34 U. S. C. 841a—841h, is reflected in subsection (b) by making that subsection applicable only to student aviation pilots who are not qualified civilian aviators. No other consequences attach to designation as student aviation pilots under the particular provisions. In subsection (b) the word "continuous" is omitted as covered by the word "period", and the subsection is written as a condition precedent to designation, because it is so interpreted.

In subsection (c) the words "enlisted in or transferred to pilot ratings" are omitted as surplusage.

Subsection (e) states expressly the authority to designate aviation pilots, which is implied in 34 U. S. C. 841a, 841b, and 841d.

In subsection (f) the words "pay grade E-5" are substituted for the words "third grade" in 34 U. S. C. 841b to conform to the terminology of the Career Compensation Act of 1949 (37 U. S. C. 231 et seq.).

In subsection (h) the words "of the Naval Reserve or the Marine Corps Reserve" are substituted for the words "designated as such in accordance with sections 841a and 841b of this title" for uniformity.

AMENDMENTS

1962—Subsec. (f). Pub. L. 87-649 repealed subsec. (f) which provided that while on active duty, an aviation pilot of the Naval Reserve or the Marine Corps Reserve is entitled to the pay of an enlisted member in pay grade E-5 or that of his grade, whichever is greater. See section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

Chapter 603.—UNITED STATES NAVAL ACADEMY

Sec.
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6974. Gifts and bequests: acceptance for benefit of museum.

§ 6951. Location.

The United States Naval Academy shall be located at Annapolis, Maryland. (Aug. 10, 1956, ch. 1041, 70A Stat. 428.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6951	34 U. S. C. 1021.	R. S. 1511.

The words "United States" are inserted before the words "Naval Academy" to state the full title. The word 'established" is omitted as executed. The words "in the State of" are omitted as surplusage.

§ 6952. Civilian teachers: number; compensation.

(a) The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at the Naval Academy as he considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 428.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6952	34 U. S. C. 1071 (as applicable to Naval Academy); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 7 (a) (as applicable to Naval Academy), 60 Stat. 854. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

The words "for the proper instruction of naval personnel" and the words "be paid out of naval appropriations" are omitted as surplusage.

In subsection (c) the words "except the authority to prescribe regulations" are omitted, since 34 U. S. C. 1071 contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

CROSS REFERENCES

Retirement of civilian teachers, see section 7081 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 6953. Midshipmen: appointment.

Midshipmen at the Naval Academy shall be appointed by the President alone. (Aug. 10, 1956, ch. 1041, 70A Stat. 429.)

HISTORICAL AND REVISION NOTES

This section is included in this chapter without specific reference to statutory source to resolve the ambiguities and conflicts existing in the statutes relating to the appointment of midshipmen at the Naval Academy. The word "appoint" has been used in various statutes when

the intent of Congress was to provide authority in the persons named to "choose," "select," or "nominate" for the office of midshipman. These statutes have been collected and codified in § 6954 of this title, which reflects the various sources of nominees for "appointment" as midshipmen and the persons who may so "nominate" them. The actual appointing power resides in the President and this implied authority is herein expressed for clarity and for the purpose of uniformity of expression.

§ 6954. Midshipmen: number.

(a) There may be at the Naval Academy at any one time midshipmen as follows:

(1) 40 selected in order of merit as established by competitive examination from the sons of members of the armed forces who were killed in action or died of, or have a service-connected disability at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service. The determination of the Veterans' Administration as to service connection of the cause of death or disability is rated, is binding upon the Secretary of the Navy.

(2) Five nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten from each State, five of whom are nominated by each Senator from that State.

(4) Five nominated by each Representative in Congress.

(5) Five from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Five from each Territory, nominated by the Delegate in Congress from that Territory.

(7) Six from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) One nominated by the Governor of the Panama Canal from the sons of civilians residing in the Canal Zone or the sons of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama.

(9) One from American Samoa, Guam, or the Virgin Islands nominated by the Secretary of the Navy upon recommendations of their respective Governors.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and nine alternates for each vacancy that is available under this section.

(b) In addition there may be appointed each year at the Academy midshipmen as follows:

(1) one hundred selected by the President from the sons of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay, other than those granted retired pay under section 1331 of this title;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(c) The President may also appoint as midshipmen at the Academy sons of persons who have been awarded the medal of honor for acts performed while in the armed forces.

(d) The Secretary of the Navy may limit the number of midshipmen appointed under subsection (b)(5). When he does so, if the total number of midshipmen, upon admission of a new class at the Academy, will be more than 3,737, no appointments may be made under subsection (b) (2) or (3) of this section or section 6956 of this title.

(e) Effective beginning with the nominations for appointment to the Academy in the calendar year 1964, the Secretary of the Navy shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 429; Sept. 7, 1962, Pub. L. 87–651, title I, § 124, 76 Stat. 514; Sept. 14, 1962, Pub. L. 87–663, § 1(3), 76 Stat. 547; Mar. 3, 1964, Pub. L. 88–276, § 2, 78 Stat. 150; Oct. 13, 1966, Pub. L. 89–650, § 1(1)–(3), 80 Stat. 896; July 5, 1968, Pub. L. 90–374, 82 Stat. 283; Oct. 22, 1968, Pub. L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, Pub. L. 91–405, title II, § 204 (c), 84 Stat. 852.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6954 (a) (1).	34 U. S. C. 1036a.	June 8, 1926, ch. 492, par. 2, 44 Stat. 703; Dec. 1, 1942, ch. 650, 56 Stat. 1024; Nov. 24, 1945, ch. 493, 59 Stat. 586; June 30, 1950, ch. 421, § 6 (c), 64 Stat. 305; June 3, 1954, ch. 251, § 1, 68 Stat. 168.
6954 (a) (2).	34 U. S. C. 1037.	
6954 (a) (3)—(7)	34 U. S. C. 1032 (1st 31 words).	
6954 (a) (7).	34 U. S. C. 1034.	
6954 (a) (8).	34 U. S. C. 1035a.	May 28, 1928, ch. 820, 45 Stat. 788.
6954 (b) (1).	34 U. S. C. 1039.	Dec. 20, 1917, ch. 5, § 1 (1st 31 words), 40 Stat. 430.
6954 (b) (2) and (3).	34 U. S. C. 1032 (32d to 70th words).	Aug. 13, 1946, ch. 962, § 16, 60 Stat. 1061; May 16, 1947, ch. 77, § 1 (o), 61 Stat. 100;
6954 (b) (4).	34 U. S. C. 1033a.	Mar. 3, 1903, ch. 10 0, 32 Stat. 1198 (2d par.).
6954 (c)	34 U. S. C. 1038.	June 8, 1 9, ch. 195, 53 Stat. 814.
		Aug. 13, 19 6, ch. 962, § 16 (a), 60 Stat. 1061, May 16, 1947, ch. 77, § 1 (o), 61 Stat. 100; June 30, 1950, ch. 421, § 5, 64 Stat. 305.
		Dec. 20, 1917, ch. 5, § 1 (32d to 70th words), 40 Stat. 430; Aug. 13, 1946, ch. 962, § 16, 60 Stat. 1061.
		Feb. 27, 1936, ch. 89, 49 Stat. 1144; June 6, 1941, ch. 175, 55 Stat. 246.
		Nov. 24, 1945, ch. 492, 59 Stat. 586.

All provisions of law authorizing appointments to the Naval Academy from various sources are collected in this section. The language is extensively changed to meet the needs of this organization of the source material. In those provisions that now authorize "appointments" by other than the President, the language is changed to indicate that the process is one of selection where the law requires selection by competitive examination, and to show that other candidates are nominated. The manner of appointing the selectees and nominees, in all cases, is covered in § 6953 of this title. In the case of nominees from States, the District of Columbia, Ter-

ritories, and from Puerto Rico, the qualification that the nominees must be from the political subdivisions from which nominated is indicated. The requirement that the nominees be actual residents of the political subdivisions is contained in § 6958 (b) of this title.

In subsection (a) (1) the words "armed forces" are substituted for the description of the land and naval forces. The words "including male and female members of" and "of all components thereof" are omitted as surplusage.

In subsection (a) (1) (B), the date February 1, 1955, fixed by Proclamation No. 3080 (Jan. 7, 1955; 20 F. R. 173), is substituted for the words "such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress under section 745 of title 38".

In subsection (b) (1) the qualification that appointees must be from the sons of members of the various "regular" components of the armed forces is added, as "Army, Navy, Air Force, Marine Corps, and Coast Guard" are so interpreted in this statute.

In subsection (c) the proviso "That all such appointees are otherwise qualified for admission" is omitted as covered by § 6958 of this title setting forth qualifications of all candidates.

The applicability to the United States Military Academy in the act of June 8, 1926, ch. 492, as amended (34 U. S. C. 1036a; 10 U. S. C. 1091a), was repealed by section 6 (c) of the act of June 30, 1950, ch. 421, 64 Stat. 305.

AMENDMENTS

1970—Subsec. (a) (5). Pub. L. 91–405 substituted "Delegate to the House of Representatives from the District of Columbia" for "Commissioner of that District".

1968—Subsec. (a). Pub. L. 90–374 increased from five to nine the number of alternates for each vacancy each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate.

Subsec. (a) (5). Pub. L. 90–623 substituted "Commissioner" for "Commissioners".

1966—Subsec. (a) (1). Pub. L. 89–650, § 1(1), provided for selection of cadets to the Naval Academy from sons of members of the armed forces who have a 100 per centum service-connected disability and removed the limitation to active service during World War I or World War II or after June 26, 1950, and before Feb. 1, 1955.

Subsec. (a) (2). Pub. L. 89–650, § 1(2), provided for nominations to the Naval Academy by the President pro tempore of the Senate if there is no Vice President.

Subsec. (b) (1). Pub. L. 89–650, § 1(3), increased the number of Presidential appointments to the Naval Academy from 75 to 100, provided for selection of eligible persons as stated in items (A) and (B), previously chosen from sons of members of regular components, and declared persons eligible under subsec. (a) (1) ineligible under subsec. (b) (1) of this section.

1964—Subsec. (a). Pub. L. 88–276, § 2(1), inserted "Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and five alternates for each vacancy that is available to him under this section."

Subsec. (b) (2), (3), (5). Pub. L. 88–276, § 2(2), reduced the number of nominees in clauses (2) and (3) from 160 to 85 and added clause (5).

Subsecs. (d), (e). Pub. L. 88–276, § 2(3), added subsecs. (d) and (e).

1962—Subsec. (a). Pub. L. 87–663 added cl. (9).

Pub. L. 87–651 substituted "Panama Canal Company" for "Panama Railroad Company" in cl. (8).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, summarized in a note set out under section 25 of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6956, 6958 of this title.

§ 6955. Midshipmen: allotment upon redistricting of Congressional Districts

If as a result of redistricting a State the domicile of a midshipman, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of midshipmen otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a midshipman or when he is finally separated from the Naval Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 430.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6955	34 U. S. C. 1032–1.	July 7, 1943, ch. 193, 57 Stat. 383.

The word "domicile" is substituted for the words "place of residence" to conform to the long-standing interpretation of this section (see also opinions of the Judge Advocate General of the Army R. 29, 83; J. A. G. 351.11, Feb. 10, 1925). The words "a congressional district other than that from which he was nominated" are substituted for the word "another". The words "were appointed with respect to", "of the former district", "as additional numbers", "at such academy for the Representative", "temporarily", and "in attendance at either academy under an appointment from such former district" are omitted as surplusage. The words "the district in which his domicile so falls" are substituted for the words "of the latter district". The words "to include him" are substituted for 34 U. S. C. 1032–1 (18 words before proviso). The words "However, the number as so increased" are substituted for 34 U. S. C. 1032–1 (1st 13 words of proviso). The words "if he fails to become a midshipman" are inserted for clarity.

§ 6956. Midshipmen: nomination and selection to fill vacancies.

(a) The Secretary of the Navy shall, as soon as possible after the first of June of each year, notify in writing each Senator, Representative, and delegate in Congress of any vacancy that will exist at the Naval Academy because of graduation in the following year, or that may occur for other reasons, for which the member or delegate is entitled to nominate a candidate and nine alternates.

(b) A nomination following notification under subsection (a) shall be made by the fourth of March of the year following that in which notice of the vacancy is given. However, if the candidate dies or declines the nomination, or if the nomination cannot be made by reason of a vacancy in the membership of the Senate or the House of Representatives, the nomination may be made, as determined by the Secretary, not later than the date of the final entrance examination for that year.

(c) Nomination of candidates to fill vacancies for the District of Columbia, and selection of all candidates at large, shall be made by the fourth of March

of the year in which the candidates are to enter the Academy.

(d) If the annual quota of midshipmen from—

(1) enlisted men of the Regular Navy and the Regular Marine Corps;

(2) enlisted men of the Naval Reserve and the Marine Corps Reserve; or

(3) at large by the President;

is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(e) If it is determined that, upon the admission of a new class to the Academy, the number of midshipmen at the Academy will be below the authorized number, the Secretary may fill the vacancies by nominating additional midshipmen from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this subsection shall be from qualified alternates under clauses (2)—(8) of section 6954(a) of this title, and the remainder shall be from qualified candidates who competed for appointment under any other provision of law. An appointment of a nominee under this subsection is an additional appointment and is not in place of an appointment otherwise authorized by law.

(f) The failure of a member of a graduating class to complete the course with his class does not delay the appointment of his successor. (Aug. 10, 1956, ch. 1041, 70A Stat. 430; Mar. 3, 1964, Pub. L. 88–276, § 3, 78 Stat. 151; July 5, 1968, Pub. L. 90–374, 82 Stat. 283.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6956 (a), (b), and (c).	34 U. S. C. 1041.	June 29, 1906, ch. 3590, 34 Stat. 578 (last par.).
6956 (d)	34 U. S. C. 1040.	Aug, 13, 1946, ch. 962, § 14, 60 Stat. 1061.
6956 (e)	34 U. S. C. 1049.	June 30, 1950, ch. 421, § 4, 64 Stat. 305.
6956 (f)	34 U. S. C. 1047 (1st proviso).	June 30, 1950, ch. 421, § 2 (1st proviso), 64 Stat. 304

The section is worded to indicate that all appointments are made by the President, and that, before appointment, prospective midshipmen are "nominees" or "candidates," as appropriate.

In subsection (b) the provision authorizing the Secretary of the Navy to nominate candidates in the event nominations to fill vacancies under subsection (a) are not made by March fourth is omitted as covered by subsection (e), the purpose of which was to assure the entrance of a full class each year.

Reference in subsection (e) to the strength of the "brigade of midshipmen" is dropped, since there is no statutory requirement that the midshipmen at the Academy be so organized, and the term is a recognition of current organization only. The language authorizing the Secretary, in his discretion, to nominate additional midshipmen to meet the needs of the armed services but not to exceed the authorized strength of the Academy is changed to authorize the Secretary to "fill the vacancies by nominating additional midshipmen". In exercising his discretion under this subsection, these factors are necessarily considered by the Secretary, irrespective of a specific provision so instructing him.

In subsection (f) the word "admission" is changed to the word "appointment", since the admission of a person is a consequence of, and follows automatically from, his appointment. The statement of reasons for failure to complete the course is omitted as unnecessary.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–374 substituted "nine alternates" for "five alternates".

1964—Subsec. (a). Pub. L. 88–276, § 3(1), substituted "five alternates" for "one or more alternates."

Subsec. (e). Pub. L. 88–276, § 3(2), substituted "three-fourths of those nominated" for "two-thirds of those nominated."

NUMBER OF ALTERNATE-APPOINTEES FROM CONGRESSIONAL SOURCES NOT TO BE REDUCED BECAUSE OF ADDITIONAL PRESIDENTIAL APPOINTMENTS

Nonreduction of number of appointees from congressional sources under this section because of additional presidential appointments under section 6954(b)(1) of this title, see note set out under section 4343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6554 of this title.

§ 6957. Admission of foreigners for instruction: restrictions; conditions.

(a) No person from a foreign country may be permitted to receive instruction at the Naval Academy except as authorized by this section.

(b) The Secretary of the Navy may permit persons designated by the President to receive instruction at the Academy as follows:

(1) Not more than 20 at a time from Canada and the American Republics other than the United States.

(2) Not more than four at a time from the Republic of the Philippines.

Of the 20 persons permitted under clause (1) to receive instruction at the Academy at any one time, not more than three may be from the same country.

(c) A person receiving instruction under this section is entitled to the same pay and allowances, to be paid from the same appropriations, as midshipmen.

(d) Except as the Secretary determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation, as a midshipman. However, a person receiving instruction under this section is not entitled to an appointment in the Navy or the Marine Corps by reason of his graduation from the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 431.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6957 (a)	34 U. S. C. 1036.	June 29, 1906, ch. 3590, 34 Stat. 577 (1st par.).
6957 (b), (c), and (d).	34 U. S. C. 1036–1; 34 U. S. C. 1036–2.	July 14, 1941, ch. 292, 55 Stat. 589; June 1, 1948, ch. 357, § 1, 62 Stat. 279. June 24, 1948, ch. 616, 62 Stat. 583.

In subsections (a) and (b) the location of the Academy is omitted as surplusage.

In subsection (b) the words "from the Republic of the Philippines" are substituted for the word "Filipinos" to indicate the proper designation of that country.

In subsection (c) reference to "emoluments" is omitted, as that term has no present significance with reference to midshipmen.

In subsection (d) the words "rules and" and "any office or position" are omitted as surplusage and the provision is

extended to cover specifically the Marine Corps, since "Navy" in this context is so interpreted.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President, see Ex. Ord. No. 10661, Feb. 27, 1956, 21 F. R. 1315, set out as a note under section 301 of Title 3, The President.

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM: NAVAL ACADEMY INSTRUCTION; BENEFITS, LIMITATIONS, RESTRICTIONS, AND REGULATIONS; OATH OF TRAINEES

Naval Academy instruction of persons from countries assisting U.S. in Vietnam, numerical limitation, prohibition against appointment of graduates to the Armed Forces, exemption from oath, etc., see Pub. L. 89-802, Nov. 9, 1966, 80 Stat. 1518, set out as a note under section 4344 of this title.

§ 6958. Midshipmen: qualifications for admission.

(a) Each candidate for admission to the Naval Academy—

(1) must be at least 17 years of age and must not have passed his twenty-second birthday on July 1 of the calendar year in which he enters the Academy; and

(2) shall be examined according to such regulations as the Secretary of the Navy prescribes, and if rejected at one examination may not be examined again for admission to the same class unless recommended by the Academic Board.

(b) Each candidate for admission nominated under clauses (3)—(7) and (9) of section 6954(a) of this title must be domiciled in the State or Territory, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(c) Each candidate nominated under clause (2) or (3) of section 6954 (b) of this title—

(1) must be a citizen of the United States;

(2) must have served at least one year as an enlisted member on the date of entrance;

(3) must have passed the required physical examination; and

(4) shall be appointed in the order of merit from candidates who have, in competition with each other, passed the required mental examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Sept. 14, 1962, Pub. L. 87-663, § 1(4), 76 Stat. 547.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6958 (a) (1)	34 U. S. C. 1047 (less 1st proviso).	June 30, 1950, ch. 421, § 2 (less 1st proviso), 64 Stat. 304.
6958 (a) (2)	34 U. S. C. 1043.	R. S. 1515.
6958 (b)	34 U. S. C. 1047 (2d proviso).	June 30, 1950, ch. 421, § 2 (2d proviso), 64 Stat. 304.
6958 (c)	34 U. S. C. 1042; 34 U. S. C. 1032 (less 1st 70 words).	Mar. 4, 1917, ch. 180, 39 Stat. 1182 (1st par.). Dec. 20, 1917, ch. 5, § 1 (less 1st 70 words), 40 Stat. 430; Aug. 13, 1946, ch. 962, § 16, 60 Stat. 1061; May 16, 1947, ch. 77, § 1 (o), 61 Stat. 100.

In subsection (a) the effective date is omitted as executed. The words "at least 17 years of age and must not have passed his twenty-second birthday" are substituted for the words "not less than seventeen years of age and not more than twenty-two years of age" to remove ambiguity, and for uniformity of treatment of provisions of this type. The reference to time of examination is omitted as being included within the Secretary's authority to prescribe regulations, which is stated in the subsection. The words "Academic Board" are substituted for the words "board of examiners".

In subsection (b) the words "domiciled in" are substituted for the words "actual resident of" since this term has been so interpreted.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-663 added references to American Samoa, Guam, and the Virgin Islands, and substituted "clauses (3)—(7) and (9)" for "clauses (3)—(7)."

CROSS REFERENCES

Effect upon enlisted status of acceptance of appointment as midshipman, see section 516 of this title.

§ 6959. Midshipmen: agreement for length of service.

(a) Each midshipman who is a citizen or national of the United States shall sign an agreement that, unless sooner separated, he will—

(1) complete the course of instruction at the Naval Academy.

(2) accept an appointment and serve as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force for at least five years immediately after graduation; and

(3) accept an appointment as a commissioned officer in the reserve component of the Navy or the Marine Corps or as a Reserve in the Air Force for service in the Air Force Reserve and remain therein until the sixth anniversary of his graduation if an appointment in the regular component of that armed force is not tendered to him or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the midshipman is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

(b) A midshipman who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Navy to the Naval Reserve or the Marine Corps Reserve in an appropriate enlisted grade or rating, and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade or rating for such period of time as the Secretary prescribes but not for more than four years. (Aug. 10, 1956, ch. 1041, 70A Stat. 432; Mar. 3, 1964, Pub. L. 88-276, § 5(a), 78 Stat. 153; Oct. 13, 1964, Pub. L. 88-647, title III, § 301(19), 78 Stat. 1072.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6959	34 U. S. C. 1048.	June 30, 1950, ch. 421, § 3, 64 Stat. 304.

The words "Hereafter" and "appointed to the United States Naval Academy" are omitted as surplusage. The words "an agreement that * * * he will" are substituted for the words "articles * * * by which he shall engage". The word "separated" is substituted for the words "discharged by competent authority". The words "if tendered an appointment", "upon graduation from the United States Naval Academy", and "consecutive" are omitted as surplusage. The words "if he is permitted to resign" are substituted for the words "in the event of the acceptance of his resignation", since a resignation is effective only if accepted. The first 43 words of clause (3) are substituted for 34 U. S. C. 1048 (last 30 words of clause (3)). The last sentence is substituted for the words "with the consent of his parents or guardian if he be a minor, and if any he have."

AMENDMENTS

1964—Pub. L. 88–647 designated existing provisions as subsec. (a), and added subsec. (b).

Subsec. (a)(2). Pub. L. 88–276 substituted "five" for "three."

EFFECTIVE DATE OF 1964 AMENDMENT; OBLIGATED PERIOD OF SERVICE

Amendment of section by Pub. L. 88–276 effective only with respect to cadets and midshipmen appointed to the service academies and the Coast Guard Academy after Mar. 3, 1964, see section 5(c) of Pub. L. 88–276, set out as a note under section 4348 of this title.

CROSS REFERENCES

Effect upon enlisted status of acceptance of appointment as midshipman, see section 516 of this title.

§ 6960. Midshipmen: clothing and equipment; uniform allowance.

The Secretary of the Navy may prescribe the amount to be credited to a midshipman, upon original admission to the Naval Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a midshipman is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in as much of his clothing and equipment of a distinctively military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled. (Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6960	34 U. S. C. 1052a.	Aug. 22, 1951, ch. 340, § 1, 65 Stat. 196.

The word "new" before "midshipmen" and the word "subsequently" after "deducted" are omitted as surplusage. The words "while owing the United States for pay advanced for the purchase of" are substituted for the words "who is indebted to the United States on account of advances of pay to purchase."

§ 6961. Midshipmen: dismissal for best interests of the service.

(a) Whenever the Superintendent of the Naval Academy believes that the continued presence of any midshipman at the Academy is contrary to the best interest of the service, he shall report in writing to the Secretary of the Navy a full statement of the facts upon which his belief is based. If the Secretary determines from the report that the Superintendent's belief is well founded, the Secretary shall serve a copy of the report on the midshipman. Within such time as the Secretary considers reasonable, the midshipman shall show cause in writing why he should not be dismissed from the Academy. The Secretary, after consideration of any cause so shown, and with the written approval of the President, may dismiss the midshipman from the Academy and from the naval service.

(b) The truth of any issue of fact raised under subsection (a), except as to the record of demerits, shall be determined by a court of inquiry convened by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6961	34 U. S. C. 1062.	Apr. 9, 1906, ch. 1370, § 1, 34 Stat. 104.

The words "court of inquiry" are substituted for the words "board of inquiry" to conform to the terminology of the Uniform Code of Military Justice. The words "under the rules and regulations for the government of the Navy" are omitted as unnecessary.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 1062 of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

§ 6962. Midshipmen: discharge for unsatisfactory conduct or inaptitude.

(a) The Superintendent of the Naval Academy shall submit to the Secretary of the Navy in writing a full report of the facts—

(1) whenever the Superintendent determines that the conduct of a midshipman is unsatisfactory; or

(2) whenever the Academic Board unanimously determines that a midshipman possesses insufficient aptitude to become a commissioned officer in the naval service.

(b) A midshipman upon whom a report is made under subsection (a) shall be given an opportunity to examine the report and submit a written statement thereon. If the Secretary believes, on the basis of the report and statement, that the determination of the Superintendent or of the Academic Board is reasonable and well founded, he may discharge the midshipman from the Naval Academy and from the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6962	34 U. S. C. 1062a.	Dec. 11, 1945, ch. 562, 59 Stat. 605.

§ 6963. Midshipmen: discharge for deficiency.

Midshipmen found deficient at any examination shall, unless the Academic Board recommends otherwise, be discharged from the Naval Academy and from the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6963	34 U. S. C. 1053.	R. S. 1519; restored Oct. 22, 1921, ch. 113, § 2, 42 Stat. 207.

§ 6964. Hazing: definition; prohibition.

(a) In this chapter "hazing" means any unauthorized assumption of authority by a midshipman whereby another midshipman suffers or is exposed to any cruelty, indignity, humiliation, hardship, or oppression, or the deprivation or abridgement of any right.

(b) The Superintendent of the Naval Academy shall prescribe regulations, to be approved by the Secretary of the Navy, to prevent hazing.

(c) Hazing is an offense that may be dealt with as an offense against good order and discipline or as a violation of the regulations of the Naval Academy. However, no midshipman may be dismissed for a single act of hazing except by sentence of a court-martial.

(d) The finding and sentence of a court-martial of a midshipman for hazing shall be reviewed in the manner prescribed for general court-martial cases.

(e) A midshipman who is sentenced to imprisonment for hazing may not be confined with men who have been convicted of crimes or misdemeanors.

(f) A midshipman who is dismissed from the Academy for hazing may not be reappointed as a midshipman or be appointed as a commissioned officer in the Army, Navy, Air Force, or Marine Corps until two years after the graduation of the class of which he was a member. (Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6964 (a)	34 U. S. C. 1064.	Apr. 9, 1906, ch. 1370, § 4, 34 Stat. 105.
6964 (b)	34 U. S. C. 1063.	
6964 (c)	34 U. S. C. 1065.	Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (1st 28 words of 1st proviso).
6964 (d) and (e).	34 U. S. C. 1066.	
6964 (f)	34 U. S. C. 1067.	Apr. 9, 1906, ch. 1370, § 2 (last 51 words), 34 Stat. 104. June 23, 1874, ch. 453, 18 Stat. 203; Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (29th to 49th word of 1st proviso); Apr. 9, 1906, ch. 1370, § 3, 34 Stat. 104; May 5, 1950, ch. 169, § 11, 64 Stat. 146. Mar. 3, 1903, ch. 1010, 32 Stat 1198 (last 43 words of 1st proviso).

In subsection (a) the words "privilege, or advantage to which he shall legally be entitled" are omitted as surplusage, since they are covered by the word "right". The definition in this subsection is made applicable throughout the chapter to cover § 6965 of this title, since the reference in that section to hazing was also derived from the act which is the source for this subsection.

In subsection (b) the words "prescribe regulations * * * to prevent hazing" are substituted for the words "make such rules * * * as will effectually prevent the practice of hazing".

In subsection (c) the words "dealt with" are substituted for the words "proceeded against, dealt with, and punished". The word "regulations" is substituted for the word "rules" for uniformity and the words "and breaches" are omitted as surplusage. The words "except by sentence of a court-martial" are substituted for the words "except under the provisions of section three of this Act" because § 3 of the source statute provided for a Naval Academy court-martial with special provisions for handling cases involving hazing. The enactment of the Uniform Code of Military Justice made midshipmen at the Naval Academy subject to the same military law which applies generally to the naval service, thereby superseding the special type of court-martial for midshipmen. A court-martial under the Uniform Code of Military Justice has the power to sentence anyone convicted by it to dismissal if authorized by the Table of Maximum Punishments.

In subsections (d) and (e) all that part of the source text preceding the proviso is omitted as superseded by the Uniform Code of Military Justice. The words "in a military or naval prison or elsewhere" are omitted as surplusage.

CROSS REFERENCES

Review of courts-martial, see section 859 et seq. of this title.

§ 6965. Failure to report violation: dismissal.

(a) Each officer stationed at the Naval Academy, each midshipman officer, each midshipman petty officer, and each civilian member of the teaching staff of the Academy shall report promptly to the Superintendent of the Naval Academy any fact that tends to show the commission of hazing or any violation of an Academy regulation by a midshipman.

(b) An officer of the naval service who fails to make a report required by subsection (a) shall be tried by court-martial and if convicted shall be dismissed from the naval service.

(c) A civilian member of the teaching staff of the Academy who fails to make a report required by subsection (a) shall, with the approval of the Secretary of the Navy, be dismissed by the Superintendent. (Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6965	34 U. S. C. 1068.	Apr. 9, 1906, ch 1370, § 5, 34 Stat. 105.

In subsection (a) the words "each officer stationed at the Naval Academy, each midshipman officer, each midshipman petty officer, and each civilian member of the teaching staff of the Academy shall" are substituted for the words "it shall be the duty of every professor, assistant professor, academic officer, or any cadet officer or cadet petty officer, or instructor, as well as every other officer stationed at the United States Naval Academy to" to state the current applicability of the provision. The words "commission of hazing" are substituted for the words "violation * * * of any of the provisions of this Act".

In subsection (b) the words "for neglect of duty" are omitted inasmuch as the Uniform Code of Military Justice sets out the offenses for which persons subject to the Code may be tried.

§ 6966. Course of study.

(a) The course at the Naval Academy is four years.

(b) The Secretary of the Navy shall arrange the course so that classes will not be held on Sunday. (Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6966 (a)	34 U. S. C. 1054.	Mar. 7, 1912, ch. 53 (1st 11 words), 37 Stat. 73. R. S. 1526.
6966 (b)	34 U. S. C. 1056.	

In subsection (b) the words "of studies and the order of recitations" are omitted as surplusage. The words "classes will not be held on Sunday" are substituted for the words "students in said institution shall not be required to pursue their studies on Sunday".

§ 6967. Degree on graduation.

Under regulations prescribed by the Secretary of the Navy, the Superintendent of the Naval Academy may confer the degree of bachelor of science upon graduates of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6967	34 U. S. C. 1057a (less last sentence).	May 25, 1933, ch. 37, 48 Stat. 73 (less last sentence); Aug. 9, 1946, ch. 932, 60 Stat. 968; Aug. 4, 1949, ch. 393, § 13, 63 Stat. 559; Aug. 18, 1949, ch. 476, 63 Stat. 614.

The word "regulations" is substituted for the words "such rules and regulations". Since the Naval Academy is now accredited, the words "from and after the date of accrediting of said Academy" are omitted as executed.

DEGREES FOR PERSONS WHO GRADUATED BEFORE ACCREDITING OF NAVAL ACADEMY

Section 35 of act Aug. 10, 1956, provided in part that, under conditions prescribed by the Secretary of the Navy, the Superintendent of the United States Naval Academy may confer the degree of bachelor of science upon living graduates of the Academy who were graduated before the date of accrediting of the Academy and who meet the requirements of the Academy for that degree.

CROSS REFERENCES

Appointment of graduates to Regular Navy or Regular Marine Corps, see section 5573 of this title.

§ 6968. Board of Visitors.

(a) A Board of Visitors to the Naval Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years. Two persons shall be designated by him each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Navy, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser is entitled to not more than $5 a day and shall be reimbursed under Government travel regulations for his travel expenses. (Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6968 (a) and (b).	34 U. S. C. 1083; 34 U. S. C. 1084.	June 29, 1948, ch. 714, § 1, 62 Stat. 1094.
6968 (c)	34 U. S. C. 1085.	June 29, 1948, ch. 714, § 2, 62 Stat. 1094.
6968 (d)	34 U. S. C. 1086.	June 29, 1948, ch. 714, § 3, 62 Stat. 1094.
6968 (e), (f), and (g)	34 U. S. C. 1087.	June 29, 1948, ch. 714, § 4, 62 Stat. 1094; June 30, 1954, ch. 432, § 732, 68 Stat. 356.
6968 (h)	34 U. S. C. 1088.	June 29, 1948, ch. 714, § 5, 62 Stat. 1094. June 29, 1948, ch. 714, § 6, 62 Stat. 1094.

In subsection (a) the words "A Board of Visitors to the Naval Academy is constituted annually" are substituted for the words "There shall be appointed * * * every year a Board of Visitors", since appointments, in the strict sense, are not involved.

In subsection (b) the language establishing staggered terms is eliminated as executed, and the existence of such terms is recognized by the use of the words "two persons shall be designated by him each year to succeed the members whose terms expire that year". No effect is given to the language "the nine Presidential appointees". The hearings indicate that one of the bills considered provided for nine such "appointees", and it appears that the number nine was inadvertently retained. The provision specifically authorizes only six Presidential designees.

CROSS REFERENCES

Travel and subsistence expenses, see section 5701 et seq. of Title 5, Government Organization and Employees.

§ 6969. Band: composition.

(a) The Naval Academy Band shall be composed of one leader, one second leader, and such enlisted members of the Navy as may be assigned.

(b) In determining years of service for the purpose of retirement, and in determining eligibility for reenlistment bonus, the members who are assigned as leader and second leader shall be treated as if they had not been so assigned.

(c) The enlisted members assigned to the Naval Academy Band shall be distributed in grade substantially the same as in the United States Navy Band. (Aug. 10, 1956, ch. 1041, 70A Stat. 435; Sept. 7, 1962, Pub. L. 87-649, § 14c(52), 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6969	34 U. S. C. 1091a.	Feb. 14, 1931, ch. 184, 46 Stat. 1111; July 17, 1953, ch. 226, § 2, 67 Stat. 181.

In subsection (a) the words "of the Navy" are supplied since the requirement that the distribution in ratings be similar to that in the United States Navy Band indicates that the Naval Academy Band should not include members of the Marine Corps, and it is so interpreted.

In subsection (b) the words "an officer in the grade of warrant officer, W-1," are substituted for the words

"a warrant officer" because the Warrant Officer Act of 1954 established the grade of warrant officer, W-1, in lieu of all the former warrant officer (as distinguished from commissioned warrant officer) grades. The second sentence covers that part of the second proviso which relates to pay and makes reference to the Career Compensation Act of 1949, since it is that act which governs entitlement to basic pay and the computation of cumulative years of creditable service. Retirement rights and reenlistment bonuses referred to in the second proviso are covered in the third sentence of this subsection, giving recognition to the fact that the status of the members who are assigned as leader and second leader of the band remains unchanged in these respects.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-649 repealed the first and second sentence which related to pay and allowances for the leader and second leader of the Naval Academy Band, and to crediting of service for pay purposes. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

PERMANENT GRADE OF PRESENT LEADER OF BAND

Section 3 of act July 17, 1953, ch. 226, 67 Stat. 180, provided that: "The President is authorized to appoint the present leader of the United States Navy Band to the permanent commissioned grade of commander in the Navy. Such appointment pursuant to this Act shall be deemed to be not in the line of the Navy or in any staff corps of the Navy."

CROSS REFERENCES

Pay and allowances, see sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6970. Storekeeper: detail; returns; inspection of accounts.

(a) An officer of the Supply Corps shall be detailed as the storekeeper at the Naval Academy. With the approval of the Secretary of the Navy, he shall procure clothing and other necessary supplies for the midshipmen in the same manner as supplies are procured for the Navy generally. Supplies procured by the storekeeper shall be issued under such regulations as the Secretary prescribes.

(b) Under such regulations as the Secretary prescribes, the storekeeper shall make quarterly returns of the property to the head of such office or agency in the Department of the Navy as the Secretary may designate. The officer so designated shall report annually to the Secretary the receipts and expenditures under this section.

(c) The storekeeper's accounts shall be inspected quarterly by the inspector general of the Supply Corps. A report of the inspection, with any recommendation of the inspector general, shall be made to the person designated by the Secretary under subsection (b). (Aug. 10, 1956, ch. 1041, 70A Stat. 435; Nov. 2, 1966, Pub. L. 89-718, § 37, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6970 (a)	34 U. S. C. 1101.	R. S. 1527.
6970 (b)	34 U. S. C. 1102.	May 13, 1908, ch. 166, 35 Stat. 153 (proviso of 1st sentence, and 2d sentence, less proviso, of 1st par.).
6970 (c)	34 U. S. C. 1103.	May 13, 1908, ch. 166, 35 Stat. 153 (proviso of 2d sentence of 1st par.).

In subsection (a) the words "necessary supplies" are substituted for the word "necessaries".

In subsection (b) the words "at the Naval Academy, authorized by the preceding section" are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89-718 substituted the head of such office or agency in the Department of the Navy as the Secretary may designate for the Chief of the Bureau of Supplies and Accounts as the officer to whom the storekeeper shall make quarterly returns and as the officer who shall make annual reports to the Secretary of the receipts and expenditures under this section and receive recommendations of the inspector general based on quarterly inspections of the storekeeper's accounts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6971 of this title.

§ 6971. Midshipmen's store, laundry, barber shop, cobbler shop, tailor shop, and dairy: disposition of funds.

(a) Funds collected from the operation of the midshipmen's store, including the barber shop, cobbler shop, and tailor shop at the Naval Academy, and the Academy dairy shall be deposited in the Treasury and are available for operating expenses of these activities and for such other expenditures as the Superintendent of the Naval Academy considers necessary in the interest of the health, comfort, and education of the midshipmen. The Superintendent shall account quarterly to the person designated by the Secretary of the Navy under section 6970(b) of this title for all receipts and expenditures under this subsection.

(b) Funds collected from the operation of the Academy laundry shall be accounted for as public funds and are available for the maintenance of necessary laundry service for Academy activities and personnel. (Aug. 10, 1956, ch. 1041, 70A Stat. 435; Nov. 2, 1966, Pub. L. 89-718, § 38, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6971 (a)	34 U. S. C. 1108b (less last proviso).	July 26, 1946, ch. 675, § 2 (less last proviso), 60 Stat. 704.
6971 (b)	34 U. S. C. 1106.	Aug. 5, 1939, ch. 448, § 1, 53 Stat. 1210.

In subsection (a) the second listing of the activities is omitted for brevity.

In subsection (b) the words "including midshipmen" are omitted as surplusage. The words "are available for the maintenance of" are substituted for the words "are appropriated for the purpose of providing and maintaining".

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "person designated by the Secretary of the Navy under section 6970(b) of this title" for "Bureau of Supplies and Accounts".

§ 6972. Chapel: crypt and window spaces.

The crypt and window spaces of the Naval Academy Chapel may be used only for memorials to officers of the Navy who have successfully commanded a fleet or squadron in battle or who have received the thanks of Congress for conspicuously distinguished services in time of war. No memorial to an officer may be accepted for, or installed in, the crypt or window spaces until at least five years after the death of that officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 435.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6972	34 U. S. C. 1111.	Mar. 3, 1909, ch. 255, 35 Stat. 773 (2d par.).

The words "United States" in connection with the chapel, the words "of the United States" in connection with naval officers and with Congress, and the words "or may receive" are omitted as surplusage. The proviso is omitted as executed.

§ 6973. Gifts and bequests: acceptance for benefit of Naval Academy.

(a) The Secretary of the Navy may accept, hold, administer, and spend gifts and bequests of personal property made on the condition that it be used for the benefit of, or for use in connection with, the Naval Academy. Gifts and bequests of money and the proceeds from the sales of property received as gifts shall be deposited in the Treasury in the fund called "United States Naval Academy general gift fund". The Secretary may disburse funds deposited under this subsection for the benefit or use of the Naval Academy subject to the terms of the gift or bequest.

(b) For the purpose of Federal income, estate, and gift taxes, property that is accepted under this section is considered as a gift or bequest to or for the use of the United States.

(c) Upon the request of the Secretary of the Navy, the Secretary of the Treasury may invest, reinvest, or retain investments of money or securities comprising any part of the United States Naval Academy general gift fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from those securities shall be deposited to the credit of the United States Naval Academy general gift fund and may be disbursed as provided in this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 436.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6973 (a)	34 U. S. C. 1115; 34 U. S. C. 1115a.	Mar. 31, 1944, ch. 147, § 1, 58 Stat. 135.
6973 (b)	34 U. S. C. 1115b.	Mar. 31, 1944, ch. 147, § 2, 58 Stat. 135.
6973 (c)	34 U. S. C. 1115c.	Mar. 31, 1944, ch. 147, § 3, 58 Stat. 135.
		Mar. 31, 1944, ch. 147, § 4, 58 Stat. 135.

CROSS REFERENCES

Acceptance of gifts and services generally, see sections 2601 and 2602 of this title.

§ 6974. Gifts and bequests: acceptance for benefit of museum.

(a) The Secretary of the Navy may accept, hold, administer, and spend gifts and bequests of personal property, and loans of personal property other than money, for the benefit of the Naval Academy Museum, its collection, or its services. Gifts or bequests of money shall be deposited in the Treasury in the fund called "United States Naval Academy Museum Fund". The Secretary may disburse funds so deposited for the purposes specified in this section.

(b) For the purpose of Federal income, estate, and gift taxes, property that is accepted under this section is considered as a gift or bequest to or for the use of the United States.

(c) Upon the request of the Secretary of the Navy, the Secretary of the Treasury may invest, reinvest, or retain investments of the money or securities comprising any part of the United States Naval Academy Museum Fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from those securities shall be deposited to the credit of the United States Naval Academy Museum Fund and may be disbursed as provided in this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 436.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
6974 (a)	34 U. S. C. 1118.	Mar. 26, 1938, ch. 52, § 3, 52 Stat. 119.
6974 (b)	34 U. S. C. 1119.	Mar. 26, 1938, ch. 52, § 4, 52 Stat. 119.
6974 (c)	34 U. S. C. 1120.	Mar. 26, 1938, ch. 52, § 5, 52 Stat. 119.

CROSS REFERENCES

Acceptance of gifts and services generally, see sections 2601 and 2602 of this title.

Chapter 605.—UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7041. Function.
7042. Superintendent; assistants.
7043. Academic Dean.
7044. Civilian teachers: number; compensation.
7045. Officers of Army, Air Force, and Coast Guard: admission.
7046. Officers of foreign countries: admission.
7047. Conferring of degrees on graduates.

§ 7041. Function.

There is a United States Naval Postgraduate School for the advanced instruction and technical education of commissioned officers of the naval service in their practical and theoretical duties. (Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7041	34 U. S. C. 1076.	July 31, 1947, ch. 420, § 1, 61 Stat. 705.

The words "There is a" are substituted for the words "That the Secretary of the Navy is hereby authorized and directed to establish the", as the Postgraduate School is in operation. The words "technical education" are substituted for the word "training" to describe more aptly the higher level of instruction at the Postgraduate School. The words "naval service" are substituted for the words "Regular Navy and Marine Corps and the reserve components thereof". The word "their" is substituted for the words "of commissioned officers".

§ 7042. Superintendent; assistants.

(a) The Secretary of the Navy shall detail as Superintendent of the Naval Postgraduate School an officer on the active list in the line of the Navy eligible for command at sea not below the grade

of captain. The Superintendent has military command of the Postgraduate School.

(b) The Secretary shall detail officers of the Navy and the Marine Corps of appropriate grades and qualifications to assist the Superintendent in—

(1) the advanced instruction and technical education of students; and

(2) the administration of the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7042	34 U. S. C. 1076a.	July 31, 1947, ch. 420, § 2, 61 Stat. 705.

In subsection (a) the word "Regular" is omitted as covered by the term "active list".

In subsection (b) the words "line and staff" and "as may be necessary" are omitted as surplusage. The word "grades" is substituted for the word "ranks". The words "advanced instruction and technical education" are substituted for the words "training * * * in the practical and theoretical duties of commissioned naval officers".

§ 7043. Academic Dean.

(a) There is at the Naval Postgraduate School the civilian position of Academic Dean. The Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy upon the recommendation of the Postgraduate School Council consisting of the Superintendent, the Deputy Superintendent, and the directors of the Technical, Administrative, and Professional Divisions of the school.

(b) The Academic Dean is entitled to such compensation for his services as the Secretary prescribes, but not more than the rate of compensation provided for grade 18 of the general schedule of the Classification Act of 1949, as amended. (Aug. 10, 1956, ch. 1041, 70A Stat. 437; Sept. 2, 1958, Pub. L. 85–861, § 1(148), 72 Stat. 1513; Aug. 11, 1966, Pub. L. 89–536, 80 Stat. 346.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7043	34 U. S. C. 1074 (1st 98 words); 34 U. S. C. 1076c.	June 10, 1946, ch. 298 (1st 98 words), 60 Stat. 236. July 31, 1947, ch. 420, § 4, 61 Stat. 706.

The words "of the Naval Academy" following "Postgraduate School" are dropped as a result of § 4 of the act of July 31, 1947 (supra). This act created the Postgraduate School and in effect transferred the position of Academic Dean of the Postgraduate School of the Naval Academy to the newly created Postgraduate School.

REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (b), is classified to section 5101 et seq. of Title 5, Government Organization and Employees. The General Schedule is set out in section 5332 of Title 5.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–536 substituted for a limit of $13,500 per annum a rate of compensation comparable to grade 18 of the general schedule of the Classification Act of 1949, as amended.

1958—Pub. L. 85–861, among other changes, increased the maximum compensation of the Academic Dean from $12,000 to $13,500 a year.

CROSS REFERENCES

Retirement, see section 7081 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 7044. Civilian teachers: number; compensation.

The Secretary of the Navy may employ as many civilians as he considers necessary to serve at the Naval Postgraduate School under the direction of the Superintendent as senior professors, professors, associate professors, assistant professors, and instructors. The Secretary shall prescribe the compensation of those persons. (Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7044	34 U. S. C. 1076b (less last sentence).	July 31, 1947, ch. 420, § 3 (less last sentence), 61 Stat. 706; Aug. 30, 1954, ch. 1076, § 1 (21), 68 Stat. 968.

The words "as many * * * as he considers necessary" are substituted for the words "such number * * * as in his opinion may be necessary for the proper instruction of students in the theoretical, academic, and scientific subjects pertaining to the technical and practical aspects of the naval profession" for brevity.

CROSS REFERENCES

Retirement of civilian teachers, see section 7081 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 7045. Officers of Army, Air Force, and Coast Guard: admission.

(a) The Secretary of the Navy may permit officers of the Army, Air Force, and Coast Guard to receive instruction at the Naval Postgraduate School. The numbers and grades of such officers shall be as agreed upon by the Secretary of the Navy with the Secretaries of the Army, Air Force, and Treasury, respectively.

(b) The Department of the Army, the Department of the Air Force, and the Department of the Treasury shall bear the cost of the instruction received by the students detailed for that instruction by the Secretaries of the Army, Air Force, and Treasury, respectively.

(c) While receiving instruction at the Postgraduate School, officers of the Army, Air Force, and Coast Guard are subject to the same regulations as apply to students who are officers of the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7045	34 U. S. C. 1076c.	July 31, 1947, ch. 420, § 6, 61 Stat. 706.

The section is enlarged to cover officers of the Air Force under authority of § 305 (a) of the National Security Act of 1947, as amended (5 U. S. C. 171e).

In subsection (a) the words "at the request of the Secretary of the Army and the Secretary of the Treasury" are omitted as surplusage. The words "to receive instruction" are inserted after the listing of the services

and the words "attendance and" are omitted. The word "grades" is substituted for the word "ranks".

In subsection (c) the words "rules and" are omitted. The words "who are officers of the naval service" are substituted for the words "of the United States Navy", since officers of the Marine Corps are occasionally ordered to attend the Postgraduate School on the same basis as officers of the Navy.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

§ 7046. Officers of foreign countries: admission.

(a) The Secretary of the Navy, upon authorization of the President, may permit commissioned officers of the military services of foreign countries to receive instruction at the Naval Postgraduate School.

(b) Officers receiving instruction under this section are subject to the same regulations governing attendance, discipline, discharge, and standards of study as apply to students who are officers of the United States naval service.

(c) No officer of a foreign country is entitled to an appointment in the Navy or the Marine Corps by reason of his completion of the prescribed course of study at the Postgraduate School. (Aug. 10, 1956, ch. 1041, 70A Stat. 438.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7046	34 U. S. C. 1076d.	July 31, 1947, ch. 420, § 5, 61 Stat. 706.

In subsection (b) the words "rules and" are omitted. The words "United States naval service" are substituted for the words "United States Navy" for uniformity.

In subsection (c) the words "to any office or position" are omitted as surplusage. The words "or Marine Corps" are inserted, as the word "Navy" in this context has been interpreted to include officers of the Marine Corps.

§ 7047. Conferring of degrees on graduates.

(a) The Superintendent of the Naval Postgraduate School, under regulations prescribed by the Secretary of the Navy, may confer on any qualified graduate a bachelor's, master's, or doctor's degree in engineering or a related field.

(b) A degree may not be conferred under this section unless the curriculum leading to that degree is accredited by the appropriate professional authority. (Aug. 10, 1956, ch. 1041, 70A Stat. 438.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7047	34 U. S. C. 1076f.	Dec. 7, 1945, ch. 559, 59 Stat. 603; July 31, 1947, ch. 420, § 7, 61 Stat. 706.

In subsection (a) the words "of science" are omitted as surplusage since the curriculum is in engineering and related fields.

In subsection (b) the words "from time to time" are omitted as surplusage.

Chapter 607.—RETIREMENT OF CIVILIAN MEMBERS OF THE TEACHING STAFFS OF THE UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7081. Civilian member; definition; exceptions.
7082. Deferred annuity policy required.
7083. Annuity premium to be paid by monthly installments; government reimbursement.
7084. Age of retirement.
7085. Computation of life annuity.
7086. Physical disability retirement.
7087. Election of annuity for self and beneficiary.
7088. Regulations.

§ 7081. Civilian member: definition; exceptions.

(a) In this chapter "civilian member" means a civilian member of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School. It includes the Academic Dean of the Postgraduate School, senior professors, professors, associate professors, assistant professors, chief instructors, assistant chief instructors, and instructors.

(b) This chapter does not apply to any civilian member who was employed at the Naval Academy or the Postgraduate School on January 16, 1936, and who did not elect to participate in the benefits provided by the Act of January 16, 1936, ch. 3 (49 Stat. 1092).

(c) This chapter does not apply to any person who was a civilian member after September 30, 1956. (Aug. 10, 1956, ch. 1041, 70A Stat. 438; Sept. 2, 1958, Pub. L. 85-861, § 1 (149), 72 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7081 (a)	34 U. S. C. 1073d; 34 U. S. C. 1074 (less 1st 98 words); 34 U. S. C. 1076b (last sentence).	Jan. 16, 1936, ch. 3, § 5, 49 Stat. 1093; Nov. 28, 1943, ch. 331, § 2, 57 Stat. 595. June 10, 1946, ch. 298 (less 1st 98 words), 60 Stat. 236.
7081 (b)	34 U. S. C. 1073c; 34 U. S. C. 1073c-1 (2d proviso).	July 31, 1947, ch. 420, § 3 (last sentence), 61 Stat. 760; Aug. 30, 1954, ch. 1076, § 1 (21), 68 Stat. 968. Jan. 16, 1936, ch. 3, § 4, 49 Stat. 1092. Jan. 16, 1936, ch. 3, § 4A (2d proviso); added Nov. 28, 1943, ch. 331, § 1, 57 Stat. 594.

Section 4 of the act of January 16, 1936, ch. 3, 49 Stat. 1092, provided that persons who were then members of the teaching staff should have the right to participate in benefits under the act if they requested such participation within 60 days. Members who were then under the civil-service retirement system were required to choose whether they would remain under it or would participate in the system established by the 1936 act. They could not come under both. The section also authorized the Secretary of the Navy to supplement the retired income of members who elected to come under the 1936 act and whose age in 1936 was such that they could not purchase adequate annuities before retiring. The provisions whereby members could elect to participate were temporary and are executed. The provisions relating to retired income are superseded by § 4A, added by the act of November 28, 1943, ch. 331, 57 Stat. 594. The only remaining effect of § 4 and the second proviso of § 4A is to exclude from the benefits and requirements of the 1936 act persons who were members of the teaching staff in 1936 and did not elect to participate.

REFERENCES IN TEXT

The Act of January 16, 1936, ch. 3 (49 Stat. 1092), referred to in subsec. (b), is now covered generally by this chapter.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-861 added subsec. (c).

§ 7082. Deferred annuity policy required.

Each civilian member, as a part of his contract of employment, shall carry, during his employment, a deferred annuity policy, having no cash surrender or loan provision, in a joint-stock life insurance corporation that is incorporated under the laws of a State and has a charter restriction that its business must be conducted without profit to its stockholders. (Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7082	34 U. S. C. 1073.	Jan. 16, 1936, ch. 3, § 1, 49 Stat. 1092.

The words "whose employment commences from and after the date of approval of this act" are omitted as surplusage. Under § 4 of the act, members already employed when the act was approved were given 60 days in which to decide whether or not they wished to participate in the benefits provided by the act. Those who chose not to participate are excluded from the application of this chapter by § 7081 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7085, 7086 of this title.

§ 7083. Annuity premium to be paid by monthly installments; government reimbursement.

Each civilian member shall make a monthly allotbasic salary toward the purchase of his deferred annuity policy. For each month the allotment is in force, the pay account of the civilian member shall be credited monthly from appropriations made for this purpose with an additional amount equal to 5 percent of his monthly basic salary. (Aug. 10, 1956, ch. 1041, 70A Stat. 439; Nov. 2, 1966, Pub. L. 89-718, § 39, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7083	34 U. S. C. 1073a.	Jan. 16, 1936, ch. 3, § 2, 49 Stat. 1092.

The words "Chief, Field Branch, Bureau of Supplies and Accounts" are substituted for the words "Navy Allotment Office, Navy Department, Washington, District of Columbia", to designate the agency through which allotments are now made.

AMENDMENTS

1966—Pub. L. 89-718 removed the requirement that the 10 percent monthly allotment be made through the Chief, Field Branch, Bureau of Supplies and Accounts.

§ 7084. Age of retirement.

A civilian member may be retired at any time after his sixty-fifth birthday, and shall be retired by June 30 following that birthday. However, in any special case the Secretary of the Navy may defer the retirement of a member until a date not later than the member's seventieth birthday. (Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7084	34 U. S. C. 1073b.	Jan. 16, 1936, ch. 3, § 3, 49 Stat. 1092.

The words "individual and" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7085 of this title.

§ 7085. Computation of life annuity.

Each civilian member who retires under section 7084 of this title is entitled to a life annuity computed by multiplying his average annual compensation during any five consecutive years of allowable service, at his option, by his number of years of service, not exceeding 35, and dividing the product by 70. The retirement annuity payable to a retired civilian member under a policy required by section 7082 of this title is counted as part of the retirement annuity provided in this section. Any difference between the amount received by the retired civilian member under his annuity policy and the total annual amount to which he is entitled under this section shall be paid to him by the Secretary of the Navy from appropriations made for this purpose. (Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7085	34 U. S. C. 1073c-1 (less 2d proviso).	Jan. 16, 1936, ch. 3, § 4A (less 2d proviso); added Nov. 28, 1943, ch. 331, § 1, 57 Stat. 594.

The words "terminable on his death at the rate of the following total annual amount" are omitted as surplusage, since they are covered by the words "life annuity".

The words "basic salary, pay, or" are omitted as surplusage, since they are covered by the word "compensation". The first proviso is omitted as unnecessary, since all existing rights and benefits of persons affected by this title are protected by a general saving provision.

INCREASE IN ANNUITIES OF CIVILIAN MEMBERS WHO RETIRED BEFORE APR. 1, 1948

Section 30 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1563, provided that:

"(a) A retired civilian member of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School who retired before April 1, 1948, is entitled to be paid, out of applicable current appropriations, $300 a year in addition to the annuity to which he is entitled under section 7085 of title 10 [this section].

"(b) A retired civilian member whose annuity, when increased by $300 under subsection (a), is less than $1,860 is entitled to be paid an additional $300 a year out of applicable current appropriations.

"(c) Additions to the annuities of retired civilian members under subsection (b) do not increase the annuities payable to the survivors of those members."

INCREASE OF ANNUITIES—1957

Pub. L. 85-40, May 31, 1957, 71 Stat. 42, provided:

"That the annuities, payable under chapter 607 of title 10, United States Code [this chapter], to civilian members of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School are increased as follows: That portion of an annuity which is not in excess of $1,500 is increased by 12 per centum, and that portion of an annuity which is in excess of $1,500 is increased by 8 per centum. These increases

shall not exceed the sum necessary to increase the annuity to $4,104, and are in addition to the increases authorized by Public Law 371, Eighty-fourth Congress. The monthly installments of each annuity shall be fixed at the nearest dollar.

"SEC. 2. The increases provided by section 1, when added to the annuities of retired civilian members of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School, do not increase the annuities of their survivors. The annuity of any such survivor, however, who is entitled to or becomes entitled to an annuity under chapter 607 of title 10, United States Code [this chapter], shall be increased in accordance with the following schedule:

If annuity commences between—	Portion of annuity not in excess of $1,500 shall be increased by—	Portion of annuity in excess of $1,500 shall be increased by—
January 16, 1936, and June 30, 1955	12 per centum	8 per centum.
July 1, 1955, and Dec. 31, 1955	10 per centum	7 per centum.
Jan. 1, 1956, and June 30, 1956	8 per centum	6 per centum.
July 1, 1956, and Dec. 31, 1956	6 per centum	4 per centum.
Jan. 1, 1957, and June 30, 1957	4 per centum	2 per centum.
July 1, 1957, and Dec. 31, 1957	2 per centum	1 per centum.

"SEC. 3. Any provision of law, enacted after the effective date of this Act [May 31, 1957], which increases the annuities of retired employees and their survivors who are entitled to annuities under the Civil Service Retirement Act of May 29, 1930, as amended (5 U. S. C. 691 et seq.) [now covered by section 8331 et seq. 30 of Title 5], shall be applicable in like manner and to the same extent to civilian members of the teaching staff of the United States Naval Academy and of the United States Naval Postgraduate School and their survivors who are entitled to annuities under chapter 607 of title 10, United States Code [this chapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7086, 7087 of this title.

§ 7086. Physical disability retirement.

(a) Each civilian member who has served not less than five years, and who, before reaching the age of 65, becomes totally disabled for useful and efficient service in his position, by reason of disease or injury not due to his own vicious habits, intemperance, or willful misconduct shall, upon his application or upon the request of the Secretary of the Navy, be retired with a life annuity computed under section 7085 of this title.

(b) The amount that the Secretary shall pay annually under this section is the difference between the total amount to which the retired member is entitled under subsection (a) and the immediate life annuity to which he is entitled at the time of his disability retirement under the annuity policy required by section 7082 of this title.

(c) Each civilian member retired under this section, unless the disability for which he was retired is permanent in character, shall be examined by a board of medical officers designated by the Superintendent of the Naval Academy or of the Postgraduate School, as appropriate, one year after his retirement and annually thereafter, until he becomes 65 years of age.

(d) Payments by the Secretary under this section shall be terminated if the retired civilian member is found to be sufficiently recovered for useful and efficient service in his former position and is offered reemployment in that position by the Superintendent.

(e) If a civilian member retired under this section is later reemployed by the United States, the payments by the Secretary shall be terminated.

(f) Each civilian member retired under this section who is reemployed as a civilian member of the teaching staff of the Naval Academy or the Naval Postgraduate School shall, upon his later retirement, be paid annually by the Secretary the difference between the total annual amount computed under section 7085 of this title and the immediate life annuity which the total premiums paid on his annuity contracts would buy.

(g) No person may receive payments from the Secretary of the Navy under this chapter and, for the same period of time, compensation under chapter 81 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 439; Nov. 2, 1966, Pub. L. 89–718, § 40, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7086	34 U. S. C. 1073c–2.	Jan. 16, 1936, ch. 3, § 4B; added Aug. 2, 1946, ch. 740, 60 Stat. 804.

In subsection (a) the words "reaching the age of 65" are substituted for the words "becoming eligible for retirement under the conditions defined in the preceding sections hereof", since a civilian member's 65th birthday is the date on which he becomes eligible for retirement under this chapter.

In subsection (c) the words "or the Postgraduate School, as appropriate" are inserted because the Postgraduate School and the Naval Academy are now two separate institutions.

In subsection (f) the words "or the Naval Postgraduate School" are inserted for the same reason.

In subsection (g) the words "but this provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period" are omitted as unnecessary.

AMENDMENTS

1966—Subsec. (g). Pub. L. 89–718 substituted "chapter 81 of title 5" for "sections 751—756, 757—791, and 793 of title 5".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7087 of this title.

§ 7087. Election of annuity for self and beneficiary.

(a) At the time of his retirement, a civilian member retiring under this chapter may elect to receive instead of the amount payable annually by the Secretary of the Navy under section 7085 or 7086 of this title a reduced annuity for his life and an annuity payable after his death to his beneficiary in either—

(1) an amount equal to his reduced annuity; or

(2) an amount equal to 50 percent of his reduced annuity.

The annuities payable to principal and beneficiary, under either election, shall be in amounts that have, on the date of the retirement of the civilian member, a combined actuarial value equal to the actuarial value of the annuity payable by the Secretary under section 7085 or 7086 of this title, as determined under actuarial tables prepared by the Civil Service Commission.

(b) If the civilian member elects to take a reduced annuity under this section, he shall, at the

time of his retirement, designate the beneficiary in writing and file the designation with the Secretary.

(c) The annuity payable under this section to the beneficiary of a deceased civilian member shall be terminated upon the death of the beneficiary. (Aug. 10, 1956, ch. 1041, 70A Stat. 440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7087	34 U. S. C. 1073c-3.	Jan. 16, 1936, ch. 3, § 4C; added Aug. 2, 1946, ch. 740, 60 Stat. 805.

In subsection (a) the words "under actuarial tables prepared by the Civil Service Commission" are substituted for the words "under the provisions of the Civil Service Retirement Act" because that act, as amended in 1948, no longer provides for the computation of actuarial values. The Secretary of the Navy, in administering the provisions of law codified in this section, uses tables prepared by the Civil Service Commission prior to the 1948 amendment.

§ 7088. Regulations.

The Secretary of the Navy shall prescribe regulations for the administration of this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 441.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7088	34 U. S. C. 1073e.	Jan. 16, 1936, ch. 3, § 6, 49 Stat. 1093.

The appropriations authorization in the second sentence of the source is omitted as unnecessary.

PART IV.—GENERAL ADMINISTRATION

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AMENDMENTS

1962—Pub. L. 87-533, §2, July 10, 1962, 76 Stat. 155, substituted "United States Naval Oceanographic" for "Hydrographic" in the heading of chapter 639.

Chapter 631.—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES

Sec.
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7225. Naval Reserve flag.
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7228. Merchant vessels: supplies.
7229. Purchase of fuel.
7230. Sale of degaussing equipment.

AMENDMENTS

1968—Pub. L. 90-377, § 4, July 5, 1968, 82 Stat. 288, struck out item 7215.

1966—Pub. L. 89-529, § 1(4), Aug. 11, 1966, 80 Stat. 339, struck out item 7218.

1959—Pub. L. 86-55, § 2, June 23, 1959, 73 Stat. 89, inserted "and aircraft" in item 7227.

1958—Pub. L. 85-861, § 1 (150), Sept. 2, 1958, 72 Stat. 1513, struck out item 7206.

1957—Pub. L. 85-43, § 1 (2), May 31, 1957, 71 Stat. 45, added item 7230.

§ 7201. Guided missiles: research and development, procurement, and construction.

The Secretary of the Navy may—

(1) conduct research and development relating to guided missiles; and

(2) procure and construct guided missiles.

(Aug. 10, 1956, ch. 1041, 70A Stat. 442.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7201	None.	July 10, 1950, ch. 454, § 303 (b), (51st through 61st words), 64 Stat. 325.

The words "The Secretary of the Navy" are substituted for the words "the Department of the Navy" to conform to other similar statements of authority. No change in meaning results since all such authority is vested in the Secretary.

The words "conduct research and development relating to guided missiles" are substituted for the words "research and development of guided missiles".

CROSS REFERENCES

Research and development, generally, see section 2352 et seq. of this title.

§ 7202. Emergency and extraordinary expenses.

(a) Within the limits of appropriations made for the purpose, the Secretary of the Navy may provide for any emergency or any extraordinary expense that arises in the Department of the Navy and that cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may

be spent on approval or authority of the Secretary for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure that he considers advisable not to specify, and his certificate is a sufficient voucher for the expenditure of that amount.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 442.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7202	5 U. S. C. 419c; 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 6, 60 Stat. 853. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 419c contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7203. Scientific investigation and research.

(a) The Secretary of the Navy may make such expenditures as he considers appropriate for scientific investigations and research from any naval appropriation available for those purposes.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 442; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (34), 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7203	5 U. S. C. 421e (a); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 24 (a), 60 Stat. 856. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the words "from any" are substituted for the words "out of and in accordance with", for brevity.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421e (a) contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "the authority to make" for "the authroity to make".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Research and development, generally, see section 2352 et seq. of this title.

§ 7204. Schools near naval activities: financial aid; transportation of dependents.

(a) The Secretary of the Navy may—

(1) contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

(A) members of the naval service;

(B) civilian officers and employees of the Department of the Navy;

(C) members of the Coast Guard when it is operating as a service in the Navy; and

(D) members of the Environmental Science Services Administration serving with the Navy; who are stationed at the activity; and

(2) provide for the transportation of these dependents between the schools and the activity when the schools are not accessible by regular means of transportation.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 442; Nov. 2, 1966, Pub. L. 89-718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7204	5 U. S. C. 421d; 5 U. S. C. 421g (b), (c); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 13, 60 Stat. 854. Aug. 2, 1946, ch. 756, § 40 (b), (c), 60 Stat. 858. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421d contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1966—Subsec. (a)(1)(D). Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 7205. Promotion of health and prevention of accidents.

(a) The Secretary of the Navy may make such expenditures as he considers appropriate to prevent accidents and to promote the safety and occupational health of—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the Environmental Science Services Administration serving with the Navy.

The expenditures may include payments for clothing, equipment, and other materials necessary for the purposes of this section. Any appropriation available for the activities in which the personnel are engaged shall be available for these purposes.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 443; Nov. 2, 1966, Pub. L. 89-718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7205	5 U. S. C. 421e (b); 5 U. S. C. 421g (b), (c); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 24 (b), 60 Stat. 856. Aug. 2, 1946, ch. 756, § 40 (b), (c), 60 Stat. 858. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the word "maintenance" is omitted as surplusage.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421e (b) contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1966—Subsec. (a)(4). Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 7206. Repealed. Pub. L. 85-861, § 36B (22), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 443, related to minor construction and extension of structures.

§ 7207. Administration of liberated and occupied areas.

(a) The Secretary of the Navy may, out of any appropriation made for the purpose, provide for the administration of liberated and occupied areas by the Department of the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7207	5 U. S. C. 421f (as applicable to administration of liberated and occupied areas); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 38 (as applicable to administration of liberated and occupied areas), 60 Stat. 858. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421f contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7208. Latin American cooperation.

(a) The Secretary of the Navy may, out of any appropriation made for the purpose, provide for the expenses of travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7208 (a)	5 U. S. C. 421f (as applicable to Latin American cooperation).	Aug. 2, 1946, ch. 756, § 38 (as applicable to Latin American cooperation), 60 Stat. 858.
7208 (b)	5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421f contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7209. Rewards for recovery of missing naval property.

(a) The Secretary of the Navy may, out of any appropriation made for the purpose, provide for the payment of a reward of not more than $500 in any one case for information leading to the discovery of missing naval property or to its recovery.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 444.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7209 (a)	5 U. S. C. 421f (less applicability to administration of liberated and occupied areas and to Latin American cooperation).	Aug. 2, 1946, ch. 756, § 38 (less applicability to administration of liberated and occupied areas and to Latin American cooperation), 60 Stat. 858.
7209 (b)	5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421f contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7210. Purchase of patents, patent applications, and licenses.

(a) The Secretary of the Navy may buy letters patent, applications for letters patent, and licenses under either letters patent or applications for letters patent. The purchases shall be made from appropriations available for the purchase or manufacture of the equipment or material to which the purchased letters patent, applications, or licenses pertain.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 444.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7210	34 U. S. C. 584; 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 34, 60 Stat. 857. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the words "may buy" are substituted for the words "is authorized to provide for the purchase" for brevity.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 34 U. S. C. 584 contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

CROSS REFERENCES

Use of appropriations for acquisition of copyrights, patents, designs, etc., see section 2386 of this title.

§ 7211. Attendance at meetings of technical, professional, or scientific organizations.

(a) The Secretary of the Navy may authorize—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the Environmental Science Services Administration serving with the Navy:

to attend meetings of technical, professional, scientific, and similar organizations, if the Secretary believes that their attendance will benefit the Department. The personnel may be reimbursed for their expenses at the rates prescribed by law.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 444; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7211	5 U. S. C. 421c; 5 U. S. C. 421g (b), (c); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 1, 60 Stat. 853. Aug. 2, 1946, ch. 756, § 40 (b), (c), 60 Stat. 858. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 421c contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1966—Subsec. (a)(4). Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 7212. Employment of outside architects and engineers.

(a) Whenever the Secretary of the Navy believes that the existing facilities of the Department of the Navy are inadequate and he considers it advantageous to national defense, he may employ, by contract or otherwise, without advertising and without reference to sections 305, 3324, 5101—5115, 5331—5338, 5341, 5342, and 7154 of title 5, architectural or engineering corporations, or firms, or individual architects or engineers, to produce designs, plans, drawings, and specifications for the accomplishment of any naval public works or utilities project or for the construction of any vessel or aircraft, or part thereof.

(b) The fee for any service under this section may not exceed 6 percent of the estimated cost, as determined by the Secretary, of the project to which the fee applies. (Aug. 10, 1956, ch. 1041, 70A Stat. 444; Nov. 2, 1966, Pub. L. 89–718, § 28, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7212	34 U. S. C. 556.	Apr. 25, 1939, ch. 87, § 3, 53 Stat. 591.

In subsection (a) the word "outside" is omitted as surplusage and the words "architects or engineers" are inserted for clarity. The words "without advertising" are substituted for the reference to R. S. 3609, for brevity and clarity.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "sections 305, 3324, 5101—5115, 5331—5338, 5341, 5342, and 7154 of title 5" for "sections 1071—1153 of title 5".

§ 7213. Relief of contractors and their employees from losses by enemy action.

The Secretary of the Navy may use funds appropriated for the construction of public works for the temporary relief of contractors and their employees from losses resulting directly from enemy action. (Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7213	34 U. S. C. 557.	Feb. 6, 1942, ch. 43, § 3, 56 Stat. 51.

The words "heretofore or hereafter" and "naval" are omitted as surplusage.

§ 7214. Apprehension of deserters and prisoners; operation of shore patrols.

(a) The Secretary of the Navy may make such expenditures out of available appropriations as he considers necessary to—

(1) apprehend and deliver deserters, stragglers, and prisoners; and

(2) operate shore patrols.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7214	34 U. S. C. 606; 5 U. S. C. 421g (d); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 22, 60 Stat. 856. Aug. 2, 1946, ch. 756, § 40 (d), 60 Stat. 858. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the word "naval" is omitted as surplusage.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 34 U. S. C. 606 contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7215. Repealed. Pub. L. 90–377, § 6(2), July 5, 1968, 82 Stat. 288.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 445, authorized the Secretary of the Navy to maintain and operate naval prisons and prison farms and to provide for the subsistence, welfare, recreation, and education of naval prisoners.

§ 7216. Collection, preservation, and display of captured flags.

The Secretary of the Navy shall collect all flags, standards, and colors taken by the Navy or the Marine Corps from enemies of the United States. These flags, standards, and colors shall be delivered to the President. Under his direction they shall be preserved and displayed in any public place he considers proper. (Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7216	5 U. S. C. 418.	R. S. 428; R. S. 1554; R. S. 1555.

The words "from time to time cause to be", "transmitted to him", and "for the purpose of being" are omitted as surplusage. The words "Marine Corps" are inserted for clarity, since the provision is interpreted as applicable thereto.

CROSS REFERENCES

Collection of flags, standards, and colors captured by the Army, see section 4714 of this title.

§ 7217. Annual report to Congress: appropriations.

The Secretary of the Navy shall send annually to Congress a report of the appropriations for the Department of the Navy for the preceding fiscal year showing as to each head—

(1) the amount appropriated;

(2) the amount spent;

(3) the amount remaining unspent at the end of the fiscal year; and

(4) estimate of probable demands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7217	5 U. S. C. 466.	R. S. 429; June 22, 1910, ch. 331, 36 Stat. 591; Feb. 25, 1950, ch. 37, § 1, 64 Stat. 10; Aug. 30, 1954, ch. 1076, § 1 (16), 68 Stat. 967.

In clause (3) the words "at the end of the fiscal year" are substituted for the words "on the thirtieth day of June preceding such report" for clarity and unformity of expression.

§ 7218. Repealed. Pub. L. 89–529, § 1(3), Aug. 11, 1966, 80 Stat. 339.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 445, authorized the Secretary of the Navy to give special recognition to members of the naval service for excellence, special service and good conduct in the naval service.

Subsec. (b) of this section was amended by Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, subsequent to the repeal of this section by Pub. L. 89–529. As amended subsec. (b) reads as follows:

"(b) The Secretary has the same authority with respect to members of the Coast Guard when the Coast Guard is operating as a service in the Navy, and with respect to members of the Environmental Science Services Administration serving with the Navy, as subsection (a) provides with respect to members of the naval service."

§ 7219. Leases of waterfront property from States or municipalities.

In leasing waterfront property from a State or municipality, the Secretary of the Navy may provide in the lease, where it is required by state law or municipal charter, that, as part or all of the consideration, any improvements placed upon the property by the United States become the property of the lessor when the lease, including any renewal, ends. (Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7219	34 U. S. C. 521.	July 1, 1918, ch. 114, 40 Stat. 705 (2d par.).

§ 7220. Gifts for welfare of enlisted members.

The Secretary of the Navy may accept gifts for use in providing recreation, amusement, and contentment for enlisted members of the naval service. The fund "Ships' Stores Profits, Navy" shall be

credited with these gifts. (Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7220	5 U. S. C. 419a.	June 30, 1932, ch. 318, 47 Stat. 424 (2d proviso).

The words "and contributions from organizations, individuals, or others" are omitted as surplusage.

CROSS REFERENCES

Acceptance of gifts and services, see section 2601 et seq. of this title.

§ 7221. Acceptance and care of gifts to vessels.

The Secretary of the Navy may accept and care for such gifts of silver, colors, books, or other articles of equipment or furniture as, in accordance with custom, are made to vessels of the Navy. Necessary expenses incident to the care of gifts that are accepted shall be paid from the appropriation for the maintenance and operation of vessels. (Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7221	5 U. S. C. 419.	May 20, 1908, ch. 182, 35 Stat. 171.

The words "in the form" and "by States, municipalities, or otherwise" are omitted as surplusage. The words "the appropriation for the maintenance and operation of vessels" are substituted for the words "the appropriation 'Equipment of Vessels' " to identify by a general description, rather than by a specific appropriation title, the appropriation authorized to be used.

CROSS REFERENCES

Acceptance of gifts and services, see section 2601 et seq. of this title.

§ 7222. Office of Naval Records and History gift fund.

(a) The Secretary of the Navy may accept, hold, and administer gifts and bequests of personal property, and loans of personal property other than money, for the benefit of the Office of Naval Records and History, its collection, or its services. Gifts or bequests of money shall be deposited in the Treasury in a trust fund called "Office of Naval Records and History Fund."

(b) For the purpose of Federal income, estate, and gift taxes, property that is accepted under this section is considered as a gift or bequest to or for the use of the United States.

(c) Upon the request of the Secretary of the Navy, the Secretary of the Treasury may invest or reinvest all or any part of the funds deposited under this section in securities of the United States or in securities guaranteed by the United States. The interest accruing from these securities shall be deposited to the credit of the Office of Naval Records and History Fund. (Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7222	5 U. S. C. 419b.	Mar. 4, 1937, ch. 26, 50 Stat. 25.

In subsection (a) the word "receive" and the words "from individuals or others" and "of the United States" are omitted as surplusage. The title of the "Office of Naval Records and Library, Navy Department" is changed to "Office of Naval Records and History", in accordance with a directive of the Secretary of the Navy dated March 10, 1949.

Subsection (b) is rewritten for clarity and to conform to a similar statement appearing in 5 U. S. C. 150s.

CROSS REFERENCES

Acceptance of gifts and services, see section 2601 et seq. of this title.

§ 7223. Acquisition of land for radio stations and for other purposes.

Land of the United States that is under the control of any department or agency of the United States may be mutually selected as a site for a naval radio station by the Secretary of the Navy and the head of the department or agency having control of the land. By direction of the President, land so selected may be transferred to and placed under the jurisdiction of the Department of the Navy for use as a naval radio station or for any other naval purpose. (Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7223	34 U. S. C. 523.	Aug. 29, 1916, ch. 417, 39 Stat. 606 (3d proviso).

The word "agency" is substituted for the word "branch" to conform to present terminology. The words "by the Secretary of the Navy and the head of the department or agency having control of the land" are added to identify the officials who "mutually" select the site.

§ 7224. Transportation on naval vessels during wartime.

In time of war or during a national emergency declared by the President, such persons as the Secretary of the Navy authorizes by regulation may be transported and subsisted on naval vessels at Government expense. (Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7224	34 U. S. C. 474.	Aug. 2, 1946, ch. 756, § 18, 60 Stat. 855.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 474 of former Title 34, the date July 25, 1947, should be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

The state of war with Japan ended on Apr. 28, 1952, by the coming into effect of the Treaty of Peace with Japan on that date. The state of war with Germany ended on Oct. 19, 1951. See notes preceding section 1 of Appendix to Title 50, War and National Defense.

§ 7225. Naval Reserve flag.

The Secretary of the Navy shall prescribe a suitable flag to be known as the Naval Reserve flag. This flag may be flown by a seagoing merchant vessel if—

(1) the vessel is documented under the laws of the United States;

(2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and

(3) the master or commanding officer and at least half of the other licensed officers of the vessel are members of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7225	50 U. S. C. 1048.	July 9, 1952, ch. 608, § 409, 66 Stat. 499.

In clause (3) the words "at least half" are substituted for the words "not less than 50 per centum". The words "or Naval Reserve" are omitted as surplusage, since the Navy includes the Naval Reserve.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 7226. Naval Reserve yacht pennant.

The Secretary of the Navy shall prescribe a suitable pennant to be known as the Naval Reserve yacht pennant. This pennant may be flown by a yacht or similar vessel if—

(1) the vessel is documented under the laws of the United States;

(2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and

(3) the captain or owner of the vessel is a member of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7226	50 U. S. C. 1049.	July 9, 1952, ch. 608, § 410, 66 Stat. 499.

In clause (3) the words "or Naval Reserve" are omitted as surplusage, since the Navy includes the Naval Reserve.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 7227. Foreign naval vessels and aircraft: supplies and services.

(a) The Secretary of the Navy, under such regulations as he prescribes, may authorize any United States naval vessel or activity to furnish any of the following supplies or services, when in the best interests of the United States, on a reimbursable basis without an advance of funds if similar supplies and services are furnished on a like basis to naval vessels and military aircraft of the United States by the friendly foreign country concerned:

(1) routine port services in territorial waters of the United States or in waters under United States control, including pilotage, tugs, garbage removal, line-handling, and utilities, to naval vessels of friendly foreign countries;

(2) routine airport services, including landing and takeoff assistance, use of runways, parking and servicing, to military aircraft of friendly foreign countries;

(3) miscellaneous supplies, including fuel, provisions, spare parts, and general stores, but not including ammunition, to naval vessels and military aircraft of friendly foreign countries; and

(4) Overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to naval vessels and military aircraft of friendly foreign countries.

(b) Routine port and airport services may be furnished under this section at no cost to the foreign country concerned where such services are provided by United States naval personnel and equipment without direct cost to the Navy.

(c) Payments for supplies and services furnished under this section may be credited to current appropriations so as to be available for the same purpose as the appropriation initially charged. (Aug. 10, 1956, ch. 1041, 70A Stat. 447; June 23, 1959, Pub. L. 86-55, § 1, 73 Stat. 89.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7227	34 U. S. C. 555d, 34 U. S. C. 555e.	May 27, 1953, ch. 67, 67 Stat. 34.

AMENDMENTS

1959—Pub. L. 86-55 authorized supplies and services to be furnished by any United States naval vessel or activity, and the furnishing of supplies and services to aircraft, eliminated provisions which limited the furnishing of supplies on a reimbursable basis to ships of foreign countries that had entered into a prior reciprocal agreement, and which permitted services, including overhauling, repairs, alterations and installation of equipment, to be furnished only if funds to cover the estimated cost thereof were advanced, and permitted the furnishing of routine port and airport services at no cost where such services are without direct cost to the Navy.

§ 7228. Merchant vessels: supplies.

(a) The Secretary of the Navy, under such regulations as he prescribes, may sell to a merchant ship such fuel and other supplies as may be required to meet its necessities if the ship is unable—

(1) to procure the supplies from other sources at its present location; and

(2) to proceed to the nearest port where they may be obtained without endangering the safety of the ship, the health and comfort of its personnel, or the safe condition of the property carried on it.

(b) Sales under this section shall be at such prices as the Secretary considers reasonable. Payment shall be made on a cash basis or on such other basis as will reasonably assure prompt payment. Amounts received from such a sale shall, unless otherwise directed by another provision of law, be credited to the current appropriation concerned

and are available for the same purposes as that appropriation. (Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7228	34 U. S. C. 555f.	June 4, 1954, ch. 264, § 3, 68 Stat. 176.

§ 7229. Purchase of fuel.

In buying fuel, the Secretary of the Navy may, in any manner he considers proper, buy the kind of fuel that is best adapted to the purpose for which it is to be used. (Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7229	34 U. S. C. 580.	R. S. 3728.

The first sentence is omitted as covered by § 2 of the act of Mar. 3, 1933, ch. 212 (41 U. S. C. 10a). The words "for the Navy, or for naval stations and yards" are omitted, since R. S. 3728 has been interpreted as authorizing the Armed Services Petroleum Purchasing Agency to negotiate contracts for the purchase of fuel, not only when acting as a procuring activity for the Navy, but also when filling the consolidated fuel requirements of the armed forces. The word "may" is substituted for the words "shall have the power to" for uniformity. The words "discriminate and" are omitted as surplusage.

CROSS REFERENCES

American materials required for public use, see section 10a of Title 41, Public Contracts.

§ 7230. Sales of degaussing equipment.

(a) To promote the installation, repair, and maintenance of degaussing equipment on vessels registered under the laws of the United States, the Secretary of the Navy may, under such regulations as he may prescribe, sell degaussing equipment that is available from Navy stocks, but that is not readily available commercially, to owners or operators of privately owned merchant ships of United States registry.

(b) Sales under this section shall be at prices representing the current or estimated replacement cost to the Navy.

(c) The proceeds of sales under this section shall be paid to the credit of the current appropriation or fund concerned. (Added Pub. L. 85–43, § 1(1), May 31, 1957, 71 Stat. 44, and amended Pub. L. 87–651, title I, § 125, Sept. 7, 1962, 76 Stat. 514.)

AMENDMENTS

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted in the revision of this title.

Chapter 633.—NAVAL VESSELS

Sec.
7291. Classification.
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§ 7291. Classification.

The President may establish, and from time to time modify, as the needs of the service require, a classification of naval vessels. (Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7291	34 U. S. C. 451 (as applicable to classification of vessels).	Mar. 3, 1901, ch. 852 (last par. as applicable to classification of vessels), 31 Stat. 1133.

TONNAGE BALANCE FOR CONSTRUCTION OF SHIPS; REPEAL

Pub. L. 89–37, title III, § 301, June 11, 1965, 79 Stat. 128, provided that: "Outstanding tonnage balances remaining in law for construction of Navy ships are hereby repealed."

CONSTRUCTION OF ALTERNATE VESSELS IN GOVERNMENT NAVY YARDS; PUBLIC INTERESTS

Pub. L. 89–37, title III, § 302, June 11, 1965, 79 Stat. 128, provided that: "The distribution of the assignments and contracts for construction of warships and escort vessels for which appropriations are authorized by this Act and hereafter shall be in accordance with the requirement of the Act of March 27, 1934 (48 Stat. 503), that the first and each succeeding alternate vessel shall be constructed in the Government Navy yards: *Provided*, That, if inconsistent with the public interests in any year to have a vessel or vessels constructed as required above, the President may have such vessel or vessels built in a Government or private yard as he may direct."

CONVERSION, ALTERATION, AND REPAIR PROJECTS; CONSIDERATIONS AND REQUIREMENTS

Pub. L. 89–37, title III, § 303, June 11, 1965, 79 Stat. 128, provided that: "The assignment of naval ship conversion, alteration, and repair projects shall be made on the basis of economic and military considerations and shall not be restricted by requirements that certain portions of such naval shipwork be assigned to particular types of shipyards or to particular geographical areas or by similar requirements."

§ 7292. Naming.

(a) Not more than one vessel of the Navy may have the same name.

(b) Each battleship shall be named for a State. However, if the names of all the States are in use, a battleship may be named for a city, place, or person.

(c) The Secretary of the Navy may change the name of any vessel bought for the Navy. (Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7292 (a)	34 U. S. C. 462.	R. S. 1532.
7292 (b)	34 U. S. C. 461.	May 4, 1898, ch. 234, 30 Stat. 390 (2d sentence under "Armor and Armament"); May 13, 1908, ch. 166, 35 Stat. 159; June 29, 1949, ch. 278, 63 Stat. 300 (6th par.).
7292 (c)	34 U. S. C. 463.	R. S. 1533.

In subsection (a) the words "care shall be taken that" are omitted as surplusage.

In subsection (b) the words "first class" are omitted as obsolete.

In subsection (c) the words "by authority of law" are omitted as surplusage.

§ 7293. Number in service in time of peace.

In time of peace, the President may keep in service such vessels of the Navy as are required and keep the rest in reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7293	34 U. S. C. 452.	R. S. 1534.

The words "vessels of the Navy" are substituted for the words "of the public armed vessels". The words "actual", "in his opinion", and "by the nature of the service" are omitted as surplusage. The words "in reserve" are substituted for the words "to be laid up in ordinary in convenient ports" to conform to modern terminology.

§ 7294. Suspension of construction in case of treaty.

In case of a treaty for the limitation of naval armament to which the United States is a signatory, the President may suspend so much of the authorized naval construction as is necessary to bring the naval vessels of the United States within the limitations agreed upon. Such a suspension does not apply to vessels under construction at the time the suspension is made. (Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7294	34 U. S. C. 498h (as applicable to vessels).	May 17, 1938, ch. 243, § 9 (as applicable to vessels), 52 Stat. 403.

The words "the United States would welcome and support an international conference for naval limitations" are omitted as a declaration of purpose without permanent or general significance. The word "further" is omitted since there is no such agreement in existence today. The word "international" is omitted as unnecessary since the word "treaty" necessarily involves an international understanding. The word "may" is substituted for the words "is hereby authorized and empowered to" for brevity.

§ 7295. Vessels: under-age.

Vessels of the following types are considered under-age for the period after completion indicated below:

(1) Battleships—26 years.

(2) Aircraft carriers—20 years.

(3) Cruisers—20 years.

(4) Submarines—13 years.

(5) Other combatant surface vessels—16 years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7295	34 U. S. C. 498g-1.	June 14, 1940, ch. 364, § 7, 54 Stat. 395.

§ 7296. Appropriations: available for other purposes.

Appropriations available for the construction or conversion of vessels or their machinery, armament, and equipment may be used for any of those purposes. These appropriations for auxiliary vessels may also be used for acquisition of those vessels. (Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7296	34 U. S. C. 498d-1; 34 U. S. C. 498m (2d sentence of 3d par.).	Apr. 26, 1939, ch. 89, § 2, 53 Stat. 619. Aug. 8, 1950, ch. 647, 64 Stat. 420 (2d sentence of 3d par.).

34 U. S. C. 498m supersedes 34 U. S. C. 498d-1, except as to application of the latter provision to the acquisition of auxiliary vessels, and the section is written accordingly. The word "Appropriations" is substituted for the words "Sums heretofore or hereafter appropriated" for brevity. The words "may be used" are substituted for the words "shall be held and considered to be available" for brevity.

§ 7297. Changing category or type: limitations.

Unless they have been specifically made available for the purpose, funds appropriated for the repair or alteration of naval vessels may not be used to make repairs or alterations of any vessel that would change its category or type. (Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7297	34 U. S. C. 490.	June 12, 1948, ch. 452, § 2, 62 Stat. 382.

§ 7298. Conversion of combatants and auxiliaries.

To improve the military characteristics of combatant and auxiliary naval vessels, the President may convert such vessels as he considers best suited for national defense, without limitation on expenditures for any one vessel, but within the total sum appropriated for conversion of vessels. (Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7298	34 U. S. C. 493c.	Aug. 1, 1947, ch. 439, 61 Stat. 718.

The words "naval vessels" are substituted for the words "vessels of the United States Navy" for brevity, and the words "for the purpose" are omitted as surplusage. The words "conversion of vessels" are substituted for the words "the purpose" at the end of the section for clarity.

§ 7299. Contracts: application of Public Contracts Act.

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to the Act of June 30, 1936, chapter 881 (49 Stat. 2036), as amended, unless the President determines that this requirement is not in the interest of national defense. (Aug. 10, 1956, ch. 1041, 70A Stat. 449; Aug. 25, 1958, Pub. L. 85-747, 72 Stat. 839.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7299	34 U. S. C. 498l.	June 14, 1940, ch. 364, § 8, 54 Stat. 395.

The words "the construction, alteration, furnishing, or equipping of any naval vessel authorized by [named U. S. Code sections] this Act" and the words "after June 30, 1940" are omitted as executed. The words "with funds from any appropriation available for such purposes" are omitted as surplusage.

In citing the act of June 30, 1936, in the act of June 14, 1940 (supra), Congress used the Public Law number rather than the chapter, volume, and page of the Statutes at Large, notwithstanding the fact that nearly four years had passed since the enactment of the cited law. It is therefore, concluded that Congress intended ship contracts to be subject to the 1936 Public Law as originally enacted, and not as modified by subsequent amendments. The words "before amendment" are inserted to preserve this meaning.

REFERENCES IN TEXT

The act of June 30, 1936, ch. 881 (49 Stat. 2036), referred to in the text, is classified to sections 35—45 of Title 41, Public Contracts.

AMENDMENTS

1958—Pub. L. 85-747 substituted "Act of June 30, 1936, chapter 881 (49 Stat. 2036), as amended" for "Act of June 30, 1936, ch. 881, (48 Stat. 2036), before amendment".

§ 7300. Contracts for construction: profit limitation.

(a) The Secretary of the Navy may not contract for the construction or manufacture of all or part of any complete naval vessel, unless the contractor agrees—

(1) to report under oath to the Secretary, when the contract is completed, as prescribed in subsection (b);

(2) to pay any excess profit into the Treasury;

(3) to make no division of any contract or subcontract for the same article for the purpose of evading this section;

(4) that the books and manufacturing spaces of its plant, affiliates, and the divisions may at any time be audited and inspected, respectively, by any person designated by the Secretary of the Navy, the Secretary of the Treasury, or an authorized committee of Congress; and

(5) to make no subcontract unless the subcontractor agrees to the conditions set forth in this subsection.

(b) The report required under subsection (a) (1) shall be in the form prescribed by the Secretary of the Navy. It shall state the total contract price, the cost of performing the contract, the net profit or loss, and the percentage of the contract price that is net profit or loss. A copy shall be sent to the Secretary of the Treasury to be considered with the Federal income tax returns of the contractor.

(c) For the purposes of this section, "excess profit" means so much of the profits as the Secretary of the Treasury determines to be greater than 10 percent of the total contract price for contracts covered by this section and completed by a contractor or a subcontractor within the taxable year. The method of computing excess profits shall be determined by the Secretary of the Treasury in agreement with the Secretary of the Navy. It shall be made available to the public.

(d) When an excess profit is found owing, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or to be paid on the excess profit. If a contractor or subcontractor has a net loss on the aggregate of contracts or subcontracts covered by this section and completed in a taxable year, the deficiency shall be allowed as a credit against any excess profit for the next taxable year.

(e) When paid into the Treasury, an excess profit becomes the property of the United States. The surety under the contract is not liable for its payment.

(f) This section applies to any division of a contract or subcontract covered by this section.

(g) This section does not apply to—

(1) a contract or subcontract for scientific equipment for communications, target detection, navigation, or fire control if the Secretary of the Navy designates the contract or subcontract for exemption; or

(2) a contract or subcontract, or division thereof, if the amount involved is $10,000 or less.

(Aug. 10, 1956, ch. 1041, 70A Stat. 450.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7300	34 U. S. C. 496 (less applicability to aircraft).	Mar. 27, 1934, ch. 95, § 3 (less applicability to aircraft), 48 Stat. 505; June 25, 1936, ch. 812, 49 Stat. 1926; Apr. 3, 1939, ch. 35, § 14, 53 Stat. 560; Aug. 7, 1946, ch. 770 (par. 18), 60 Stat. 867.

The revised section exhausts 34 U. S. C. 496 (as applicable to naval vessels).

In subsection (a), the first 26 words, last 23 words of second proviso, and sixth proviso of the 1st sentence are omitted as executed. The 27th through 53rd words of the 1st sentence are omitted as surplusage, since the matter of budget estimates is now covered by Title IV of the National Security Act, as amended (5 U. S. C. 172–172j). The words "herein, heretofore, or hereafter authorized" are omitted as surplusage. The third and fourth provisos of the 1st sentence are omitted as superseded by sections 650 and 651 of the Internal Revenue Code (26 U. S. C. 650, 651).

In subsection (a) (2), the word "excess" is added for clarity.

In subsection (a) (3), the words "evading this section" are substituted for the words "evading the provisions of sections 494, 495, 496, 497 of this title", since sections 494, 495, and 497 are executed.

In subsection (a) (5), "agrees to the conditions set forth in this subsection" are substituted for the words "agrees to the foregoing conditions" to reflect the accepted interpretation of 34 U. S. C. 496 that the section, except as modified by other law, applies to any person furnishing materials or service, worth $10,000 or more, for intended and designated use in naval construction. (See *Commissioner of Internal Revenue* v. *Aluminum Co. of America*, C. C. A. 3, 1944, 142 F. 2d 663, certiorari denied 65 S. Ct. 64, 323 U. S. 728, 89 L. Ed. 585).

In subsection (b) the words "for the taxable year or years concerned" are omitted as surplusage. The words "net profit or loss" are substituted for the words "net income" in both instances where the latter words appear, for clarity. Under subsection (d), it is clear that either a profit or loss is included within the meaning of "net income" as used in the source statute.

In subsection (c) the words "Secretary of the Treasury" are substituted for the words "Treasury Department". The words "contracts covered by this section and completed by a contractor or subcontractor within the taxable year" are substituted for the words "construction and/or manufacture of any complete naval vessel or portion thereof of such contracts within the scope of the section as are completed by the particular contracting party within the taxable year". The words "to be paid into the Treasury" are omitted as surplusage. The words "The method initially fixed upon shall be so determined on or before June 30, 1934" are omitted as executed.

In subsection (d) the words "particular", "That in any case", and "to the United States in consequence hereof", are omitted as surplusage. The words "on the aggregate of contracts or subcontracts covered by this section" are substituted for the words "as aforesaid on all such contracts or subcontracts for the construction and/or manufacture of any complete naval vessel or portion thereof" for clarity and brevity.

Subsection (f) is substituted for the last 23 words of the second sentence of 34 U. S. C. 496, less the words "involving an amount in excess of $10,000". The words "covered by this section" are inserted for clarity.

Subsection (g) (2) is substituted for the last sentence of 34 U. S. C. 496, and for the words "involving an amount in excess of $10,000" appearing in the last 23 words of the 2d sentence of 34 U. S. C. 496.

§ 7301. Bids on construction: estimates required.

(a) When advertising for bids for the construction of any naval vessel, the Secretary of the Navy shall require each bidder to file with his bid the estimates on which the bid is based.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 450.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7301 (a)	34 U. S. C. 488.	Aug. 2, 1946, ch. 756, § 36, 60 Stat. 857.
7301 (b)	5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 857.

In subsection (a) the words "when advertising for" are substituted for the words "in requesting competitive" to make it clear that the subsection applies only to formal bids secured through advertising and not to informal proposals made in response to letters or circulars.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 34 U. S. C. 488 does not contain any authority for the Secretary to prescribe regulations.

§ 7302. Construction on Pacific Coast.

The Department of the Navy shall have constructed on the Pacific Coast of the United States such vessels as the President determines necessary to maintain shipyard facilities there adequate to meet the requirements of national defense. (Aug. 10, 1956, ch. 1041, 70A Stat. 451.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7302	34 U. S. C. 498j.	May 17, 1938, ch. 243, § 11, 52 Stat. 403.

The word "there" is substituted for the words "upon the Pacific Coast" to avoid repetition. The words "have constructed" are substituted for the word "construct" for clarity. The word "necessary" is omitted as being included within the meaning of the word "adequate".

§ 7303. Model Basin; investigation of hull designs.

(a) An office or agency in the Department of the Navy designated by the Secretary of the Navy shall conduct at the David W. Taylor Model Basin, Carderock, Maryland, investigations to determine the most suitable shapes and forms for United States vessels and aircraft and investigations of other problems of their design.

(b) The Secretary of the Navy may authorize experiments to be made at the Model Basin for private persons. The costs of experiments made for private persons shall be paid by those persons under regulations prescribed by the Secretary. The results of private experiments are confidential and may not be divulged without the consent of the persons for whom they are made. However, the data obtained from such experiments may be used by the Secretary for governmental purposes, subject to the patent laws of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 451; Nov. 2, 1966, Pub. L. 89-718, § 41, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7303	5 U. S. C. 430a.	May 6, 1936, ch. 333, 49 Stat. 1263; June 20, 1940, ch. 400, § 1 (a), (b), 54 Stat. 492.

In subsection (a) the authority to purchase a site and construct the model basin is omitted as executed. The words "David W. Taylor Model Basin, Carderock, Maryland" are inserted to designate the model basin established under this authority. The words "investigations to determine" are substituted for the words "work of investigating and determining." The phrase "vessels, including aircraft" is changed to read "vessels and aircraft," and the words "their design" are substituted for "ship design."

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "An officer or agency of the Department of the Navy designated by the Secretary of the Navy" for "The Bureau of Ships".

CROSS REFERENCES

Patent laws generally, see Title 35, Patents.

§ 7304. Examination by board; unfit vessels stricken from Naval Vessel Register.

(a) The Secretary of the Navy shall designate boards of naval officers to examine vessels of the Navy. Each vessel shall be examined by a board at least once every three years, if practicable.

(b) When a board, in conducting an examination under this section, finds that any vessel is unfit for service or that an unfinished vessel in any naval shipyard cannot be finished without disproportionate expense, it shall submit a written report to the Secretary stating fully the reasons for its opinion. If the Secretary concurs, he shall strike the name of that vessel from the Naval Vessel Register. (Aug. 10, 1956, ch. 1041, 70A Stat. 451.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7304	34 U. S. C. 491.	Aug. 5, 1882, ch. 391, § 2 (last 2 sentences), 22 Stat. 296; Aug. 7, 1946, ch. 770 (par. 24), 60 Stat. 868.

In subsection (a) the provision as to the examination of "all vessels on their return from foreign stations" is omitted as obsolete because ships are no longer assigned to foreign stations, but to fleet commands. No distinction is made in inspection procedures between vessels in fleets operating abroad and those in other fleets.

In subsection (b) the words "in opinion with said report" are omitted as surplusage. The words "naval shipyard" are substituted for the words "navy yard" to conform to current terminology. The name "Navy Register" is changed to "Naval Vessel Register", the present name of the publication, to avoid confusion with another official document known as the "Navy Register".

DISPOSAL OF CERTAIN UNCOMPLETED VESSELS

Pub. L. 85-438, May 29, 1958, 72 Stat. 154, authorized the Secretary of the Navy to strike from the Naval Vessel Register and to dispose of the following uncompleted naval vessels: U. S. S. *Kentucky;* U. S. S. *Hawaii;* U. S. S. *Lansdale;* U. S. S. *Seymour D. Owens;* U. S. S. *Lancetfish;* U. S. S. *Unicorn;* U. S. S. *Walrus.*

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7305, 7306, 7307 of this title; title 50 App. section 1878gg.

§ 7305. Sale of vessel stricken from Naval Vessel Register.

(a) This section does not apply to a vessel the disposal of which is authorized by the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 471 et. seq.), if it is to be disposed of under that Act.

(b) The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register under section 7304 of this title. If he considers that the sale of the vessel is in the best interest of the United States, he shall advertise it for sale.

(c) The advertisement shall ask for sealed bids for the purchase of the vessel and shall be published for at least three months in newspapers used by the Department of the Navy for other advertisements. It shall—

(1) state the name, location, and appraised value of the vessel to be sold;

(2) state the day, hour, and place for the opening of the bids;

(3) state that the sale will be for cash to the bidder submitting the highest bid above the appraised value of the vessel; and

(4) specify the period of time, after the opening of the bids, within which the successful bidder will be required to pay the remaining 90 percent of the amount bid by him.

(d) The Secretary shall—

(1) require that each bid be accompanied by a cash deposit of not less than 10 percent of the amount of the bid; and

(2) require that each bid be accompanied by a bond, with two or more sureties to be approved by him, conditioned on the payment of the remaining 90 percent within the time specified in the advertisement.

(e) The bids shall be opened at the time and place stated in the advertisement, and a record shall be made of them.

(f) If the bidder whose bid is accepted defaults in the payment of all or part of the remaining 90 percent of the amount of his bid within the time specified, his cash deposit of 10 percent of that amount shall be forfeited to the United States and the Secretary shall advertise the vessel again and resell it in the manner prescribed in this section.

(g) The cash deposit forfeited by a defaulting bidder shall be applied, first, to the payment of the expenses of the advertisement and resale of the vessel and, second, to the payment of the difference, if any, between the amount bid by the defaulting bidder and the amount for which the vessel is resold. Any balance remaining shall be covered into the Treasury.

(h) This section does not prevent a suit for breach of any condition of a bond furnished by a bidder.

(i) Each vessel sold as prescribed in this section shall be delivered to the purchaser upon full payment to the Secretary of the amount bid.

(j) The net proceeds of each sale under this section shall be covered into the Treasury.

(k) A sale under this section of a vessel the disposal of which is authorized by the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 471 et seq.), is subject to regulations under section 205 of that Act (40 U. S. C. 486).

(*l*) Except as otherwise provided by law, no vessel of the Navy may be sold in any other manner than that provided by this section, or for less than its appraised value, unless the President so directs in writing. (Aug. 10, 1956, ch. 1041, 70A Stat. 451.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7305	34 U. S. C. 492.	Mar. 3, 1883, ch. 141, § 5, 22 Stat. 599; Oct. 31, 1951, ch. 654, § 4 (5), 65 Stat. 709.

Subsections (a) and (k) are substituted for the first 17 words of 34 U. S. C. 492 to make it clear that these words have a dual purpose. In the case of a surplus vessel the disposal of which is covered by the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 471 et seq.), these words authorize the vessel to be sold either (1) by the Administrator of General Services under that act, or (2) by the Secretary of the Navy under 34 U. S. C. 492, subject to regulations issued by the Administrator of General Services under Section 205 of the Federal Property Act.

In subsection (b) the name "Navy Register" is changed to "Naval Vessel Register", the present name of the publication, to avoid confusion with another official document known as the "Navy Register".

In subsection (h) the words "This section does not prevent" are substituted for the words "nothing herein contained shall be construed to prevent".

REFERENCES IN TEXT

The Federal Property and Administrative Services Act, referred to in subsecs. (a) and (k), is act June 30, 1949, ch. 288, 63 Stat. 377. Titles I to IV and VI to VIII thereof are classified to chapters 10 and 16 of Title 40, Public Buildings, Property, and Works, and chapter 4 of Title 41, Public Contracts. Title V thereof was classified to former chapter 11 of Title 44, Public Printing and Documents, but was repealed in the revision of Title 44 by Pub. L. 90-620, § 3, Oct. 22, 1968, 82 Stat. 1309. The subject matter of such former title V is now covered by chapters 21, 25, 27, 29, and 31 of Title 44.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. sections 1878ee, 1878gg, 1878hh, 1878nn, 1878tt, 1878uu.

§ 7306. Use for experimental purposes.

The Secretary of the Navy, with the approval of the President, may use for experimental purposes any vessel stricken from the Naval Vessel Register under section 7304 of this title, if he determines that it is in the best interest of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 452; Nov. 8, 1965, Pub. L. 89-348, § 1(10), 79 Stat. 1311; Nov. 2, 1966, Pub. L. 89-718, § 42, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7306	34 U. S. C. 493b.	June 24, 1941, ch. 231, 55 Stat. 260.

The name "Navy Register" is changed to "Naval Vessel Register", the present name of the publication, to avoid confusion with another official document known as the "Navy Register".

AMENDMENTS

1966—Pub. L. 89-718 struck out the designation "(a)" at the beginning of the section and repealed subsec. (b) which required the Secretary to make an annual report to Congress of all vessels used for experimental purposes under this section.

1965—Subsec. (b). Pub. L. 89-348 repealed subsec. (b), which required the Secretary to make an annual report to Congress of all vessels used for experimental purposes under this section.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 493b of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F. R. 4759, set out as a note under section 301 of Title 3, The President.

USE OF NAVAL VESSELS TO DETERMINE EFFECT OF NEWLY DEVELOPED WEAPONS

Pub. L. 85-436, May 29, 1958, 72 Stat. 153, authorized the Secretary of the Navy to employ certain ships of the Navy as targets for the purpose of tests and experimentation in determining the effect of newly developed weapons on such vessels. This authorization terminated two years after May 29, 1958, by the provisions of section 4 of Pub. L. 85-436.

§ 7307. Restriction on disposal.

(a) Notwithstanding any other provision of law, no battleship, aircraft carrier, cruiser, destroyer, or submarine of the Navy may be sold, transferred, or otherwise disposed of, unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(b) Without authority from Congress granted after March 10, 1951, no battleship, aircraft carrier, cruiser, destroyer, or submarine that has not been stricken from the Naval Vessel Register under section 7304 of this title, nor any interest of the United States in such a vessel, may be sold, transferred, or otherwise disposed of under any law. (Aug. 10, 1956, ch. 1041, 70A Stat. 452.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7307 (a)	34 U. S. C. 546e (as applicable to ships).	June 28, 1940, ch. 440, § 14 (as applicable to ships), 54 Stat. 681; Aug. 7, 1946, ch. 770 (par. 29, 57), 60 Stat. 868, 871.
7307 (b)	34 U. S. C. 493a-1.	Mar. 10, 1951, ch. 4, § 4, 65 Stat. 4.

In subsection (a) the words "in any manner whatsoever", "Nothing herein shall be construed to repeal or modify sections 33 and 36 of Title 18", and the words "exchanged" and "hereafter" are omitted as surplusage. 34 U. S. C. 546e is superseded by the act of June 30, 1949, ch. 288, 63 Stat. 378 (40 U. S. C. 471—514) as to property which may be declared excess and disposed of under the latter act. The 1949 act (40 U. S. C. 472 (d)) excludes from its application "naval vessels of the following categories: battleships, aircraft carriers, cruisers, destroyers, and submarines". For this reason the words "No battleship, aircraft carrier, cruiser, destroyer, or submarine" are substituted for the words "no naval weapon, ship, * * * or which have been contracted for".

In subsection (b) the words "any law" are substituted for the words "Notwithstanding the provisions of the Mutual Defense Assistance Act of 1949, as amended, or the provisions of any other law".

TRANSFERS TO CERTAIN COUNTRIES

Act. Sept. 15, 1951, ch. 401, 65 Stat. 322, provided:

"That, notwithstanding the provisions of section 4 of Public Law 3, Eighty-second Congress, approved March 10, 1951, the transfer of two destroyer escorts to France, two destroyer escorts to Denmark, three destroyer escorts to Peru, and two destroyer escorts to Uruguay is authorized under the provisions and limitations contained in the Mutual Defense Assistance Act of 1949, as amended.

"SEC. 2. Notwithstanding the provisions of section 4 of Public Law 3, Eighty-second Congress, approved March 10, 1951, the transfer of eight destroyer escorts to Brazil, one destroyer escort to Great Britain, and six destroyer escorts to France is authorized under the provisions and limitations contained in the Mutual Defense Assistance Act of 1949, as amended: *Provided*, That the destroyer escorts, the transfer of which is authorized by this section, are on the date of approval of this Act [Sept. 15, 1951] in the possession of the Governments named in this section under agreements made pursuant to an Act to promote the defense of the United States, approved March 11, 1941, as amended.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 2322, 2773, 2793; title 50 App. sections 1878cc, 1878ee, 1878hh, 1878mm.

§ 7308. Transfer or gift of obsolete, condemned, or captured vessels.

(a) Subject to section 474 of title 40, the Secretary of the Navy may transfer by gift or otherwise, on terms prescribed by him, any obsolete or condemned vessel of the Navy or any captured vessel in the possession of the Department of the Navy to—

(1) any State, Territory, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof;

(2) the District of Columbia or the Canal Zone; or

(3) any corporation or association whose charter or articles of agreement denies it the right to operate for profit.

(b) Each agreement for the transfer of a vessel under this section shall include a stipulation that—

(1) the transferee will maintain the vessel in a condition satisfactory to the Department of the Navy; and

(2) no expense to the United States will result from the transfer.

(c) No transfer under this section takes effect unless—

(1) notice of the proposal to make the transfer is sent to Congress;

(2) 60 calendar days of continuous session of Congress have expired after the notice is sent to Congress; and

(3) during that 60-day period Congress does not pass a concurrent resolution stating in substance that it does not favor the proposed transfer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 453.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7308	34 U. S. C. 546f; 34 U. S. C. 546k (less 1st sentence as applicable to 34 U. S. C. 546g; and less 3d sentence).	Aug. 7, 1946, ch. 804, § 1, 60 Stat. 897; Oct. 31, 1951, ch. 654, § 4 (6), 65 Stat. 709. Aug. 7, 1946, ch. 804, § 6 (less 1st sentence as applicable to § 2; and less 3d sentence). 60 Stat. 898.

In subsection (a) the words "Subject to section 474 of title 40" are substituted for the proviso of 34 U. S. C. 546f. The word "conditions" is omitted as included in the word "terms". The word "Commonwealth" is inserted to reflect the present status of Puerto Rico.

Chapter 635.—NAVAL AIRCRAFT

Sec.
7341. Airplanes and lighter-than-air craft: authorized number.
7342. Percentage required to be constructed or manufactured in United States plants.
7343. Manufacture in United States plants under certain circumstances.
7344. Suspension of construction in case of treaty.

§ 7341. Airplanes and lighter-than-air craft: authorized number.

(a) The President may acquire, construct, or manufacture naval airplanes, spare parts, and equipment necessary to provide and maintain 15,000 useful naval airplanes. However, if in the judgment of the Secretary of the Navy the number of airplanes authorized in this section is insufficient to meet the needs of the national defense, the Secretary may, with the approval of the President, make such plans for procurement as the situation demands.

(b) The President may acquire, construct, or manufacture lighter-than-air craft, spare parts, and equipment necessary to provide and maintain 200 useful lighter-than-air craft.

(c) In this section "useful naval airplanes" or "useful lighter-than-air craft" means those airplanes or lighter-than-air craft, as the case may be, on the Navy list that are, or after reasonable repair can be made, in all respects safe to fly and fitted to take part in active military operations in time of war. The terms exclude those airplanes or aircraft classified as experimental or, with the approval of the Secretary, declared obsolete. (Aug. 10, 1956, ch. 1041, 70A Stat. 453.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7341 (a)	34 U. S. C. 749d.	July 19, 1940, ch. 644, § 8, 54 Stat. 780.
7341 (b)	34 U. S. C. 749e.	
7341 (c)	34 U. S. C. 749 (2d proviso of 7th par.).	June 16, 1942, ch. 418, § 1, 56 Stat. 371. June 24, 1926, ch. 668, § 1 (2d proviso of 7th par.), 44 Stat. 765.

In subsection (a) and (b) the word "manufacture" is inserted for uniformity.

In subsection (c) the words "useful naval airplanes or useful lighter-than-air craft" are substituted for the words "useful airplanes" to make it clear that the use of the term "useful naval airplanes" in 34 U. S. C. 749d and the term "useful lighter-than-air craft" in 34 U. S. C. 749e have reference to the definition in 34 U. S. C. 749.

§ 7342. Percentage required to be constructed or manufactured in United States plants.

(a) At least 10 percent of the aircraft and aircraft engines procured for the naval service in any year shall be constructed or manufactured in plants owned and operated by the United States.

(b) In order not to curtail procurement of naval aircraft and engines, this section is inapplicable when the Secretary of the Navy determines that plants owned and operated by the United States are producing to the limit of their capacity. (Aug. 10, 1956, ch. 1041, 70A Stat. 454.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7342	34 U. S. C. 495 (2d par.); 34 U. S. C. 495a.	Mar. 27, 1934, ch. 95, § 2 (2d par.), 48 Stat. 504. July 19, 1940, ch. 644, § 6, 54 Stat. 780.

In subsections (a) and (b) the words "and factories" are omitted as surplusage.

In subsection (a) the words "the procurement of which is authorized by this section and undertaken after March 27, 1934" are omitted. The act of March 27, 1934, ch. 95, 48 Stat. 503 authorized the President to procure naval aircraft "in numbers commensurate with a treaty Navy" (referring to the Washington and London Naval Treaties of 1922 and 1930, respectively). The provision of law on which this section is based, as enacted, referred only to aircraft procured pursuant to this authorization. Although this authorization is superseded by the aircraft authorization contained in the act of July 19, 1940, ch. 644, § 8, 54 Stat. 780, the provision codified in subsection (a) was considered by Congress to be applicable to the procurement of aircraft under the later act. If it had not been so considered, section 6 of the 1940 act (codified in subsection (b)) would have been unnecessary.

§ 7343. Manufacture in United States plants under certain circumstances.

The President may construct or manufacture at any plant owned and operated by the United States any naval aircraft, or the engines, spare parts, or equipment for any such aircraft, if it reasonably appears that the persons, firms, or corporations, or the agents thereof, who are bidding on the construction or manufacture of any of these items—

(1) have entered into a combination, agreement, or understanding, the effect or purpose of which is to deprive the United States of fair, open, and unrestricted competition in letting contracts for the construction or manufacture of any of the aircraft, engines, spare parts, or equipment; or

(2) being solely or peculiarly in position to construct, manufacture, or furnish the particular type or design of aircraft, engines, spare parts, or equipment required by the Department of the Navy, have named a price in excess of cost of production plus a reasonable profit as provided in section 2382 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 454.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7343	34 U. S. C. 495 (less 1st and 2d pars.).	Mar. 27, 1934, ch. 95, § 2 (less 1st and 2d pars.), 48 Stat. 504.

Clause (1) and the last paragraph of 34 U. S. C. 495 are omitted as executed.

The act of March 27, 1934, ch. 95, 48 Stat. 503 authorized the President to procure naval aircraft "in numbers commensurate with a treaty Navy" (referring to the Washington and London Naval Treaties of 1922 and 1930). The provision of law on which this section is based, as enacted, referred only to aircraft procured pursuant to this authorization. Although this authorization is superseded by the aircraft authorization contained in the act of July 19, 1940, ch. 644, § 8, 54 Stat. 780, the provision covered in this section has been interpreted to cover aircraft procured under later acts. In clause (1) the word "object" is omitted as surplusage.

§ 7344. Suspension of construction in case of treaty.

In case of a treaty for the limitation of naval armament to which the United States is a signatory, the President may suspend so much of the authorized naval construction as is necessary to bring the naval aircraft of the United States within the limitations agreed upon. Such a suspension does not apply to aircraft under construction at the time the suspension is made. (Aug. 10, 1956, ch. 1041, 70A Stat. 454.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7344	34 U. S. C. 498h (less as pertains to vessels).	May 17, 1938, ch. 243, § 9 (less as pertains to vessels), 52 Stat. 403.

The declaration that "the United States would welcome and support an international conference for naval limitations" is omitted as not having permanent and general significance. The word "international" is omitted since all treaties are international in character.

Chapter 637.—SALVAGE FACILITIES

Sec.
7361. Naval salvage facilities: contracts for commercial facilities.
7362. Commercial use of naval facilities.
7363. Transfer of equipment: contract provisions.
7364. Advancement of funds for salvage operations.
7365. Settlement of claims.
7366. Limitation on appropriations.
7367. Disposition of receipts.

§ 7361. Naval salvage facilities: contracts for commercial facilities.

(a) The Secretary of the Navy may provide, by contract or otherwise, necessary salvage facilities for public and private vessels upon such terms as he determines to be in the best interest of the United States.

(b) The Secretary shall submit to the Secretary of Commerce for recommendation and comment each proposed contract for salvage facilities that affects the interests of the Department of Commerce.

(c) Term contracts for salvage facilities may be made under this section only if—

(1) the Secretary of the Navy determines that available commercial salvage facilities are inadequate to meet the requirements of national defense; and

(2) public notice of the intention to enter into the contracts has been given in a manner and for a period that will, in the Secretary's judgment, provide the maximum competition for such contracts among commercial salvage organizations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 455.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7361	46 U. S. C. 733 (a); 46 U. S. C. 734 (a).	May 4, 1948, ch. 256, § 1 (a), 62 Stat. 209. May 4, 1948, ch. 256, § 2 (a), 62 Stat. 209.

In subsection (a) the word "conditions" is omitted as included in the word "terms".

In subsection (b) the words "Secretary of Commerce" and "Department of Commerce" are substituted for the words "Maritime Commission" and "United States Maritime Commission" to reflect 1950 Reorganization Plan No. 21, effective May 24, 1950, 15 F. R. 3178, 64 Stat. 1273. That Plan abolished the Maritime Commission and established the Maritime Administration in the Department of Commerce. It also created the Federal Maritime Board, the Chairman of which is ex officio the Maritime Administrator and head of the Maritime Administration. Certain specified functions of the Maritime Commission and its Chairman were transferred to the Federal Maritime Board or its Chairman. None of the functions so transferred relate to the subject matter of this section. All other functions were transferred to the Secretary of Commerce.

§ 7362. Commercial use of naval facilities.

The Secretary of the Navy may acquire or transfer, by charter or otherwise, for operation by private salvage companies, such vessels and equipment as he considers necessary. (Aug. 10, 1956, ch. 1041, 70A Stat. 455.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7362	46 U. S. C. 733 (b).	May 4, 1948, ch. 256, § 1 (b) 62 Stat. 209.

§ 7363. Transfer of equipment: contract provisions.

Before any salvage vessel or salvage gear is sold, chartered, leased, lent, or otherwise transferred by the Department of the Navy to any private party, the transferee must agree in writing with the Department that the vessel or gear will be used to support organized offshore salvage facilities for a period of as many years as the Secretary considers appropriate. The agreement shall contain such other provisions as the Secretary considers appropriate to assure the fulfillment of the undertaking. (Aug. 10, 1956, ch. 1041, 70A Stat. 455.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7363	46 U. S. C. 734 (b).	May 4, 1948, ch. 256, § 2 (b), 62 Stat. 209.

§ 7364. Advancement of funds for salvage operations.

The Secretary of the Navy may advance to private salvage companies such funds as he considers necessary to provide for the immediate financing of salvage operations. These advances shall be made on terms that the Secretary considers adequate for the protection of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 455.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7364	46 U. S. C. 733 (c).	May 4, 1948, ch. 256, § 1 (c), 62 Stat. 209.

The word "conditions" is omitted as included in the word "terms".

§ 7365. Settlement of claims.

The Secretary of the Navy, or his designee, may consider, ascertain, adjust, determine, compromise, or settle and receive payment of any claim by the United States for salvage services rendered by the Department of the Navy to any vessel. (Aug. 10, 1956, ch. 1041, 70A Stat. 456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7365	46 U. S. C. 735 (1st 31 words).	May 4, 1948, ch. 256, § 3 (1st 31 words), 62 Stat. 210.

§ 7366. Limitation on appropriations.

Not more than $3,000,000 may be appropriated annually for the administration of this chapter. (Aug. 10, 1956, ch. 1041, 70A Stat. 456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7366	None.	May 4, 1948, ch. 256, § 4, 62 Stat. 210.

The appropriations authorization language is omitted as surplusage, and the remaining language constituting a restriction on the amount is rephrased for clarity.

§ 7367. Disposition of receipts.

Money received under this chapter shall be credited to appropriations for maintaining salvage facilities by the Department of the Navy. However, if the amount received in any year exceeds the cost incurred by the Navy during that year in giving and maintaining salvage services, the excess shall be covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 456.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7367	46 U. S. C. 735 (less 1st 31 words).	May 4, 1948, ch. 256, § 3 (less 1st 31 words), 62 Stat. 210.

The words "as miscellaneous receipts" are omitted as surplusage.

Chapter 639.—UNITED STATES NAVAL OCEANOGRAPHIC OFFICE AND NAVAL OBSERVATORY.

Sec.
7391. United States Naval Oceanographic Office: establishment and duties.
7392. United States Naval Oceanographic Office: maps, charts, and books.
7393. United States Naval Oceanographic Office: pilot charts.
7394. Price of maps, charts, and navigational publications.
7395. Naval Observatory: administration.
7396. Naval Observatory: exchange of information with foreign offices.

AMENDMENTS

1964—Pub. L. 88–436, § 1(b), Aug. 14, 1964, 78 Stat. 436, substituted "navigational publications" for "nautical books" in item 7394.

1962—Pub. L. 87–533, § 1 (a) (1), (b), July 10, 1962, 76 Stat. 154, 155, substituted "United States Naval Oceanographic" for "Hydrographic" in the chapter heading and in items 7391—7393.

§ 7391. United States Naval Oceanographic Office: establishment and duties.

There is attached to the Office of the Chief of Naval Operations a United States Naval Oceanographic Office. The United States Naval Oceanographic Office shall improve means of navigating vessels of the Navy and the merchant marine by providing, under the authority of the Secretary of the Navy, accurate and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally. (Aug. 10, 1956, ch. 1041, 70A Stat. 456; July 10, 1962, Pub. L. 87–533, § 1(a) (2), 76 Stat. 154.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7391	5 U. S. C. 457.	R. S. 431; May 4, 1898, ch. 234, 30 Stat. 374 (1st par. last 18 words); Mar. 4, 1913, ch. 148, 37 Stat. 899 (1st par., less provisos); June 30, 1914, ch. 130, 38 Stat. 408 (4th par.); Reorganization Plan No. 3 of 1946, Part III, § 301 (as applicable to Hydrographic Office), 60 Stat. 1099.

The words "in the Navy Department" and "safely the" are omitted as surplusage. The word "inexpensive" is substituted for the word "cheap". The words "books on navigation" are substituted for the word "navigators". The words "for the benefit and use" are omitted as surplusage.

AMENDMENTS

1962—Pub. L. 87–533 substituted "United States Naval Oceanographic" for "Hydrographic" in the catchline and wherever appearing in the text.

§ 7392. United States Naval Oceanographic Office: maps, charts, and books.

The Secretary of the Navy, under such regulations as he prescribes, may—

(1) have the United States Naval Oceanographic maps, charts, and nautical books required in navigation and have such materials published and furnished to navigators; and

(2) buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 456; July 10, 1962, Pub. L. 87–533, § 1(a) (3), 76 Stat. 154.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7392	5 U. S. C. 458 (less 46th through 52d words).	R. S. 432 (less 46th through 52d words); Jan. 12, 1895, ch. 23, § 77, par. 1 (less 46th through 52d words), 28 Stat. 621.

The words "attached to the Chief of Naval Operations in the Navy Department" are omitted as covered by the preceding section and the words "relating to and" are omitted as surplusage. The words "books on navigation" are substituted for the word "navigators". 5 U. S. C. 458 and R. S. 432 incorrectly reflect the wording of the Act of June 21, 1866, ch. 129, § 2, 14 Stat. 69. The 1866 Act provided that "The Secretary * * * is * * * authorized * * * to purchase the plates and copyrights of * * * navigators, sailing directions and instructions * * *", rather than "navigators' sailing directions and instructions" as shown by R. S. 432 and 5 U. S. C. 458. The words "as he may consider necessary, and when he may deem it expedient to do so" are omitted as unnecessary, since a discretionary power is involved.

AMENDMENTS

1962—Pub. L. 87–533 substituted "United States Naval Oceanographic" for "Hydrographic" in the catchline and in cl. (1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 82.

§ 7393. United States Naval Oceanographic Office: pilot charts.

(a) There shall be conspicuously printed on pilot charts prepared in the United States Naval Oceanographic Office: "Prepared from data furnished by the United States Naval Oceanographic Office of the Department of the Navy and by the Weather Bureau of the Department of Commerce, and published at the United States Naval Oceanographic Office under the authority of the Secretary of the Navy".

(b) The Weather Bureau of the Department of Commerce shall furnish to the United States Naval Oceanographic Office, as expeditiously as possible, all meteorological information received by the Weather Bureau that is necessary for, and of the character

used in, the preparation of pilot charts. (Aug. 10, 1956, ch. 1041, 70A Stat. 456; July 10, 1962, Pub. L. 87–533, § 1(a)(4), 76 Stat. 154.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7393	5 U. S. C. 458a.	June 17, 1910, ch. 297, § 1, 36 Stat. 508 (3d par., 2d sentence, less last 16 words.)

In subsection (a) the words "Department of the Navy" are substituted for the words "Navy Department" to conform to current terminology. The words "Weather Bureau of the Department of Commerce" are substituted for the words "Weather Bureau of the Department of Agriculture" as a result of Reorganization Plan No. IV, § 8, June 30, 1940, 54 Stat. 1236.

In subsection (b) the words "shall furnish" are substituted for the words "shall continue to be furnished".

AMENDMENTS

1962—Pub. L. 87–533 substituted "United States Naval Oceanographic" for "Hydrographic" in the catchline and wherever appearing in the text.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

The Weather Bureau of the Department of Commerce was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7394. Price of maps, charts, and navigational publications.

All maps, charts, and other publications offered for sale by the United States Naval Oceanographic Office shall be sold at such prices and under such regulations as may be determined by the Secretary of the Navy. Money received from the sales shall be covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 457; July 10, 1962, Pub. L. 87–533, § 1(a)(5), 76 Stat. 154; Aug. 14, 1964, Pub. L. 88–436, § 1(a), 78 Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7394	5 U. S. C. 458 (46th through 52d words); 5 U. S. C. 459.	R. S. 432 (46th through 52d words); Jan. 12, 1895, ch 23, § 77, par. 1 (46th through 52d words), 28 Stat. 621. May 29, 1920, ch. 214, 41 Stat. 665 (4th par.).

The words "to the United States" are inserted after the word "cost" for clarity. The word "money" is substituted for the words "All sums" for uniformity. The words "as miscellaneous receipts" are omitted as surplusage.

AMENDMENTS

1964—Pub. L. 88–436 substituted "offered for sale" for "issued", "shall be sold at such prices and under such regulations as may be determined by the Secretary of the Navy" for ", furnished to navigators, shall be paid for at the cost to the United States of the paper and printing", in the text, and "navigational publications" for "nautical books" in the catchline.

1962—Pub. L. 87–533 substituted "United States Naval Oceanographic" for "Hydrographic."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 82.

§ 7395. Naval Observatory: administration.

(a) The Naval Observatory shall be attached to the Office of the Chief of Naval Operations.

(b) The Superintendent of the Naval Observatory shall be detailed from officers in the line of the Navy serving in the grade of captain or above.

(c) The Secretary of the Navy may detail any officer of the Navy, competent for that duty, to supervise the Nautical Almanac. (Aug. 10, 1956, ch. 1041, 70A Stat. 457.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7395	5 U. S. C. 133y-16 (note); 5 U. S. C. 461; 5 U. S. C. 463.	Reorganization Plan No. 3 of 1946, Part III, § 301, 60 Stat. 1099. Mar. 3, 1901, ch. 852, 31 Stat. 1122 (2d par., last sentence). R. S. 436; June 29, 1949, ch. 278, 63 Stat. 300 (2d par.).

In subsection (a) the words "together with their respective functions, are hereby transferred from the Bureau of Naval Personnel, Department of the Navy" are omitted as executed. The words "attached to" are substituted for the words "and shall be administered, subject to the direction and control of the Secretary of the Navy, under the Chief of Naval Operations" for brevity. All orders issued by the Chief of Naval Operations in performing the duties assigned to him are issued under the authority of the Secretary of the Navy.

In subsection (b) the words "until further legislation by Congress" are omitted as surplusage.

In subsection (c) the word "detail" is substituted for the word "place". The words "in charge" are omitted.

In subsection (c) the word "detail" is substituted for word "service" for clarity.

§ 7396. Naval Observatory: exchange of information with foreign offices.

(a) The Secretary of the Navy may arrange to exchange data with foreign almanac offices to reduce the duplication of work in preparing the different national nautical and astronomical almanacs and make available for publication in the American Ephemeris and Nautical Almanac a larger amount of data useful to navigators and astronomers. Each such arrangement shall be made terminable on one year's notice.

(b) The work of the Nautical Almanac Office shall be so conducted that in an emergency the part of the work intended for the use of navigators may be computed by the force of the office without foreign cooperation. (Aug. 10, 1956, ch. 1041, 70A Stat. 457.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7396	5 U. S. C. 464.	Aug. 22, 1912, ch. 335, 37 Stat. 342 (2d par.).

In subsection (a) the words "as he may from time to time deem desirable with a view" are omitted as surplusage. The words "a larger amount of data useful" are substituted for the words "increase the total data which may be of use" for clarity.

In subsection (b) the words "during the continuance of any such arrangement" are omitted as surplusage. The third proviso of 5 U. S. C. 464 is omitted as obsolete.

Chapter 641.—NAVAL PETROLEUM RESERVES

Sec.
7421. Jurisdiction and control.
7422. Administration.
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7424. Protection of oil reserves; contracts for conservation.
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7429. Re-lease of certain lands: lessee's preferential right.
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7436. Regulations.
7437. Violations by lessee.
7438. Rifle, Colorado, Plant; possession, use, and transfer of.

AMENDMENTS

1962—Pub. L. 87-796, § 1(13), Oct. 11, 1962, 76 Stat. 906, substituted "Rifle, Colorado, plant; possession, use, and transfer of" for "Exclusion of naval oil shale reserves" in item 7438.

§ 7421. Jurisdiction and control.

(a) The Secretary of the Navy shall take possession of all properties inside the naval petroleum and oil shale reserves that are or may become subject to the control of and use by the United States for naval purposes, except as otherwise provided in section 7438 hereof.

(b) The Secretary has exclusive jurisdiction and control over those lands inside naval petroleum reserves numbered 1 and 2 that are covered by leases granted under sections 181—184, 185—188, 189—194, 201, 202—209, 211—214, 223, 224—226, 226d, 226e, 227—229a, 241, 251, and 261—263 of title 30, and shall administer those leases. (Aug. 10, 1956, ch. 1041, 70A Stat. 457; Oct. 1, 1962, Pub. L. 87-796, § 1(*l*), 76 Stat. 904.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7421 (a)	34 U. S. C. 524 (1st 36 words of 1st par.).	June 4, 1920, ch. 228 (1st par., 1st 36 words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1253; June 17, 1944, ch. 262, 58 Stat. 280.
7421 (b)	34 U. S. C. 524 (293d word to end of 1st par.); 34 U. S. C. 524a.	June 4, 1920, ch. 228 (1st par., 294th word to end, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280. Feb. 25, 1928, ch. 104, 45 Stat. 148.

In subsection (b) the reference to the transfer of jurisdiction and administration is omitted as executed.

REFERENCES IN TEXT

Sections 226d and 226e of title 30, referred to in subsec. (b), are omitted from the Code and are covered by section 226 of Title 30, Mineral Lands and Mining.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-796 empowered the Secretary to take possession of all properties inside the oil shale reserves, and inserted the exception clause.

§ 7422. Administration.

(a) Except as otherwise provided in section 7438 hereof, the Secretary of the Navy, directly or by contract, lease, or otherwise, shall explore, prospect, conserve, develop, use, and operate the naval petroleum and oil shale reserves in his discretion, subject to approval by the President.

(b) The naval petroleum and oil shale reserves and land outside naval petroleum reserve numbered 1 covered by contracts under section 7426 of this title, shall be used and operated for—

(1) the protection, conservation, maintenance, and testing of those reserves; or

(2) the production of petroleum, gas, oil shale and products thereof whenever and to the extent that the Secretary, with the approval of the President, finds that it is needed for national defense and the production is authorized by a joint resolution of Congress.

(c) The Secretary of the Navy may under subsection (a) develop the South Barrow gas field, naval petroleum reserve numbered 4, to supply gas to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska, the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska. (Aug. 10, 1956, ch. 1041, 70A Stat. 458; Aug. 24, 1962, Pub. L. 87-599, § 1, 76 Stat. 401; Oct. 11, 1962, Pub. L. 87-796, § 1(2), 76 Stat. 904.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7422	34 U. S. C. 524 (1st par., 37th through 62d words, and 123d through 185th words).	June 4, 1920, ch. 228 (1st par., 37th through 62d words, and 123d through 185th words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-796 substituted "Except as otherwise provided in section 7438 hereof, the Secretary" for "The Secretary", and included oil shale reserves.

Subsec. (b). Pub. L. 87-796 included oil shale reserves in the opening provisions, and substituted "petroleum, gas, oil shale and products thereof whenever" for "petroleum whenever" in cl. (2).

Subsec. (c). Pub. L. 87-599 added subsec. (c).

CONNECTIONS TO PIPELINE IN SOUTH BARROW GAS FIELD

Section 3 of Pub. L. 87-599 provided that: "The Federal agency or agencies in control of any pipeline between gas wells in the South Barrow gas field and the town of Barrow may authorize Purchasers of the gas or carriers of the gas to install connections to such pipeline."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7423, 7426 of this title.

§ 7423. Periodic re-examination of production requirements.

The Secretary of the Navy shall from time to time reexamine the need for the production of petroleum or products from oil shale for national defense when that production is authorized under section 7422 of this title. If he finds that the authorized quantity is no longer needed, he shall reduce production to the amount currently needed for national defense. (Aug. 10, 1956, ch. 1041, 70A Stat. 458; Oct. 10, 1956, Pub. L. 87–796, § 1(3), 76 Stat. 904.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7423	34 U. S. C. 524 (186th through 243d words of 1st par.).	June 4, 1920, ch. 228 (1st par., 186th through 243d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280.

AMENDMENTS

1962—Pub. L. 87–796 directed the Secretary to reexamine, from time to time, the need for production of products from oil shale.

§ 7424. Protection of oil reserves; contracts for conservation.

(a) To consolidate and protect the oil lands owned by the United States, the Secretary of the Navy may—

(1) contract with owners and lessees of land inside or adjoining naval petroleum and oil shale reserves for—

(A) conservation in the ground of oil and gas; and

(B) compensation for estimated drainage in lieu of drilling or operating offset wells; and

(2) acquire privately owned lands or leases inside naval petroleum reserve numbered 1 by exchange of—

(A) lands of the United States inside naval petroleum reserve numbered 1;

(B) the right to royalty production from any of the naval petroleum reserves; and

(C) the right to any money due the United States as a result of the wrongful extraction of petroleum products from lands inside naval petroleum reserve numbered 1.

(b) The Secretary shall report annually to Congress all agreements under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 458; Oct. 11, 1962, Pub. L. 87–796, § 1(4), 76 Stat. 904.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7424	34 U. S. C. 524 (4th par., less 1st proviso).	June 4, 1920, ch. 228 (4th par., less 1st proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–796 inserted provisions in cl. (1) empowering the Secretary to contract with owners and lessees of land inside or adjoining oil shale reserves.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7425 of this title.

§ 7425. Acquisition by condemnation and purchase.

(a) Whenever the Secretary of the Navy is unable to make arrangements he considers satisfactory for—

(1) exchanges of land or agreements for conservation authorized by section 7424 of this title; or

(2) contracts for joint, unit, or other cooperative plans with respect to lands or leases authorized by section 7426 of this title;

he may acquire, with the approval of the President, such privately owned lands and leases—

(1) by purchase, inside the naval petroleum reserves, or outside those reserves on the same geologic structure; and

(2) by condemnation, inside naval petroleum reserve numbered 1, or, if there is substantial drainage, outside that reserve on the same geologic structure.

(b) The Secretary shall report annually to Congress all proceedings for purchase and condemnation under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 458.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7425	34 U. S. C. 524 (5th par., 1st 123 words, and 169th through 193d words).	June 4, 1920, ch. 228 (5th par., 1st 123 words, and 169th through 193d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

The words "Whenever the Secretary of the Navy is unable" are substituted for the words "In the event of the inability of the Secretary of the Navy" for brevity.

FEDERAL RULES OF CIVIL PROCEDURE

Condemnation, see rule 71A, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 7426. Cooperative or unit plans affecting naval petroleum reserve numbered 1.

(a) The Secretary of the Navy may contract for joint, unit, or other cooperative plans of exploration, prospecting, conservation, development, use, and operation of lands owned or controlled by the United States inside naval petroleum reserve numbered 1 and lands owned or leased by private interests—

(1) inside naval petroleum reserve numbered 1; or

(2) outside naval petroleum reserve numbered 1 on the same geologic structure.

(b) Each contract under this section shall require that the United States will be assured of receiving currently its share of the total production from each of the commercially productive zones underlying all lands covered by the contract, as determined from time to time on the basis of estimates of its original share of the quantities of recoverable oil, gas, natural gasoline, and associated hydrocarbons in those zones on the date fixed in the contract.

(c) Any party to such a contract, other than the United States, may be permitted by the contract to

produce and to receive, and shall have charged to its share in the total production from any zone, petroleum in such quantities as are necessary to compensate that party—

(1) for its share of the current expenses of protecting, conserving, testing, and maintaining in good oil-field condition the lands, wells, and improvements thereon, and its real and personal taxes levied or assessed thereon; and

(2) for surrendering control of the rate of production from its lands.

The quantity of petroleum permitted to be produced as compensation for surrendering control of the rate of production may, in the discretion of the Secretary, be reduced or eliminated at any time on reasonable notice if the Secretary is not then having petroleum produced for national defense under section 7422 of this title.

(d) In no event may the quantity of petroleum produced under subsection (c) from any zone for any private contracting party exceed one-third of its share of the recoverable petroleum in that zone as estimated on the date fixed in the contract.

(e) No contract may be made under this section until the Committees on Armed Services of the Senate and the House of Representatives have been consulted as to all its details. (Aug. 10, 1956, ch. 1041, 70A Stat. 459.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7426 (a)	34 U. S. C. 524 (63d through 122d words of 1st par.).	June 4, 1920, ch. 228 (1st par., 63d through 122d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280.
7426 (b), (c), (d), and (e).	34 U. S. C. 524 (2d par.).	June 4, 1920, ch. 228 (2d par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (b) the words "Each contract under this section" are substituted for the words "Any contract entered into pursuant to * * * conservation, development, use, or operation" for brevity.

In subsection (c) the words "pursuant to the authority herein granted * * * conservation, maintenance and testing" are omitted as surplusage. The words "or zones" are omitted under the authority of 1 U. S. C. 1.

In subsection (d) the words "from any zone for any private contracting party" are added for clarity. The words "or zones" are omitted for the reason previously stated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7422, 7485, 7488 of this title.

§ 7427. Cooperative or unit plans in the naval petroleum reserves.

The Secretary of the Navy, with the consent of the President, may make agreements, with respect to lands inside the naval petroleum reserves, of the same type as the Secretary of the Interior may make under section 226e of title 30. No such agreement made by the Secretary of the Navy may extend the term of any lease unless the agreement so provides. (Aug. 10, 1956, ch. 1041, 70A Stat. 460.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7427	30 U. S. C. 236b (last 46 words).	Aug. 8, 1946, ch. 916, § 13 (29th through 85th words) 60 Stat. 958.

REFERENCES IN TEXT

Section 226e of title 30, referred to in the text, is omitted from the Code and is now covered by section 226 of Title 30, Mineral Lands and Mining.

§ 7428. Agreements and leases: provision for change.

Every unit or cooperative plan of development and operation, except a plan authorized by Section 7426 of this title, and every lease affecting lands owned by the United States within the naval petroleum and oil shale reserves shall contain a provision authorizing the Secretary of the Navy, subject to approval by the President and to any limitation in the plan or lease, to change from time to time the rate of prospecting and development on, and the quantity and rate of production from, lands of the United States under the plan or lease, notwithstanding any other provision of law. (Aug. 10, 1956, ch. 1041, 70A Stat. 460; Oct. 11, 1962, Pub. L. 87–796, § 1(5), 76 Stat. 905.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7428	34 U. S. C. 524 (proviso of 6th par.).	June 4, 1920, ch. 228 (6th par., proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

The words "entered into after July 1, 1937" and "entered into subsequent to July 1, 1937" are omitted as surplusage. The words "in his discretion" are omitted as surplusage.

AMENDMENTS

1962—Pub. L. 87–796 included leases affecting lands within oil shale reserves.

§ 7429. Re-lease of certain lands: lessee's preferential right.

The Secretary of the Navy, on terms prescribed by him, may re-lease lands in the naval petroleum reserves that were covered by leases made before July 1, 1936, and terminated by law at the expiration of their initial twenty-year periods. If any such land is to be re-leased, the Secretary shall give to the former lessee preferential rights to the new lease. (Aug. 10, 1956, ch. 1041, 70A Stat. 460.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7429	34 U. S. C. 524 (6th par., less proviso).	June 4, 1920, ch. 228 (6th par., less proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1253; June 17, 1944, ch. 262, 58 Stat. 282.

The source law provided that leases of lands of the United States within the naval petroleum reserves in existence before July 1, 1936, except leases that had become part of an approved unit or cooperative plan and agreement, should terminate at the end of their initial 20-year period, and that the lands covered by these leases could then be re-released by the Secretary of the Navy.

All of the leases covered by this provision have terminated as provided therein. Thus the provision for the termination of the leases is executed and the only remaining effect of the source is to authorize the re-lease of the lands formerly covered by the terminated leases. This section is worded accordingly. Reference to the classes of leases that were excepted from the termination is omitted as unnecessary because these leases were, of course, not terminated. They are not affected, since this section refers only to leases that were "terminated by law". The word "conditions" is omitted as included in the word "terms".

§ 7430. Disposition of products.

(a) The Secretary of the Navy in administering the naval petroleum and oil shale reserves under this chapter shall use, store, sell, or exchange for other petroleum or refined products, the oil and gas products, including royalty products, oil shale and products therefrom produced, from lands in the naval petroleum and oil shale reserves, including gas products from lands in the South Barrow gas field of naval petroleum reserve numbered 4, and lands outside petroleum reserve numbered 1 covered by joint, unit, or other cooperative plans for the benefit of the United States.

(b) Each sale of petroleum, gas, other hydrocarbons, oil shale, or products therefrom, under this section shall be made by the Secretary at public sale to the highest qualified bidder at such time, in such amounts, and after such advertising as the Secretary considers proper. (Aug. 10, 1956, ch. 1041, 70A Stat. 460; Aug. 24, 1962, Pub. L. 87-599, § 2, 76 Stat. 401; Oct. 11, 1962, Pub. L. 87-796, § 1(6), 76 Stat. 905.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7430 (a)	34 U. S. C. 524 (244th through 293d words of 1st par.).	June 4, 1920, ch. 228 (1st par., 244th through 293d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.
7430 (b)	34 U. S. C. 524 (2d sentence of 3d par.).	June 4, 1920, ch. 228 (3d par., 2d sentence, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words "subject to the applicable limitations and restrictions of this Act" are omitted as surplusage and the words "in administering" are inserted.

In subsection (b) the words "under this section" are substituted for the words "from the naval reserves" to make it clear that the requirements of this subsection apply to sales of petroleum, gas, and other hydrocarbons from lands outside petroleum reserve numbered 1 covered by joint, unit, or other cooperative plans as well as the sale of those products from the naval reserves proper. Subsection (a) is the only authority for the sale of petroleum, gas, and other hydrocarbons from the naval petroleum reserves.

AMENDMENTS

1962—Subsec. (a). Pub L. 87-796 empowered the Secretary to use, store, sell or exchange for other petroleum or refined products, oil shale and products therefrom produced, from lands in the oil shale reserves.

Pub. L. 87-599 inserted ", including gas products from lands in the South Barrow gas field of naval petroleum reserve numbered 4,".

Subsec. (b). Pub. L. 87-796 included sale of oil shale, or products therefrom.

§ 7431. Requirements as to consultation and approval.

The Committee on Armed Services of the Senate and the House of Representatives must be consulted and the President's approval must be obtained before any condemnation proceedings may be started under this chapter and before any of the following transactions authorized by this chapter may be effective:

(1) A lease of any part of the naval petroleum or oil shale reserves.

(2) A contract to alienate from the United States the use, control, or possession of any part of the naval petroleum or oil shale reserve (except that consultation and Presidential approval are not required in connection with the issuance of permits, licenses, easements, grazing and agricultural leases, rights-of-way, and similar contracts pertaining to use of the surface area of the naval petroleum and oil shale reserves).

(3) A contract to sell the oil and gas (other than royalty oil and gas), oil shale, and products therefrom produced from any part of the naval petroleum and oil shale reserves.

(4) A contract for conservation or for compensation for estimated drainage.

(5) An agreement to exchange land, the right to royalty production, or the right to any money due the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Oct. 11, 1962, Pub. L. 87-796, § 1(7), 76 Stat. 905.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7431	34 U. S. C. 524 (1st proviso of 4th par.).	June 4, 1920, ch. 228 (4th par., 1st proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

AMENDMENTS

1962—Pub. L. 87-796 included oil shale reserves in cls. (1) and (2), inserted the provisions in cl. (2) excepting consultation and Presidential approval in connection with the issuance of permits, licenses, easements, grazing and agricultural leases, rights-of-way, and similar contracts pertaining to use of the surface area of the naval petroleum and oil shale reserves, and included oil shale, and products therefrom produced from any part of the oil shale reserves.

§ 7432. Expenditures: appropriations chargeable.

(a) Expenses incurred by the Secretary of the Navy with respect to the naval petroleum and oil shale reserves shall be paid from appropriations made available for the purposes specified in this chapter.

(b) Expenditures necessary to carry out this chapter shall be made under the direction of the President, who shall submit estimates for these expenditures as prescribed by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, Pub. L. 87-796, § 1(8), 76 Stat. 905.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7432	34 U. S. C. 524 (3d par., less 2d sentence; 5th par., 124th through 168th words).	June 4, 1920, ch. 228 (3d par., less 2d sentence; 5th par., 124th through 168th words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words "by the Congress" are omitted as surplusage.

In subsection (b) the words "There is authorized to be appropriated" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-796 substituted "with respect to the naval petroleum and oil shale reserves shall be paid from appropriations made available for the purposes specified in this chapter" for "in exploring, prospecting, conserving, developing, using and operating lands owned or controlled by the United States in the naval petroleum reserves, and in producing petroleum, and the share of the United States of expenses incurred under any contract entered into under this chapter, shall be paid from appropriations made available for those purposes."

§ 7433. Disposition of royalties.

(a) Any oil, gas, gasoline or other substance accruing to the United States as royalty from any lease under this chapter shall be delivered to the United States, or shall be paid for in money, as the Secretary of the Navy elects.

(b) All money accruing to the United States from lands in the naval petroleum and oil shale reserves shall be covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, Pub. L. 87-796, § 1(9), 76 Stat. 905.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7433	34 U. S. C. 524 (10th par.).	June 4, 1920, ch. 228 (10th par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words "or all" are omitted as surplusage. The words "under this chapter" are substituted for the words "of lands within the naval petroleum reserves or other naval fuel reserves under the authority of this section" for brevity. The words "be delivered to the United States, or shall be paid for in money" are substituted for the words "be paid for in money or be paid in kind" for clarity. Neither gas, oil, gasoline, nor hydrocarbon can be "paid", but any one of them may be delivered.

In subsection (b) the words "except as otherwise provided in this section" are omitted as surplusage. There is no exception within the chapter to the rule stated in subsection (b). The word "paid" is substituted for the words "which may accrue" for clarity. The words "under this chapter" are substituted for the words "under the provisions of this section or of sections * * * on account of the petroleum products extracted therefrom" for brevity. The two terms are coextensive. The sections of 30 U. S. C. that are cited in 34 U. S. C. 524 (10th par.) comprise the entire act of Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended. The application of that act to the Navy is covered in § 7427 of this title. The words "as miscellaneous receipts" are omitted as surplusage.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-796 substituted "or other substance" for "or other hydrocarbon substance."

Subsec. (b). Pub. L. 87-796 substituted "All money accruing to the United States from lands in the naval petroleum and oil shale reserves" for "Money paid to the United States for petroleum products under this chapter."

§ 7434. Quarterly reports to Armed Services Committees.

Within thirty days after the close of each quarter, the Secretary of the Navy shall report to the Committees on Armed Services of the Senate and House of Representatives the production from the naval petroleum and oil shale reserves during the preceding quarter. (Aug. 10, 1956, ch. 1041, 70A Stat. 461; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(35), 72 Stat. 1566; Oct. 11, 1962, Pub. L. 87-796, § 1(10), 76 Stat. 906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7434	34 U. S. C. 524 (193d word to end of 5th par.).	June 4, 1920, ch. 228 (5th par., 194th word to end, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1253; June 17, 1944, ch. 262, 58 Stat. 282.

AMENDMENTS

1962—Pub. L. 87-796 required a report of the production from oil shale reserves.

1958—Pub. L. 85-861 substituted "Committees" for "Committee".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

§ 7435. Foreign interest.

(a) If the laws, customs, or regulations of any foreign country deny the privilege of leasing public lands to citizens or corporations of the United States, citizens of that foreign country, or corporations controlled by citizens of that country, may not, by contract made after July 1, 1937, or by stock ownership, holding, or control, acquire or own any interest in, or right to any benefit from, any lease of land in the naval petroleum, naval oil shale, or other naval fuel reserves made under sections 181—184, 185—188, 189—194, 201, 202—209, 211—214, 223, 224—226, 226d, 226e, 227—229a, 241, 251, and 261—263 of title 30, or under this chapter.

(b) The Secretary of the Navy may cancel any lease for any violation of this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 461; Oct. 11, 1962, Pub. L. 87-796, § 1(11), 76 Stat. 906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7435	34 U. S. C. 524 (8th par.).	June 4, 1920, ch. 228 (8th par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words "foreign country" are substituted for the words "another country" for clarity.

In subsection (b) the word "for" is substituted for the words "in the event of" for brevity.

REFERENCES IN TEXT

Sections 226d and 226e of title 30, referred to in subsec. (a), are omitted from the Code and are covered by section 226 of Title 30, Mineral Lands and Mining.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-796 substituted "land in the naval petroleum, naval oil shale, or other naval fuel reserves" for "land in the naval petroleum or other naval fuel reserves."

§ 7436. Regulations.

(a) The Secretary of the Navy, subject to approval by the President, may prescribe regulations

and take any proper action to accomplish the purposes of this chapter.

(b) All statements, reports, and representations required by the regulations shall be under oath, unless otherwise specified, and in such form as the Secretary requires. (Aug. 10, 1956, ch. 1041, 70A Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7436	34 U. S. C. 524 (9th par.).	June 4, 1920, ch. 228 (9th par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words "necessary rules and" are omitted as surplusage, and the words "to take any proper action" are substituted for the words "to do any and all things necessary or proper" for brevity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7437 of this title.

§ 7437. Violations by lessee.

(a) If a lessee fails to comply with any provision of this chapter, of his lease, or of regulations issued under section 7436 of this title that are in force on the date of his lease, the lease may be forfeited and cancelled by an appropriate proceeding in the United States district court for the district in which any part of the property is located.

(b) The lease may provide appropriate methods for the settlement of disputes and remedies for breach of specified conditions. (Aug. 10, 1956, ch. 1041, 70A Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7437	34 U. S. C. 524 (11th par., less proviso).	June 4, 1920, ch. 228 (11th par. less proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words "the district in which any part of the property is located" are substituted for the words "the district in which the property, or some part thereof, is located," for brevity.

In subsection (b) the words "for resort to" and "for" are omitted as surplusage.

§ 7438. Rifle, Colorado, Plant; possession, use, and transfer of

(a) The Secretary of the Interior shall take possession of the experimental demonstration facility near Rifle, Colorado, which was constructed and operated by the Department of the Interior on lands on or near the naval oil shale reserves under the Act of April 5, 1944, chapter 172 (58 Stat. 190), as amended.

(b) The Secretary of the Interior, subject to the approval of the President, shall by contract, lease, or otherwise encourage the use of the facility described in subsection (a) above in research, development, test, evaluation, and demonstration work. For such purposes the Secretary of the Interior may use, lease for use by institutions, organizations, or individuals, public or private, or transfer by letter to the Secretary of the Navy the facility described in subsection (a) above and may construct, install, and operate, or lease for operation additional experimental facilities on such lands. The Secretary of the Interior may, after consultation by the Secretary of the Navy with the Committees on Armed Services of the Senate and the House of Representatives, mine and remove, or authorize the mining and removal, of any oil shale or products therefrom from lands in the naval oil shale reserves that may be needed for such experimentation.

(c) Nothing herein contained shall be construed—

(1) to authorize the commercial development and operation of the naval oil shale reserves by the Government in competition with private industry; or

(2) in diminution of the responsibility of the Secretary of the Navy in providing oil shale and products therefrom for needs of national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462; Oct. 11, 1962, Pub. L. 87-796, § 1(12), 76 Stat. 906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7438	34 U. S. C. 524 (proviso of 11th par.).	June 4, 1920, ch. 228 (11th par., proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

The words "this chapter does not authorize" are substituted for the words "nothing herein contained shall be construed to permit" for brevity.

REFERENCES IN TEXT

Act April 5, 1944, chapter 172 (58 Stat. 190), referred to in subsec. (a), is classified to chapter 6 of Title 30, Mineral Lands and Mining.

AMENDMENTS

1962—Pub. L. 87-796 amended section generally by substituting provisions relating to the possession, use, and transfer of the experimental demonstration facility near Rifle, Colorado, for provisions which stated that this chapter does not authorize the development or operation of the naval oil-shale reserves.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7421, 7422 of this title.

Chapter 643.—CIVILIAN EMPLOYEES

Sec.
7472. Physical examination: employees engaged in hazardous occupations.
7473. Employment of aliens.
7476. Administration of oaths by clerks and employees.
7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation.
7478. Naval War College: employment of civilian professors; compensation.

AMENDMENTS

1966—Pub. L. 89-718, § 43, Nov. 2, 1966, 80 Stat. 1120, struck out item 7474 which read: "Wage rates: establishment."

1959—Pub. L. 86-148, § 1(2), Aug. 7, 1959, 73 Stat. 302, struck out item 7475.

1958—Pub. L. 85-861, § 1 (151), Sept. 2, 1958, 72 Stat. 1513, struck out item 7471.

§ 7471. Repealed. Pub. L. 85-861, § 36B (23), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 462, related to appointments in the professional and scientific service, and is now covered by section 1581 of this title.

§ 7472. Physical examination: employees engaged in hazardous occupations.

(a) The Secretary of the Navy may provide for physical examination by civilians of employees engaged in hazardous occupations, where the professional services of the Medical Department are not available. The Secretary may compensate these civilians for their services, on a contract or fee basis, at the rates customary in the locality.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7472	5 U. S. C. 415c; 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 2, 60 Stat. 853; Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words "except the authority to prescribe regulations" are omitted, since 5 U. S. C. 415c contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7473. Employment of aliens.

Laws prohibiting payment of compensation to a person who is not a citizen of the United States do not apply to a person whose employment by the Department of the Navy is determined by the Secretary of the Navy to be necessary to obtain for the armed forces the benefits of the special technical or scientific knowledge or experience possessed by that person and not readily obtainable from a citizen. (Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7473	5 U. S. C. 415b.	Feb. 26, 1946, ch. 36, 60 Stat. 31.

The word "Laws" is substituted for the words "Statutory provisions" for clarity. The words "armed forces" are substituted for the words "military services of the United States" for uniformity. The words "of the United States" at the end of the section are omitted as surplusage.

§ 7474. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 463, related to establishment of wage rates for employees by the Secretary of the Navy.

§ 7475. Repealed. Pub. L. 86–148, § 1(1), Aug. 7, 1959, 73 Stat. 302.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 463, restricted the increasing of forces at naval activities prior to national elections.

§ 7476. Administration of oaths by clerks and employees.

(a) Chief clerks and inspectors attached to any office of inspector of naval material, chief clerks attached to the field service of the Department of the Navy, to naval shipyards and stations, and to Marine Corps posts and stations, and such other clerks and employees attached to those activities as the Secretary of the Navy designates, may administer—

(1) oaths required by law or regulation relating to claims against, or applications to, the United States of officers and of employees of the Department; and

(2) oaths of office to officers and employees of the Department.

(b) There may be no compensation for the administration of oaths under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7476	34 U. S. C. 217b.	Apr. 25, 1935, ch. 83, 49 Stat. 162.

§ 7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation.

(a) When civilian employees of the Department of the Navy are located at duty stations outside the United States, the dependents and household effects of such personnel may be transported—

(1) from the locations outside the United States to locations designated by such personnel or their dependents; and

(2) from those designated locations to the duty stations to which the personnel are ordered.

The Secretary of the Navy may determine the civilian employees whose dependents and household effects may be transported under this section.

(b) Authority to transport household effects under this section includes authority to pack and unpack those effects.

(c) Transportation of dependents and household effects is authorized under this section either before or after orders are issued relieving the civilian concerned from the duty station outside the United States. The transportation may be by Government or commercial facilities.

(d) In place of the transportation in kind authorized for dependents, the Secretary may authorize the payment, after the travel has been completed, of an amount equal to the commercial transportation costs, including taxes if paid, of all parts of the travel for which transportation in kind was not furnished.

(e) Current appropriations available for travel and transportation may be used for expenditures under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7477	37 U. S. C. 112c.	Feb. 18, 1946, ch. 30 (3d par.), 60 Stat. 20; Oct. 12, 1949, ch. 681, § 524, 63 Stat. 836.

In subsection (a) the words "without regard to rank or grade" and "or subsequent to the discharge or release of such personnel from active service" are omitted as applicable only to members of the naval service. The act of February 18, 1946, 60 Stat. 20 applied to both civilian and naval personnel and was amended by the act of October 12, 1949, ch. 681, § 524, by deleting therefrom all

reference to naval personnel. The words "the continental limits of" and "or in Alaska" are omitted as covered by the term "outside the United States".

§ 7478. Naval War College: employment of civilian professors; compensation.

(a) The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at the Naval War College as he considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7478	34 U. S. C. 1071 (less applicability to Naval Academy); 5 U. S. C. 412a.	Aug. 2, 1946, ch. 756, § 7 (a) (less applicability to Naval Academy), 60 Stat. 854. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the words "for the proper instruction of naval personnel" and in subsection (b) the words "out of naval appropriations" are omitted as surplusage.

In subsection (c) the words "except the authority to prescribe regulations" are omitted, since 34 U. S. C. 1071 contains no authority for the Secretary to prescribe regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

Chapter 645.—PROCUREMENT OF SUPPLIES AND SERVICES

Sec.
7521. Progress payment for work done; lien based on payment.
7522. Contracts for research.
7523. Tolls and fares: payment or reimbursement.

CROSS REFERENCES

Miscellaneous procurement provisions, see section 2381 et seq. of this title.

§ 7521. Progress payment for work done; lien based on payment.

The Secretary of the Navy may make partial payments during the progress of work done under a contract made by the Department of the Navy. Partial payments may not exceed the value of the work done and may be made only under contracts providing therefor and in accordance with the contract provisions. Each such contract shall provide that, when a partial payment is made, a lien on the thing contracted for accrues to the United States on account of the payments so made. This lien is paramount to all other liens. (Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7521	34 U. S. C. 582.	Aug. 22, 1911, ch. 42, 37 Stat. 32.

The words "in his discretion" and "from time to time" are omitted as surplusage.

§ 7522. Contracts for research.

(a) The Secretary of the Navy and, by direction of the Secretary, the Chief of Naval Research and the chiefs of bureaus may, without advertising, make contracts or amendments or modifications of contracts for services and materials necessary to conduct research and to make or secure reports, tests, models, or apparatus. A contractor supplying such services or materials need not be required to furnish a bond.

(b) Section 529 of title 31 does not apply to advance, progress, or other payments made with respect to a contract under this section.

(c) This section does not authorize the use of the cost-plus-a-percentage-of-cost system of contracting. (Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7522	5 U. S. C. 475e.	Aug. 1, 1946, ch. 727, § 6, 60 Stat. 780.

In subsection (a) reference to R. S. 3718, 3719, 3720, and 3722 (34 U. S. C. 561, 562, 563, and 572) is omitted because these sections were expressly repealed by § 11 (a) of the act of February 19, 1948, ch. 65, 62 Stat. 25. The words "without advertising" are substituted for the reference to R. S. 3709 (41 U. S. C. 5) for brevity and clarity. The sentence "A contractor supplying such services or materials need not be required to furnish a bond" is substituted for the words "without performance or other bonds" for clarity, since the provision is interpreted as a discretionary authority in the Secretary to waive bond.

In subsection (c) the words "This section does not authorize" are substituted for the words "nothing in this section shall be construed to authorize".

CROSS REFERENCES

Contracts for research and development generally, see section 2352 et seq. of this title.

§ 7523. Tolls and fares: payment or reimbursement.

Naval appropriations chargeable for transportation or travel are available for the payment or reimbursement of ferry, bridge, and similar tolls and of streetcar, bus, and similar fares. (Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7523	34 U. S. C. 899a.	Aug. 2, 1946, ch. 756, § 23, 60 Stat. 856.

Chapter 647.—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
7541. Obsolete and other material: gift or sale to Boy Scouts of America.
7541a. Uniform clothing: sale to Naval Sea Cadet Corps.
7542. Excess clothing: sale for distribution to needy.
7543. Useless ordnance material: disposition of proceeds on sale.
7544. Devices and trophies: transfer to other agencies.
7545. Obsolete material and articles of historical interest: loan or gift.
7546. Loan or gift of articles to ships' sponsors and donors.
7547. Equipment for instruction in seamanship: loan to military schools.

AMENDMENTS

1965—Pub. L. 89-266, § 1(2), Oct. 19, 1965, 79 Stat. 990, added item 7541a.

CROSS REFERENCES

Management and disposal of government property generally, see section 471 et seq. of Title 40, Public Buildings, Property, and Works.

§ 7541. Obsolete and other material: gift or sale to Boy Scouts of America.

Subject to regulations under section 486 of title 40, the Secretary of the Navy may—

(1) give obsolete material not needed for naval purposes; and

(2) sell other material that may be spared at a price representing its fair value;

to the Boy Scouts of America for the sea scouts. In either case the cost of transportation and delivery shall be charged to the Boy Scouts of America. (Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7541	34 U. S. C. 546b.	Mar. 1, 1929, ch. 429, 45 Stat. 1430; Oct. 31, 1951, ch. 654, § 2 (21), 65 Stat. 707.

The word "give" is substituted for the words "dispose of without charge"; the words "naval purposes" are substituted for the words "the Navy"; and the word "sell" is substituted for the words "dispose of * * * at prices". The words "to the Navy" are omitted as surplusage. Since the corporate name of the organization is "Boy Scouts of America", that name is used to designate the transferee in lieu of words "sea scout department", and the words "for the sea scouts" are added.

CROSS REFERENCES

Coast Guard, disposal of materials to Boy Scouts, see section 641 of Title 14, Coast Guard.

§ 7541a. Uniform clothing: sale to Naval Sea Cadet Corps.

Subject to regulations under section 486 of title 40, the Secretary of the Navy, under regulations prescribed by him, may sell any item of enlisted naval uniform clothing that may be spared, at a price representing its fair value, to the Naval Sea Cadet Corps for the sea cadets and to any Federal or State maritime academy having a department of naval science for the maritime cadets and midshipmen. The cost of transportation and delivery of items sold under this section shall be charged to the Naval Sea Cadet Corps and to such Federal and State maritime academies. (Added Pub. L. 89-266, § 1(1), Oct. 19, 1965, 79 Stat. 990.)

§ 7542. Excess clothing: sale for distribution to needy.

(a) Subject to regulations under section 486 of title 40, the Secretary of the Navy, under regulations prescribed by him, may sell, at nominal prices, to recognized charitable organizations, to States and subdivisions thereof, and to municipalities nonregulation and excess clothing that may be available for distribution to the needy. The clothing may be sold only if the purchaser agrees not to resell it but to give it to the needy.

(b) A fair proportionate allotment of clothing to be sold under this section shall be set aside for distribution in each State and the District of Columbia. An allotment so set aside may not be sold for other distribution until at least 30 days after the allotment was made. (Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7542	34 U. S. C. 546d.	Dec. 23, 1932, ch. 8, 47 Stat. 751; Oct. 31, 1951, ch. 654, § 2 (22), 65 Stat. 707.

In subsection (a) the words "absolutely free" are omitted as surplusage.

In subsection (b) the words "for other distribution" are substituted for the words "distribution within any other State". The words "at least" are added for clarity.

§ 7543. Useless ordnance material: disposition of proceeds on sale.

The net proceeds of sales of useless ordnance material by the Department of the Navy shall be covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7543	50 U. S. C. 74.	Jan. 22, 1923, ch. 28, 42 Stat. 1142 (last 24 words of 5th par.).

The words "as miscellaneous receipts" are omitted as surplusage.

§ 7544. Devices and trophies: transfer to other agencies.

(a) The Secretary of the Navy may, without reimbursement, transfer to the Secretary of the Treasury devices and trophies for the promotion of the sale of war bonds or victory bonds. The Secretary of the Treasury may sell or donate the devices and trophies for the promotion of the sale of such bonds.

(b) The Secretary of the Navy may, without reimbursement, transfer to any agency of the United States devices and trophies for scientific, experimental, monumental, or display purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7544	34 U. S. C. 546i.	Aug. 7, 1946, ch. 804, § 4, 60 Stat. 898.

The words "such * * * as he may in his discretion determine" are omitted as surplusage.

§ 7545. Obsolete material and articles of historical interest: loan or gift.

(a) Subject to regulations under section 486 of title 40, the Secretary of the Navy, under regulations prescribed by him, may lend or give, without expense to the United States, captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models, other condemned or obsolete material, trophies, and flags, and

other material of historic interest not needed by the Department of the Navy, to—

(1) a State, Territory, Commonwealth, or possession of the United States, or political subdivision or municipal corporation thereof;

(2) the District of Columbia;

(3) a library;

(4) a historical society;

(5) an educational institution whose graduates or students fought in World War I or World War II;

(6) a soldiers' monument association;

(7) a State museum;

(8) a museum operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

(9) a post of the Veterans of Foreign Wars of the United States;

(10) a post of the American Legion;

(11) any other recognized war veterans' association; or

(12) a post of the Sons of Veterans Reserve.

(b) Records of the Government as defined in section 366 of title 44 may not be disposed of under this section.

(c) No loan or gift under this section may be made unless—

(1) notice of the proposal to make the loan or gift is sent to Congress;

(2) 30 calendar days of continuous session of Congress have expired after the notice was sent to Congress; and

(3) during that 30-day period Congress does not pass a concurrent resolution stating in substance that it does not favor the proposed loan or gift.

(d) If any disposition is authorized by this section and section 2572 of this title, the Secretary may make the gift or loan under either section. (Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7545	34 U. S. C. 546g; 34 U. S. C. 546h (last sentence as applicable to 34 U. S. C. 546g); 34 U. S. C. 546k (1st sentence as applicable to 34 U. S. C. 546g, and 3d sentence).	Aug. 7, 1946, ch. 804, § 2, 60 Stat. 897; Oct. 31, 1951, ch. 654, § 2 (23), 65 Stat. 707. Aug. 7, 1946, ch. 804, § 3 (last sentence as applicable to § 2), 60 Stat. 897. Aug. 7, 1946, ch. 804, § 6 (1st sentence as applicable to § 2, and 3d sentence), 60 Stat. 898.

In subsection (a) the words, "ordnance material" are substituted for the words "ordnance, guns, projectiles". Posts of the Grand Army of the Republic are omitted from the list of authorized donees because there are no surviving members of that organization. The word "Commonwealth" is inserted to reflect the present status of Puerto Rico. Specific reference to the Canal Zone is omitted as unnecessary, since the Zone is a "possession of the United States" as defined in section 101 of this title and is therefore covered by clause (1).

Subsection (d) is added to note the existence of a later act, codified in § 2572 of this title, which provides similar disposal authority, and to give effect to § 2 of the act of February 27, 1948, ch. 76, 62 Stat. 37, which is not now contained in the U. S. Code, and which saves this section despite the apparent implied repeal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7546 of this title.

§ 7546. Loan or gift of articles to ships' sponsors and donors.

The Secretary of the Navy, under regulations prescribed by him and without expense to the United States, may lend or give—

(1) to the sponsor of a vessel the name plate or any small article of negligible or sentimental value from that vessel; and

(2) to any State, group, or organization named in section 7545 of this title any article, material, or equipment, including silver service, given by it. (Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7546	34 U. S. C. 546h (less applicability to 34 U. S. C. 546g).	Aug. 7, 1946, ch. 804, § 3 (less applicability to § 2), 60 Stat. 898.

The words "the sponsor" are substituted for the words "any individual who sponsored" for brevity. The word "ship" and the word "person" are omitted as surplusage. The words "the loans or gifts described in this section shall be made" are omitted as unnecessary, and the words "under regulations prescribed by him" are substituted for the words "subject to such rules and regulations as may be prescribed by the Secretary of the Navy" for brevity.

§ 7547. Equipment for instruction in seamanship: loan to military schools.

(a) Upon the application of the governor of any State having a seacoast or bordering on any of the Great Lakes, the President may direct the Secretary of the Navy to lend to one well-established military school in that State that desires to instruct its cadets in elementary seamanship one fully equipped cutter for every 25 cadets attending the school, and such other equipment adequate for instruction in elementary seamanship as may be spared.

(b) To be eligible for a loan under this section a school must—

(1) have adequate facilities for cutter drill;

(2) have at least 75 cadets—

(A) at least 15 years of age;

(B) in uniform;

(C) receiving military instruction; and

(D) quartered in barracks under military regulations; and

(3) have the capacity to quarter and educate 150 cadets at one time.

(c) Whenever a loan is made under this section, the Secretary shall require a bond in double the value of the property for its care and return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7547	34 U. S. C. 1128.	Mar. 3, 1901, ch. 863, 31 Stat. 1440; June 29, 1906, ch. 3612, 34 Stat. 620; June 24, 1910, ch. 378, 36 Stat. 613 (1st par.).

In subsection (a) the word "lend" is substituted for the word "furnish" because of the provision for return of the equipment. The words "man-of-war's" are omitted as obsolete. The words "attending the school" are substituted for the words "in actual attendance".

In subsection (b) the words "To be eligible for a loan under this section" are added, and the subsection is phrased as a condition.

Chapter 649.—QUARTERS, UTILITIES, AND RELATED SERVICES

Sec.
7571. Quarters or other accommodations: to whom furnished.
7572. Quarters: accommodations in place of for members on sea duty.
7573. Quarters: temporary; transient members.
7574. Quarters: limitations on size.
7575. Quarters: exemptions from cost limitations.
7576. Quarters: extension telephones.
7577. Quarters: Nurse Corps Officers; assignment in hospitals.
7579. Officers' messes and quarters: limitations on employment of enlisted members.
7580. Heat and light for Young Men's Christian Association buildings.
7581. Marine Corps post laundries: disposition of receipts.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (155), Sept. 2, 1958, 72 Stat. 1513, struck out item 7578.

§ 7571. Quarters or other accommodations: to whom furnished.

(a) Under such regulations as the Secretary of the Navy prescribes, public quarters including heat, light, water, and refrigeration may be furnished for personnel in the following categories who are on active duty:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the Environmental Science Services Administration serving with the Navy.

If public quarters are not available for any such member, the Secretary may provide lodging accommodations for him. Lodging accommodations so provided may not be occupied by the member's dependents.

(b) The Secretary may determine in any case whether public quarters are available within the meaning of any provision of law relating to the assignment of or commutation for public quarters.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a), except the authority to prescribe regulations, to any person in the Department of the Navy, with or without authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 467; Nov. 2, 1966, Pub. L. 89-718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7571 (a)	34 U. S. C. 911a (less applicability to members on sea duty); 5 U. S. C. 421g (b).	Aug. 2, 1946, ch. 756, § 15 (less applicability to members on sea duty), 60 Stat. 854.
7571 (b)	34 U. S. C. 911.	Aug. 2, 1946, ch. 756, § 40 (b), 60 Stat. 858.
7571 (c)	5 U. S. C. 412a.	July 1, 1918, ch. 114, 40 Stat. 718 (4th par.). Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the words "including members of the Nurse Corps" are omitted as surplusage, and the definition of "naval personnel" in 5 U. S. C. 421g, which is applicable to this subsection, is executed.

In subsection (b) the words "in any case whether public quarters are available" are substituted for the words "where and when there are no public quarters". The words "for persons in the Navy and Marine Corps, or serving therewith" are omitted, since these classes of personnel for whom the Secretary makes the determination of availability are the same as those who may be furnished quarters under subsection (a).

AMENDMENTS

1966—Subsec. (a)(3). Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 7572. Quarters: accommodations in place of for members on sea duty.

(a) If public quarters are not available, the Secretary of the Navy may provide lodging accommodations for any—

(1) member of the naval service;

(2) member of the Coast Guard when it is operating as a service in the Navy; or

(3) member of the Environmental Science Services Administration serving with the Navy;

on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable. Lodging accommodations so provided may not be occupied by the member's dependents.

(b) Under such regulations as the Secretary prescribes, any officer of the naval service on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable, and who is not entitled to basic allowance for quarters, may be reimbursed for expenses incurred in obtaining quarters, in an amount not more than the basic allowance for quarters of an officer of his grade, if it is impracticable to furnish accommodations under subsection (a).

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a) to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat.; Nov. 2, 1966, Pub. L. 89-718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7572 (a)	34 U. S. C. 911a (as applicable to members on sea duty); 5 U. S. C. 421g (b).	Aug. 2, 1946, ch. 756, § 15 (as applicable to members on sea duty), 60 Stat. 854.
7572 (b)	34 U. S. C. 915.	Aug. 2, 1946, ch. 756, § 40 (b), 60 Stat. 858.
7572 (c)	5 U. S. C. 412a.	June 19, 1942, ch. 419, § 1, 56 Stat. 371. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the word "public" is substituted for the words "possessed by the United States" and the subsection is phrased in terms of availability, as it is so interpreted. The itemization of personnel categories for whom quarters may be furnished is inserted to execute the definition of "naval personnel", made applicable to this section by 5 U. S. C. 421g. The requirement in that definition that personnel be on active duty is omitted since this subsection applies only to personnel on sea duty.

In subsection (b) the words "and who is not entitled to basic allowance for quarters" are inserted to make it clear that the entitlement under this subsection, as interpreted, is not in addition to basic allowance for quarters. The words "in obtaining quarters" are inserted for clarity. The words "basic allowance for quarters or an officer of his grade" are substituted for the words "his quarters allowance" because, under the Career Compensation Act of 1949, members without dependents are not entitled to a quarters allowance when on sea duty, and the limitation must be based upon the allowance of an officer of the same grade who is entitled thereto.

In subsection (c) the words "except the authority to prescribe regulations" are omitted, since subsection (a) does not contain such authority.

AMENDMENTS

1966—Subsec. (a)(3). Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

CROSS REFERENCES

Similar provisions with respect to the Coast Guard, see section 475 of Title 14, Coast Guard.

§ 7573. Quarters: temporary; transient members.

Temporary quarters may be furnished on a rental basis to transient members of the naval service with their dependents, for periods not exceeding 60 days, without loss of entitlement to basic allowance for quarters. (Aug. 10, 1956, ch. 1041, 70A Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7573	None.	April 4, 1944, ch. 165 (3d proviso on p. 190), 58 Stat. 190.

The words "That effective December 13, 1943" are omitted as executed. The word "quarters" is substituted for the word "housing" for uniformity. The words "basic allowance for quarters" are substituted for the words "rental allowance or money allowance for quarters" to conform to the terminology of § 302 of the Career Compensation Act of 1949 (37 U. S. C. 252).

§ 7574. Quarters: limitations on size.

(a) In the construction of family quarters for members of the naval service, the following are the maximum limitations on net floor area for each unit:

(1) For flag officers in the Navy and general officers in the Marine Corps—2,100 square feet.

(2) For captains in the Navy and colonels in the Marine Corps—1,670 square feet.

(3) For commanders and lieutenant commanders in the Navy and lieutenant colonels and majors in the Marine Corps—1,400 square feet.

(4) For officers of the naval service below the grade of lieutenant commander or major—1,250 square feet.

(5) For enlisted members of the naval service—1,080 square feet.

In this section "net floor area" means all floor space inside the exterior walls, excluding basement, service space instead of basement, attic, garage, and porches.

(b) The maximum limitations prescribed by subsection (a) are increased 10 percent for quarters of the commanding officer of any station, air base, or other installation, based on the grade authorized for that position.

(c) The maximum limitations for family quarters for civilians are the same as those for members of the naval service of comparable responsibility, grade, and pay, as determined by the Secretary of the Navy.

(d) If the Secretary of Defense, or his designee, determines on the basis of a survey of the family housing needs at any installation where the construction of family housing is authorized, that the construction of four-bedroom units for enlisted men is required, such units may be constructed with a net floor area of one thousand two hundred and fifty square feet or less.

(e) If the Secretary of Defense, or his designee, determines, on the basis of a survey of the family housing needs at an installation where the construction of family housing is authorized, that the construction of four-bedroom units for officers holding grades below lieutenant commander or equivalent is required, such units may be constructed with a net floor area of one thousand four hundred square feet or less.

(f) The maximum limitations prescribed by subsections (a), (d), and (e) may be increased up to 15 per centum if the Secretary of Defense, or his designee, determines that such increase is in the best interest of the Government to permit award of a turnkey construction contract for family housing to the contractor offering the most satisfactory proposal. (Aug. 10, 1956, ch. 1041, 70A Stat. 468; Aug. 30, 1957, Pub. L. 85-241, title IV, § 404(b), 71 Stat. 556; Aug. 10, 1959, Pub. L. 86-149, title IV, § 410 (b), 73 Stat. 321; July 27, 1962, Pub. L. 87-554, title V, § 504(b), (d), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88-174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91-142, title V, § 510(a), 83 Stat. 312.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7574 (a)	34 U. S. C. 911b, 911c.	June 16, 1948, ch. 479, § 3 (less last par.), 62 Stat. 462.
7574 (b)	None.	June 16, 1948, ch. 479, § 3 (1st sentence of last par.), 62 Stat. 462.
7574 (c)	34 U. S. C. 911d.	June 16, 1948, ch. 479, § 3 (last par., less 1st sentence), 62 Stat. 462.

In subsection (a) the introductory clause is substituted for the introductory clause in 34 U. S. C. 911b. The reference to the effective date of the source law, June 16, 1948, and the words "whether heretofore, herein, or hereafter authorized" are omitted as surplusage. The words "members of the naval service" are substituted for the words "personnel of the Navy" to expressly include members of the Marine Corps. The construction of Marine Corps family quarters is undertaken out of the same appropriations as Navy quarters, and certain Marine Corps quarters were authorized by the act of June 16, 1948 (supra). It is clear, from the administration of this provision, that it is considered applicable to the Marine Corps. The Marine Corps grades corresponding to the named Navy grades are therefore inserted throughout the section. In clause (4) the words "officers of the naval service below the grade of lieutenant commander or major" are substituted for the words "warrant officers, commissioned warrant officers, and commissioned officers through the rank of lieutenant". The provisos are omitted as executed.

In subsection (b) (1) the word "continental" is omitted, since "United States" is defined in this title to mean the States and the District of Columbia. In subsection (b) (2) the words "based on the grade authorized for that position" are substituted for the words "over and above that to which his rank would entitle him" for clarity.

In subsection (c) the words "are the same as those" are substituted for the words "shall be limited to conform to the allowances", and the words "responsibility, grade, and pay" are substituted for the words "status according to responsibility, rating, and pay". The words "to be appropriate" are omitted as surplusage.

AMENDMENTS

1969—Subsec. (f). Pub. L. 91–142 added subsec. (f).

1963—Subsec. (b). Pub. L. 88–174 eliminated provisions which provided for a 10-percent increase in the prescribed maximum limitations for quarters outside the United States and authorized an increase for quarters of the commanding officer of an airbase.

1962—Subsec. (d). Pub. L. 87–554, § 504(b), removed the limitation on four-bedroom units for enlisted men to 15 percent of family homes constructed from appropriated funds for enlisted men.

Subsec. (e). Pub. L. 87–554, § 504(d), removed the limitation on four-bedroom units for officers holding grades below lieutenant commander to 10 percent of family homes constructed from appropriated funds for officers.

1959—Subsec. (e). Pub. L. 86–149 added subsec. (e).

1957—Subsec. (d). Pub. L. 85–241 added subsec. (d).

CONSTRUCTION COST LIMITATIONS

Construction cost limitations, see notes under section 1594h—1 of Title 42, The Public Health and Welfare.

§ 7575. Quarters: exemptions from cost limitations.

A limitation upon the cost of quarters built for members of the naval service does not apply to expenditures for work and equipment outside those quarters, including expenditures for—

(1) the furnishing of electricity, gas, water, and sewage disposal;

(2) roads and walks; or

(3) grading and drainage.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7575	34 U. S. C. 558.	Oct. 6, 1942, ch. 580, 56 Stat. 769.

The words "members of the naval service" are substituted for the words "commissioned officers, commissioned warrant or warrant officers, and enlisted men of the Navy". The provision as enacted covers Army and Navy personnel and indicates no intent to omit any category of military personnel.

§ 7576. Quarters: extension telephones.

(a) Under regulations prescribed by the Secretary of the Navy appropriated funds may be used to pay the cost of installation and use, other than for personal long distance calls, of extension telephones connecting public quarters occupied by personnel in the following categories with the switchboards of their official stations:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the Environmental Science Services Administration serving with the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 469; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7576	34 U. S. C. 915a; 5 U. S. C. 412a; 5 U. S. C. 421g (d).	Aug. 2, 1946, ch. 756, § 4, 60 Stat. 853. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858. Aug. 2, 1946, ch. 756, § 40 (d), 60 Stat. 858.

In subsection (a) the words "appropriated funds" are substituted for the words "naval appropriations", and the definition of "naval personnel" in 5 U. S. C. 421g, which is applicable to this section, is executed. In executing this definition the words "while on active duty" are omitted as unnecessary, since a member not on active duty would not have an official station within the meaning of this section.

AMENDMENTS

1966—Subsec. (a)(3). Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 7577. Quarters: Nurse Corps officers; assignment in hospitals.

Under such regulations as the Secretary of the Navy prescribes, officers in the Nurse Corps may be assigned quarters in naval hospitals. (Aug. 10, 1956, ch. 1041, 70A Stat. 469.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7577	34 U. S. C. 43h (a) (2d proviso, less 1st 21 words).	Apr. 16, 1947, ch. 38, § 208 (a) (2d proviso, less 1st 25 words), 61 Stat. 50.

§ 7578. Repealed. Pub. L. 85-861, § 36B (24), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 469, related to limitations on furnishing of tableware and kitchen utensils.

§ 7579. Officers' messes and quarters: limitations on employment of enlisted members.

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the naval service and enlisted members of the Coast Guard when it is operating as a service in the Navy may be assigned to duty in a service capacity in officers' messes and public quarters where the Secretary finds that this use of the members is desirable for military reasons.

(b) Notwithstanding any other provision of law, retired enlisted members of the naval service and members of the Fleet Reserve and the Fleet Marine Corps Reserve may, when not on active duty, be voluntarily employed in any service capacity in officers' messes and public quarters without additional expense to the United States.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations. (Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7579	34 U. S. C. 915b (b); 5 U. S. C. 412a; 5 U. S. C. 421g (b).	Aug. 2, 1946, ch. 756, § 16 (b), 60 Stat. 855. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858. Aug. 2, 1946, ch. 756, § 40 (b), 60 Stat. 858.

In subsection (a) the words "enlisted members of the naval service and enlisted members of the Coast Guard when it is operating as a service in the Navy" are substituted for the words "enlisted naval personnel" to execute the definition of "naval personnel" made applicable to this section by 5 U. S. C. 421g. The definition in that section also covers personnel of the Coast and Geodetic Survey, but since that service has no enlisted members reference to it is unnecessary. In executing this definition the words "while on active duty" are omitted as unnecessary, since members not on active duty would not be subject to assignment by the Secretary of the Navy.

In subsection (b) the word "transferred" before the words "member of the Fleet Reserve" is omitted as unnecessary, since the categories of such members other than "transferred" have not been administratively used, and authority for them is omitted in this title. The words "and the Fleet Marine Corps Reserve" are added, as the words "Fleet Reserve" are used in a generic sense to cover such members. The words "when not on active duty" are added. When the personnel concerned are on active duty, they are treated in the same manner as others on active duty.

§ 7580. Heat and light for Young Men's Christian Association buildings.

The Secretary of the Navy may furnish, without charge, heat and light to any building of the Young Men's Christian Association located at a naval activity. (Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7580	34 U. S. C. 527.	Mar. 4, 1911, ch. 239, 36 Stat. 1274 (2d proviso).

The words "naval activity" are substituted for the words "navy yards and stations" to use present terminology and provide the same coverage.

§ 7581. Marine Corps post laundries: disposition of receipts.

(a) Money received for laundry work performed by Marine Corps post laundries shall be used to pay the cost of maintenance and operation of those laundries. Any amount remaining at the end of the fiscal year after the cost has been so paid shall be deposited in the Treasury to the credit of the appropriation from which the cost of operating the laundries is paid.

(b) The receipts and expenditures of Marine Corps post laundries shall be accounted for as public funds. (Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7581	34 U. S. C. 724.	July 11, 1919, ch. 9, 41 Stat. 155 (proviso).

In subsection (a) the words "Marine Corps" are inserted before the words "post laundries" for clarity. The words "maintenance and" are added to the first sentence and the words "maintenance and operation" are omitted from the second sentence.

Chapter 651.—SHIPS' STORES AND COMMISSARY STORES

Sec.
7601. Sales: members of naval service and Coast Guard; widows; civilian employees and other persons.
7602. Sales: members of Army and Air Force; prices.
7603. Sales: veterans under treatment.
7604. Profits: ships' stores.
7605. Acceptance of Government checks outside the United States.

§ 7601. Sales: members of naval service and Coast Guard; widows; civilian employees and other persons.

(a) Such stores as the Secretary of the Navy designates may be procured and sold to members of the naval service, members of the Coast Guard, and widows of such members.

(b) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of naval activities.

However, sales to civilian officers and employees inside the United States may be made only to those residing within military installations. (Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7601 (a)	34 U. S. C. 533.	Mar. 3, 1909, ch. 255, 35 Stat. 768 (1st proviso); Apr. 14, 1937, ch. 78, 50 Stat. 63; June 10, 1939, ch. 196, 53 Stat. 814; Jan. 23, 1942, ch 15, 56 Stat. 13; Apr. 9, 1943, ch. 39, 57 Stat. 60; Aug. 8, 1953, ch. 390, § 2, 67 Stat. 499.
7601 (b)	34 U. S. C. 533a.	Aug. 8, 1953, ch. 390, § 1 (as applicable to Secretary of the Navy), 67 Stat. 499.

In subsection (a) the words "members of the naval service" are substituted for the words "officers and enlisted men of the Navy, Marine Corps".

In subsection (b) the word "outside" is substituted for the words "beyond the continental limitations". The words "or in Alaska" are omitted, since, in section 101 (1) of this title, the words, "United States" are defined to include only the States and the District of Columbia. The word "continental", after the words "within the", is omitted for the same reason. The last sentence is substituted for 34 U. S. C. 533a (proviso).

§ 7602. Sales: members of Army and Air Force; prices.

The Navy and the Marine Corps shall sell subsistence supplies to any member of the Army or the Air Force at prices charged members of the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 471.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7602	34 U. S. C. 538.	Aug. 29, 1916, ch. 418, § 1, 39 Stat. 630 (less words before semicolon of 3d proviso under "Subsistence of the Army").

This section is expanded to cover sales to members of the Air Force, as authorized by § 305 (a) of the National Security Act of 1947, as amended (5 U. S. C. 171*l*).

§ 7603. Sales: veterans under treatment.

A person who has been separated honorably or under honorable conditions from the Army, the Navy, the Air Force, or the Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Veterans' Administration may buy subsistence supplies and other supplies, except articles of uniform, from the Navy and the Marine Corps at prices charged members of the naval service. (Aug. 10, 1956, ch. 1041, 70A Stat. 471.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7603	34 U. S. C. 536.	June 5, 1920, ch. 240 (par. under "Purchase of Army Stores by Discharged Receiving Treatment from the Public Health Service"), 41 Stat. 976.

The word "separated" is substituted for the word "discharged". The words "under honorable conditions" are added since this provision is interpreted as benefiting personnel discharged under honorable conditions. The words "Air Force" are supplied under the authority of § 305 (a) of the National Security Act of 1947, as amended (5 U. S. C. 171*l*). The words "Veterans' Administration" are added under the authority of the act of August 9, 1921, ch. 57, 42 Stat. 148, which transferred care of veterans to the Veterans' Bureau, the act of June 7, 1924, ch. 320, 43 Stat 610, which transferred all hospitals under the jurisdiction of the Public Health Service to the Veterans' Bureau, and the act of July 3, 1930, ch. 863, § 1, 46 Stat. 1016, under which the President by Executive Order No. 5398, July 21, 1930, transferred the Veterans' Bureau to the Veterans' Administration. The words "while undergoing such care and treatment" are omitted as surplusage.

§ 7604. Profit: ships' stores.

(a) A profit of not more than 15 percent may be charged on sales from ships' stores. Under regulations prescribed by the Secretary of the Navy, the profit shall be used for the purposes stated in subsection (b) and shall be accounted for to the office or agency in the Department of the Navy designated by the Secretary.

(b) On vessels of the Navy and at naval activities outside the United States, other than an activity designated by the Secretary as a permanent shore establishment, ships' stores profits shall be used equitably for the welfare of officers and enlisted members of the naval service. At other naval activities, the profits shall be used for the amusement, comfort, and contentment of enlisted members only. (Aug. 10, 1956, ch. 1041, 70A Stat. 471; Nov. 2, 1966, Pub. L. 89–718, § 44, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7604	34 U. S. C. 542.	June 24, 1910, ch. 378, 36 Stat. 619 (last proviso); July 1, 1944, ch. 359, 58 Stat. 671.

The words "the continental limits of" are omitted, since "United States" is defined in this title as meaning the States and the District of Columbia.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "office or agency in the Department of the Navy designated by the Secretary" for "Bureau of Supplies and Accounts".

§ 7605. Acceptance of Government checks outside the United States.

Notwithstanding sections 521 and 543 of title 31, the Secretary of the Navy may authorize the officer in charge of any commissary store or ship's store ashore located outside the United States to—

(1) accept any Government check tendered by a retired member of the Navy or the Marine Corps, a member of the Naval Reserve or the Marine Corps Reserve, or a member of the Fleet Reserve or the Fleet Marine Corps Reserve, if the member is the payee of the check and the check is tendered in payment of amounts due from the member to the store; and

(2) refund in cash any difference between the amount due and the amount of the tendered check.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7605	34 U. S. C. 552.	July 15, 1939, ch. 285, 53 Stat. 1043.

Since the authority of this section to refund any cash balance extends only to the payee of a check, the section is written to authorize only the payee to cash it. The Fleet Reserve and the Fleet Marine Corps Reserve were parts of the Naval Reserve and the Marine Corps Reserve, respectively, when the source statute was enacted but were removed therefrom by the Armed Forces Reserve Act of 1952. The words "or a member of the Fleet Reserve or the Fleet Marine Corps Reserve" are inserted in clause (1) to give this section the same applicability as the source.

Chapter 653.—CLAIMS

Sec.
7621. Definitions.
7622. Admiralty claims against the United States.
7623. Admiralty claims by the United States.

AMENDMENTS

1962—Pub. L. 87-769, § 1(2)(B), Oct. 9, 1962, 76 Stat. 768, eliminated item 7625.

1960—Pub. L. 86-533, § 1(10)(B), June 29, 1960, 74 Stat. 247, eliminated item 7624.

CROSS REFERENCES

Military claims generally, see section 2731 et seq. of this title.

§ 7621. Definitions.

(a) In this chapter "vessel in the naval service" means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(b) In this chapter "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance. (Aug. 10, 1956, ch. 1041, 70A Stat. 472.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7621	46 U. S. C. 793.	July 3, 1944, ch. 399, § 3, 58 Stat. 724.

In subsection (a) the words "vessel in the naval service" are substituted for the words "vessels of the Navy or in the naval service". The defined term is used throughout the chapter, and by definition includes vessels of the Navy. The words "when the Coast Guard is operating as a service in the Navy" are substituted for the words "the Coast Guard when operating as a part of the Navy" to conform to the terminology of 14 U. S. C. 3.

Subsection (b) is inserted for clarity, and is based on the source laws for this revised chapter.

§ 7622. Admiralty claims against the United States.

(a) The Secretary of the Navy may settle, or compromise, and pay in an amount not more than $1,000,000, a claim against the United States for—

(1) damage caused by a vessel in the naval service; or

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel in the naval service.

(b) If a claim under this section is settled or compromised for more than $1,000,000, the Secretary shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $10,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the claimant, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law. (Aug. 10, 1956, ch. 1041, 70A Stat. 472; July 7, 1965, Pub. L. 89-67, 79 Stat. 212.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7622	46 U. S. C. 797; 46 U. S. C. 799.	July 3, 1944, ch. 399, § 7, 58 Stat. 726. July 3, 1944, ch. 399, § 9; added Aug. 2, 1946, ch. 739, 60 Stat. 803.

In subsection (a) the words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in § 7621 (b) of this title. The words "vessel in the naval service" are substituted for the words "vessels of the Navy or in the naval service", in view of the definition in § 7621 (a) of this title. The words "pay in an amount not more than $1,000,000, a claim" are substituted for the words "pay the amount of any claim so determined, compromised, or settled" and for the words "the payment of any claim on which a net amount exceeding $1,000,000 is determined to be due from the United States, or which is compromised or settled at a net amount exceeding $1,000,000 payable by the United States, shall not be authorized by this section".

In subsection (c) the words "In any case where the amount to be paid is not more than" are substituted for the words "When the net amount paid in settlement does not exceed" for clarity, since the delegation necessarily precedes payment. The words "the Secretary may delegate his authority" are substituted for the words "the authority of the Secretary of the Navy * * * may be exercised by" for clarity.

In subsection (d) the words "but not until then", "for all purposes", and "to the contrary" are omitted as surplusage.

The first proviso in 46 U. S. C. 797, stating that this section is supplementary to, and not in lieu of, other laws authorizing the settlement of claims, is omitted as unnecessary, since the other applicable claims laws are restated in this title. The second proviso, forbidding consideration of claims for more than $3,000 if they accrued before Sept. 8, 1939, is omitted as obsolete. It was designed to avoid reviving stale claims upon enactment of the source law on July 3, 1944. However, as a matter of practice, no claims are settled under this authority which are more than two years old, in line with the two-year statute of limitations contained in the Suits in Admiralty Act and the Public Vessels Act. This limitation has been officially publicized in the Federal Register for May 22, 1947, p. 3296, and in 32 CFR 752. The third proviso in 46 U. S. C. 797 is omitted as unnecessary, since the appropriation named therein no longer exists, and the payments are now made from appropriations for the Department of Defense.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-67 substituted "$10,000" for "$1,000."

CROSS REFERENCES

Suits in admiralty—

Against United States for damages caused by or for towage or salvage services, see section 781 et seq. of Title 46, Shipping.

By or against vessels or cargoes of United States, see section 741 et seq. of Title 46, Shipping.

§ 7623. Admiralty claims by the United States.

(a) The Secretary of the Navy may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Navy or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the net amount to be received by the United States is not more than $1,000,000.

(b) In exchange for payment of an amount found to be due the United States under this section, the Secretary may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $10,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the Secretary, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(e) This section does not apply to any claim while there is pending as to that claim a suit filed by or against the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 472; July 7, 1965, Pub. L. 89-67, 79 Stat. 212.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7623	34 U. S. C. 600a; 34 U. S. C. 600d; 34 U. S. C. 600c.	Dec. 5, 1945, ch. 555, § 1, 59 Stat. 596. Dec. 5, 1945, ch. 555, § 4; added Aug. 2, 1946, ch. 742, 60 Stat. 806. Dec. 5, 1945, ch. 555, § 3 59 Stat. 596.

In subsection (a) the words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 7621 (b) of this title. The words "of the United States" (following the word "property"), "by contract or otherwise", and "thereto" are omitted as surplusage. The words "of a kind that is within the admiralty jurisdiction of" are substituted for the words "cognizable in admiralty in". The words "receive payment of a claim * * * if the net amount to be received by the United States is not more than $1,000,000" are substituted for the words "receive in payment of any such claim the amount due the United States pursuant to determination, compromise, or settlement as herein authorized * * * *Provided, further,* That no settlement or compromise where there is involved a payment in the net amount of over $1,000,000 shall be authorized by this Act".

In subsection (b) the words "and to deliver" are omitted as covered by the word "execute". The words "Amounts received under this section" are substituted for the words "All such payments" for clarity and uniformity. The words "of the United States as miscellaneous receipts" are omitted as surplusage.

In subsection (c) the words "In any case where the amount to be received by the United States is not more than" are substituted for the words "Where the net amount received in settlement does not exceed" for clarity, since the delegation of authority necessarily precedes receipt of payment. The words "the Secretary may delegate his authority" are substituted for the words "the authority of the Secretary of the Navy * * * may be exercised" for clarity.

In subsection (d) the words "but not until then", "for all purposes", and "to the contrary" are omitted as surplusage.

Subsection (e) is worded to insure that the effect of a suit pending at any time is preserved and that the provision is not interpreted to apply only to suits that are pending on the date of enactment of this title.

The first proviso of 34 U. S. C. 600a, stating that this section is supplementary to, and not in lieu of, other laws authorizing the settlement of claims, is omitted as unnecessary, since the other applicable claims laws are restated in this title.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-67 substituted "$10,000" for "$1,000."

CROSS REFERENCES

Suits in admiralty—

Against United States for damages caused by or for towage or salvage services, see section 781 et seq. of Title 46, Shipping.

By or against vessels or cargoes of United States, see section 741 et seq. of Title 46, Shipping.

§ 7624. Repealed. Pub. L. 86-533, §1(10)(A), June 29, 1960, 74 Stat. 247.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 473, related to reports to the Congress with respect to amounts paid or received under sections 7622 and 7623 of this title.

§ 7625. Repealed. Pub. L. 87-769, § 1(2)(A), Oct. 9, 1962, 76 Stat. 768.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 473, related to settlement of claims for damage to or loss of privately owned property, and is now covered by section 2736 of this title.

Chapter 655.—PRIZE

Sec.
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7678. Interfering with delivery, custody, or sale of prize property.
7679. Powers of district court over prize property notwithstanding appeal.
7680. Appeals and amendments in prize causes.
7681. Reciprocal privileges to cobelligerent.

§ 7651. Scope of chapter.

(a) This chapter applies to all captures of vessels as prize during war by authority of the United States

or adopted and ratified by the President. However, this chapter does not affect the right of the Army or the Air Force, while engaged in hostilities, to capture wherever found and without prize procedure—

(1) enemy property; or

(2) neutral property used or transported in violation of the obligations of neutrals under international law.

(b) As used in this chapter—

(1) "vessel" includes aircraft; and

(2) "master" includes the pilot or other person in command of an aircraft.

(c) Property seized or taken upon the inland waters of the United States by its naval forces is not maritime prize. All such property shall be delivered promptly to the proper officers of the courts.

(d) Nothing in this chapter may be construed as contravening any treaty of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7651 (a)	34 U. S. C. 1131 (less 1st proviso); 34 U. S. C. 1159 (as applicable to capture).	R. S. 4613 (less 1st proviso); June 24, 1941, ch. 232, 55 Stat. 261. Aug. 18, 1942, ch. 553, § 1 (as applicable to capture), 56 Stat. 746; July 1, 1944, ch. 370, § 1, 58 Stat. 678; Nov. 14, 1945, ch. 472, § 1, 59 Stat. 581.
7651 (b)	34 U. S. C. 1131 (1st proviso); 34 U. S. C. 1132.	R. S. 4613 (1st proviso); June 24, 1941, ch. 232, 55 Stat. 261. R. S. 4614; June 24, 1941, ch. 232, 55 Stat. 261.
7651 (c)	50 U. S. C. 214.	R. S. 5310.
7651 (d)	34 U. S. C. 1158 (last sentence).	R. S. 4652 (last sentence).

In subsection (a) the words "including aircraft" are omitted as covered by subsection (b). The section is written to make the words "during war" applicable to the entire chapter. These words appear in 34 U. S. C. 1159, but not in 34 U. S. C. 1131. Prize is historically and uniformly treated as a war-time matter, so no substantive change results from the extension. The words "this chapter does not affect" are substituted for the words "nothing herein contained shall be construed as affecting, or in any way impairing". The words "Air Force" are added under authority of § 305 (a) of the National Security Act of 1947, as amended (5 U. S. C. 171*l*), to provide the same applicability as formerly provided by the word "Army". The word "legal" is omitted as surplusage.

In subsection (b) the definition of the term "ship" is omitted as covered by the term "vessel". All of 34 U. S. C. 1132 except that part which includes "aircraft" within the term "vessels" is omitted as unnecessary since the defined term "vessels of the Navy" does not appear in the provisions to which the definition is made applicable. The last sentence of 34 U. S. C. 1158 applies only to Title LIV (Prize) of the Revised Statutes. In subsection (d) it is broadened to cover the entire body of statutory prize law. Additions to the prize law made by the act of August 18, 1942, ch. 553, 56 Stat. 746, as amended, operated only to extend the jurisdiction of courts of the United States to certain cases in which the prizes are not brought into the territorial waters of the United States. Relations of this country with other countries are not affected by the 1942 act except when jurisdiction is exercised by American courts over prizes brought into cobelligerent ports. As that act provides that the consent of the cobelligerent is necessary to the exercise of such jurisdiction, the rule against contravention of treaties is properly applied to it.

§ 7652. Jurisdiction.

(a) The United States district courts have original jurisdiction, exclusive of the courts of the States, of each prize and each proceeding for the condemnation of property taken as prize, if the prize is—

(1) brought into the United States, or the Territories, Commonwealths, or possessions;

(2) brought into the territorial waters of a cobelligerent;

(3) brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States; or

(4) appropriated for the use of the United States.

(b) The United States district courts, exclusive of the courts of the States, also have original jurisdiction of a prize cause in which the prize property—

(1) is lost or entirely destroyed; or

(2) cannot be brought in for adjudication because of its condition.

(c) The jurisdiction conferred by this section of prizes brought into the territorial waters of a cobelligerent may not be exercised, nor may prizes be appropriated for the use of the United States within those territorial waters, unless the government having jurisdiction over those waters consents to the exercise of the jurisdiction or to the appropriation. (Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7652 (a)	34 U. S. C. 1159 (less applicability to capture); 34 U. S. C. 1164 (2d sentence).	Aug. 18, 1942, ch. 553, § 1 (less applicability to capture), 56 Stat. 746; July 1, 1944, ch. 370, § 1, 58 Stat. 678; Nov. 14, 1945, ch. 472, § 1, 59 Stat. 581. Aug. 18, 1942, ch. 553, § 6 (less 1st sentence), 56 Stat. 747.
7652 (c)	34 U. S. C. 1166; 34 U. S. C. 1161.	Aug. 18, 1942, ch. 553, § 8, 56 Stat. 747. Aug. 18, 1942, ch. 553, § 3, 56 Stat. 746.

Subsection (a) reflects 28 U. S. C. 1333 by restating the basic prize jurisdiction of that section over prizes brought into the United States, and by providing that the extension of prize jurisdiction conferred by 34 U. S. C. 1159 on the United States district courts is exclusive of the courts of the States. 34 U. S. C. 1166 and the second sentence of 34 U. S. C. 1164 are executed in the single jurisdictional statement of this section and the consolidation of the act of August 18, 1942, ch. 553, 56 Stat. 746 (34 U. S. C. 1159—1166) with the earlier prize provisions. The words "during war" in 34 U. S. C. 1159 are omitted as covered in § 7651 of this title. In clause (1) the words "or the Territories, Commonwealths, or possessions" are added, since "United States" in this title is geographically limited to the 48 States and the District of Columbia, whereas the term here is intended to include all places within the jurisdiction of the district courts.

In clause (4) the words "taken or" preceding the words "appropriated for the use of the United States" are omitted as surplusage and in order to avoid confusion between the two meanings of the word "taken" in prize law. In both the Revised Statutes and the 1942 act the phrase "taken or appropriated" means no more than "appropriated" alone, whereas "taken", in the phrase "taken as prize" means "captured".

Subsection (b) is included to make the statement of jurisdiction complete. It is derived by implication from the first sentence of R. S. 4625 (34 U. S. C. 1141) which is the source of subsection (c) of § 7653 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7681 of this title.

§ 7653. Court in which proceedings brought.

(a) If a prize is brought into a port of the United States, or the Territories, Commonwealths, or possessions, proceedings for the adjudication of the prize cause shall be brought in the district in which the port is located.

(b) If a prize is brought into the territorial waters of a cobelligerent, or is brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States, or is appropriated for the use of the United States before proceedings are started, the venue of the proceedings for adjudication of the cause shall be in the judicial district selected by the Attorney General, or his designee, for the convenience of the United States.

(c) If the prize property is lost or entirely destroyed or if, because of its condition, no part of it has been or can be sent in for adjudication, proceedings for adjudication of the cause may be brought in any district designated by the Secretary of the Navy. In such cases the proceeds of anything sold shall be deposited with the Treasurer of the United States or public depositary in or nearest the district designated by the Secretary, subject to the orders of the court for that district. (Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7653 (b)	34 U. S. C. 1160.	Aug. 18, 1942, ch. 553, § 2, 56 Stat. 746.
7653 (c)	34 U. S. C. 1141 (less last sentence).	R. S. 4625 (less last sentence).

Subsection (a) is inserted in order to present a complete statement of the subject matter of the section. Its substance is not specifically set out in the Revised Statutes but is strongly implied in 34 U. S. C. 1135 which requires the United States attorney for the district in which the port is located to file a libel.

In subsection (b) the requisites for jurisdiction conferred under the 1942 act are substituted for the words "brought under the jurisdiction conferred by this Act". The substituted words are the same as those used in clauses (2), (3), and (4) of the preceding section except that the words "before proceedings are started" are added following the words "appropriated for the use of the United States" for clarity. An appropriation can take place before or after proceedings are commenced, but in the latter case there is no occasion for the Attorney General to determine venue.

In subsection (c) the words "or if because the whole has been appropriated to the use of the United States" and the words "or the value of anything taken or appropriated for the use of the United States" are omitted. The provision in the 1942 act which empowers the Attorney General to decide the venue of proceedings when the prize property has been appropriated is incompatible with the provision in R. S. 4625 which authorizes the Secretary of the Navy to select the judicial district in such cases. Hence the 1942 act superseded R. S. 4625 with respect to cases of this type. Deposit of the value of prize property appropriated by the United States is adequately covered in § 7663 of this title and is not mentioned here. The second sentence of 34 U. S. C. 1141 (R. S. 4625), relating to proceedings by captors, is omitted because it was rendered inoperative by the act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed all laws authorizing the distribution of prize money to captors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7655 of this title.

§ 7654. Effect of failure to start proceedings.

If a vessel is captured as prize and no proceedings for adjudication are started within a reasonable time, any party claiming the captured property may, in any district court as a court of prize—

(1) move for a monition to show cause why such proceedings shall not be started; or

(2) bring an original suit for restitution.

The monition issued in either case shall be served on the United States Attorney for the district, on the Secretary of the Navy, and on such other persons as are designated by order of the court. (Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7654	34 U. S. C. 1141 (last sentence).	R. S. 4625 (last sentence).

§ 7655. Appointment of prize commissioners and special prize commissioners.

(a) In each judicial district there may be not more than three prize commissioners, one of whom is the naval prize commissioner. They shall be appointed by the district court for service in connection with any prize cause in which proceedings are brought under section 7653 (a) or (c) of this title. The naval prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary of the Navy. The naval prize commissioner shall protect the interests of the Department of the Navy in the prize property. At least one of the other commissioners must be a member of the bar of the court, of not less than three years' standing, who is experienced in taking depositions.

(b) A district court may appoint special prize commissioners to perform abroad, in connection with any prize cause in which proceedings are brought under section 7653 (b) of this title, the duties prescribed for prize commissioners, and, in connection with those causes, to exercise anywhere such additional powers and perform such additional duties as the court considers proper, including the duties prescribed by this chapter for United States marshals. The court may determine the number and qualifications of the special prize commissioners it appoints, except that for each cause there shall be at least one naval special prize commissioner. The naval special prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary. The naval special prize commissioner shall protect the interests of the Department of the Navy in the prize property. (Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7655 (a)	34 U. S. C. 1137 (less applicability to compensation of the naval prize commissioner).	R. S. 4621 (less applicability to compensation of the naval prize commissioner); Nov. 14, 1945, ch. 472, § 2, 59 Stat. 581.
7655 (b)	34 U. S. C. 1163 (less applicability to compensation of the naval special prize commissioner).	Aug. 18, 1942, ch. 553, § 5 (less applicability to compensation of the naval special prize commissioner), 56 Stat. 746.

The first sentence of subsection (a) is reworded to make it clear that the limitation as to number applies to the number of prize commissioners who may serve in each judicial district at any one time and that the court is not precluded from making additional appointments to fill vacancies. The words "for service in connection with any prize cause in which proceedings are brought under section 7653 (a) or (c) of this title" are added to distinguish the prize commissioners from the special prize commissioners mentioned in subsection (b). The words "officer of the Navy" in subsections (a) and (b) are substituted for the words "naval officer, active or retired" because an officer of the Navy does not lose his status as such upon retirement, and to retain these words would open to question the many other provisions in this subtitle treating retired officers as officers.

In subsection (b) the words "in connection with any prize cause in which proceedings are brought under section 7653 (b) of this title" are substituted for the words "in cases arising under this Act" for accuracy of reference. The words "including the duties prescribed by this chapter for United States marshals" are added for clarity. Section 7662 of this title prescribes the duties of marshals. Most of these duties could not be performed by the marshals if the prize was not brought into a United States port. In such cases occurring during World War II the courts, under the authority of the 1942 act, required the special prize commissioners to perform the duties ordinarily performed by the marshals. The words "without regard for the requirements of section 7367 of this title" are omitted as unnecessary, since that section is codified in subsection (a), and language distinguishing the prize commissioners from the special prize commissions is included in each subsection.

§ 7656. Duties of United States Attorney.

(a) The interests of the United States in a prize cause shall be represented by the United States attorney for the judicial district in which the prize cause is adjudicated. The United States attorney shall protect the interests of the United States and shall examine all fees, costs, and expenses sought to be charged against the prize fund.

(b) In a judicial district where one or more prize causes are pending the United States attorney shall send to the Secretary of the Navy, at least once every three months, a statement of all such causes in the form and covering the particulars required by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7656	34 U. S. C. 1136.	R. S. 4619.

The act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed all laws authorizing the distribution of prize money to captors, rendered inoperative parts of R. S. 4619 relative to protection of captors' interest. These parts are omitted from 34 U. S. C. 1136 and from the revised section.

§ 7657. Duties of commanding officer of capturing vessel.

(a) The commanding officer of a vessel making a capture shall—

(1) secure the documents of the captured vessel, including the log, and the documents of cargo, together with all other documents and papers, including letters, found on board;

(2) inventory and seal all the documents and papers;

(3) send the inventory and documents and papers to the court in which proceedings are to be had, with a written statement—

(A) that the documents and papers sent are all the papers found, or explaining the reasons why any are missing; and

(B) that the documents and papers sent are in the same condition as found, or explaining the reasons why any are in different condition;

(4) send as witnesses to the prize court the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any other person found on board whom he believes to be interested in or to know the title, national character, or destination of the prize, and if any of the usual witnesses cannot be sent, send the reasons therefor to the court; and

(5) place a competent prize master and a prize crew on board the prize and send the prize, the witnesses, and all documents and papers, under charge of the prize master, into port for adjudication.

(b) In the absence of instructions from higher authority as to the port to which the prize shall be sent for adjudication, the commanding officer of the capturing vessel shall select the port that he considers most convenient in view of the interests of probable claimants.

(c) If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, the commanding officer of the capturing vessel shall have a survey and an appraisal made by competent and impartial persons. The reports of the survey and the appraisal shall be sent to the court in which proceedings are to be had. Property so surveyed and appraised, unless appropriated for the use of the United States, shall be sold under authority of the commanding officer present. Proceeds of the sale shall be deposited with the Treasurer of the United States or in the public depositary most accessible to the court in which proceedings are to be had and subject to its order in the cause. (Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7657	34 U. S. C. 1133.	R. S. 4615.

As does 34 U. S. C. 1133, the revised section reflects the act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, and the act of May 29, 1920, ch. 214, § 1, 41 Stat. 654, which, respectively, abolished the interest of captors in prize property and substituted "Treasurer of the United States or public depositary" for "assistant treasurer of the United States".

§ 7658. Duties of prize master.

The prize master shall take the captured vessel to the selected port. On arrival he shall—

(1) deliver immediately to a prize commissioner the documents and papers and the inventory thereof;

(2) make affidavit that the documents and papers and the inventory thereof and the prize property are the same and are in the same condition as delivered to him, or explaining any loss or absence or change in their condition;

(3) report all information respecting the prize and her capture to the United States attorney;

(4) deliver the persons sent as witnesses to the custody of the United States marshal; and

(5) retain the prize in his custody until it is taken therefrom by process from the prize court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7658	34 U. S. C. 1134.	R. S. 4617.

The word "diligently" is omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7659, 7660 of this title.

§ 7659. Libel and proceedings by United States attorney.

(a) Upon receiving the report of the prize master directed by section 7658 of this title, the United States attorney for the district shall promptly—

(1) file a libel against the prize property;

(2) obtain a warrant from the court directing the marshal to take custody of the prize property; and

(3) proceed to obtain a condemnation of the property.

(b) In connection with the condemnation proceedings the United States attorney shall insure that the prize commissioners—

(1) take proper preparatory evidence; and

(2) take depositions de bene esse of the prize crew and of other transient persons who know any facts bearing on condemnation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7659	34 U. S. C. 1135.	R. S. 4618.

As does 34 U. S. C. 1135, the revised section reflects the act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed all laws authorizing distribution of prize proceeds to captors.

§ 7660. Duties of prize commissioners.

One or more of the prize commissioners shall—

(1) receive from the prize master the documents and papers of the captured vessel and the inventory thereof;

(2) take the affidavit of the prize master required by section 7658 of this title;

(3) take promptly, in the manner prescribed by section 7661 of this title, the testimony of the witnesses sent in;

(4) take, at the request of the United States attorney, on interrogatories prescribed by the court, the depositions de bene esse of the prize crew and others;

(5) examine and inventory the prize property;

(6) apply to the court for an order to the marshal to unload the cargo, if this is necessary to that examination and inventory;

(7) report to the court, and notify the United States attorney, whether any of the prize property requires immediate sale in the interest of all parties;

(8) report to the court, from time to time, any matter relating to the condition, custody, or disposal of the prize property requiring action by the court;

(9) return to the court sealed and secured from inspection—

(A) the documents and papers received, duly scheduled and numbered;

(B) the preparatory evidence;

(C) the evidence taken de bene esse; and

(D) their inventory of the prize property; and

(10) report to the Secretary of the Navy, if, in their judgment, any of the prize property is useful to the United States in the prosecution of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7660	34 U. S. C. 1138 (less applicability to procedure for interrogating witnesses).	R. S. 4622 (less applicability to procedure for interrogating witnesses).

The words "but the custody of the property shall be in the marshal only" are omitted as surplusage, since this fact is made clear in § 7662 of this title.

§ 7661. Interrogation of witnesses by prize commissioners.

Witnesses before the prize commissioners shall be questioned separately, on interrogatories prescribed by the court, in the manner usual in prize courts. Without special authority from the court, the witnesses may not see the interrogatories, documents, or papers, or consult with counsel or with other persons interested in the cause. Witnesses who have the rights of neutrals shall be discharged as soon as practicable. (Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7661	34 U. S. C. 1138 (as applicable to procedure for interrogating witnesses).	R. S. 4622 (as applicable to procedure for interrogating witnesses).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7660 of this title.

§ 7662. Duties of marshal.

The marshal shall—

(1) keep in his custody all persons found on board a prize and sent in as witnesses, until they are released by the prize commissioners or the court;

(2) keep safely in his custody all prize property under warrant from the court;

(3) report to the court any cargo or other property that he thinks should be unloaded and stored or sold;

(4) insure the prize property, if in his judgment it is in the interest of all concerned;

(5) have charge of the sale of the property, if a sale is ordered, and be responsible for the conduct of the sale in the manner required by the court, for the collection of the gross proceeds, and for their immediate deposit with the Treasurer of the United States or public depositary nearest the place of sale, subject to the order of the court in the cause; and

(6) submit to the Secretary of the Navy, at such times as the Secretary designates, a full statement of the condition of the prize and of the disposal made thereof.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7662	34 U. S. C. 1139.	R. S. 4623.

In clause (2) the words "in his custody" are inserted to make clear the fact that the marshal has custody of the prize property.

In clause (5) the words "and be responsible for" are inserted for clarity, since 34 U. S. C. 1144 provides that the sale and deposit of the proceeds shall be made by the auctioneer and his agent rather than by the marshal, although the marshal supervises them. The words "Treasurer of the United States or public depositary" are substituted for "assistant treasurer" to reflect the act of May 29, 1920, ch. 214, 41 Stat. 654.

§ 7663. Prize property appropriated for the use of the United States.

(a) Any officer or agency designated by the President may appropriate for the use of the United States any captured vessel, arms, munitions, or other material taken as prize. The department or agency for whose use the prize property is appropriated shall deposit the value of the property with the Treasurer of the United States or with the public depositary nearest to the court in which the proceedings are to be had, subject to the orders of the court.

(b) Whenever any captured vessel, arms, munitions, or other material taken as prize is appropriated for the use of the United States before that property comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisal, and inventory sent to the court in which the proceedings are to be had. If the property is appropriated after it comes into the custody of the court, sufficient notice shall be given to enable the court to have the property appraised for the protection of the rights of the claimants.

(c) Notwithstanding subsections (a) and (b), in any case where prize property is appropriated for the use of the United States, a prize court may adjudicate the cause on the basis of an inventory and survey and an appropriate undertaking by the United States to respond for the value of the property, without either an appraisal or a deposit of the value of the prize with the Treasurer of the United States or a public depositary. (Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7663	34 U. S. C. 1162.	Aug. 18, 1942, ch. 553, § 4, 56 Stat. 746; July 1, 1944, ch. 370, § 2, 58 Stat. 678.
7663	34 U. S. C. 1140.	R. S. 4624; Nov. 14, 1945, ch. 472, § 3, 59 Stat. 581.

In subsection (a) the words "may appropriate" are substituted for the words "the power to take or appropriate * * * may be exercised", in 34 U. S. C. 1162, for clarity and uniformity of statement. Under the Revised Statutes it was implied and understood that the Navy could appropriate prizes on behalf of the United States for use by the Navy. Use by other government agencies was not contemplated. The 1942 act enabled the Navy to turn prize vessels over to the War Shipping Administration without bringing them back to United States ports. Reference to that Administration in subsection (a) is omitted since the Administration has been abolished and these functions have not been specifically vested in its successors. It is surplusage as well, because the authority to appropriate is given to any officer or agency designated by the President.

The proviso added to R. S. 4624 (34 U. S. C. 1140) by the 1945 amendment is identical with the proviso added to the 1942 act (34 U. S. C. 1162) by the 1944 amendment. The 1945 act completed the process of making the procedure under the Revised Statutes the same as that in effect for causes over which the courts were given jurisdiction by the World War II legislation, and its single statement in subsection (c) is therefore justified.

34 U. S. C. 1140 and the revised section reflect the act of March 3, 1899, ch 413, § 13, 30 Stat. 1007, which repealed laws authorizing distribution of prize proceeds to captors, and the act of May 29, 1920, ch. 2145, 41 Stat. 654, which requires substitution of "Treasurer of the United States or public depositary" for "assistant treasurer".

§ 7664. Delivery of property on stipulation.

(a) Prize property may be delivered to a claimant on stipulation, deposit, or other security, if—

(1) the claimant satisfies the court that the property has a peculiar and intrinsic value to him, independent of its market value;

(2) the court is satisfied that the rights and interests of the United States or of other claimants will not be prejudiced;

(3) an opportunity is given to the United States attorney and the naval prize commissioner or the naval special prize commissioner to be heard as to the appointment of appraisers; and

(4) a satisfactory appraisal is made.

(b) Money collected on a stipulation, or deposited instead of it, that does not represent costs shall be deposited with the Treasurer of the United States or a public depositary in the same manner as proceeds of a sale. (Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7664	34 U. S. C. 1142.	R. S. 4626.

34 U. S. C. 1142 and this section reflect the act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed laws authorizing distribution of prize proceeds to captors, and the act of May 28, 1920, ch. 214, § 1, 41 Stat. 654, which requires substitution of "Treasurer of the United States or public depositary" for "assistant treasurer".

§ 7665. Sale of prize.

(a) The court shall order a sale of prize property if—

(1) the property has been condemned;

(2) the court finds, at any stage of the proceedings, that the property is perishable, liable to deteriorate, or liable to depreciate in value; or

(3) the cost of keeping the property is disproportionate to its value.

(b) The court may order a sale of the prize property if, after the return-day on the libel, all the parties in interest who have appeared in the cause agree to it.

(c) An appeal does not prevent the order of a sale under this section or the execution of such an order. (Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7665	34 U. S. C. 1143.	R. S. 4627.

In subsection (a) the word "perishing" is omitted as surplusage. The words "in value" are added after "depreciate" for clarity.

In subsection (c) the words "An appeal does not prevent" are substituted for the words "no appeal shall operate to prevent".

§ 7666. Mode of making sale.

(a) If a sale of prize property is ordered by the court, the marshal shall—

(1) prepare and circulate full catalogues and schedules of the property to be sold and return a copy of each to the court;

(2) advertise the sale fully and conspicuously by posters and in newspapers ordered by the court;

(3) give notice to the naval prize commissioner at least five days before the sale; and

(4) keep the goods open for inspection for at least three days before the sale.

(b) An auctioneer of known skill in the business to which the sale pertains shall be employed by the Secretary of the Navy to make the sale. The auctioneer, or his agent, shall collect and deposit the gross proceeds of the sale. The auctioneer and his agent are responsible to the marshal for the conduct of the sale and the collection and deposit of the gross proceeds. (Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7666	34 U. S. C. 1144.	R. S. 4628.

The statement in subsection (b) of the responsibility of the auctioneer and agent to the marshal in the collection and deposit of proceeds is inserted to clarify the marshal's functions. It is derived from 34 U. S. C. 1139, and appears in § 7662 of this title.

§ 7667. Transfer of prize property to another district for sale.

(a) In the case of any prize property ordered to be sold, if the court believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, the court may direct the marshal to transfer the property to the district selected by the court for the sale, and to insure it. In such a case the court shall give the marshal proper orders as to the time and manner of conducting the sale.

(b) When so ordered the marshal shall transfer the property and keep it safely. He is responsible for its sale in the same manner as if the property were in his own district and for the deposit of the gross proceeds with the Treasurer of the United States or public depositary nearest to the place of sale, subject to the order of the court for the district where the adjudication is pending.

(c) The necessary expenses of insuring, transferring, receiving, keeping, and selling the property are a charge upon it and upon the proceeds. Whenever any such expense is paid in advance by the marshal, any amount not repaid to him from the proceeds shall be allowed to him as in the case of expenses incurred in suits in which the United States is a party.

(d) If the Secretary of the Navy believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, he may, either by a general regulation or by a special direction in the cause, require the marshal to transfer the property from the district in which the judicial proceedings are pending to any other district for sale. In such a case proceedings shall be had as if the transfer had been made by order of the court. (Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7667	34 U. S. C. 1145.	R. S. 4629.

34 U. S. C. 1145 and this section reflect the act of May 29, 1920, ch. 214, § 1, 41 Stat. 654, which requires substitution of "Treasurer of the United States or public depositary" for "assistant treasurer".

In subsection (b) the words "He is responsible for its sale" are substituted for the words "It shall be the duty of the marshal to * * * sell the same", because, as shown in § 7666 of this title, the marshal does not sell the property himself but supervises the auctioneer who conducts the sale.

§ 7668. Disposition of prize money.

The net proceeds of all property condemned as prize shall be decreed to the United States and shall be ordered by the court to be paid into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7668	34 U. S. C. 1151.	R. S. 4630; R. S. 4641.

R. S. 4630 provided that in some circumstances the captors were to receive the net proceeds of prize property and in other circumstances they were to receive half and the United States was to receive the other half. The act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, repealed "all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels,

or any property hereafter captured, condemned as prize". Thus the only part of R. S. 4630 that remains in effect, as is indicated in 34 U. S. C. 1151, is that part which provides that proceeds shall be decreed to the United States. The section is so worded. R. S. 4641 stated how proceeds decreed to captors should be divided among them. These provisions were eliminated by the act of March 3, 1899, supra. All that remains of R. S. 4641, as is indicated in 34 U. S. C. 1151, is the provision that proceeds decreed to the United States shall be paid into the Treasury, and the section is worded accordingly.

§ 7669. Security for costs.

The court may require any party to give security for costs at any stage of the cause and upon filing an appeal. (Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7669	34 U. S. C. 1148.	R. S. 4638.

The word "filing" is substituted for the word "claiming".

§ 7670. Costs and expenses a charge on prize property.

(a) Costs and expenses allowed by the court incident to the bringing in, custody, preservation, insurance, and sale or other disposal of prize property are a charge upon the property and shall be paid from the proceeds thereof, unless the court decrees restitution free from such a charge.

(b) Charges for work and labor, materials furnished, or money paid must be supported by affidavit or vouchers. (Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7670 (a)	34 U. S. C. 1149.	R. S. 4639.
7670 (b)	34 U. S. C. 1150 (2d sentence).	R. S. 4640 (2d sentence).

§ 7671. Payment of costs and expenses from prize fund.

(a) Payment may not be made from a prize fund except upon the order of the court. The court may, at any time, order the payment, from the deposit made with the Treasurer or public depositary in the cause, of costs or charges accrued and allowed.

(b) When the cause is finally disposed of, the court shall order the Treasurer or public depositary to pay the costs and charges allowed and unpaid. If the final decree is for restitution, or if there is no money subject to the order of the court in the cause, costs or charges allowed by the court and not paid by the claimants shall be paid out of the fund for paying the expenses of suits in which the United States is a party or is interested. (Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7671	34 U. S. C. 1150 (less 2d sentence).	R. S. 4640 (less 2d sentence).

In subsection (b) the words "or orders" after "order" are omitted as surplusage. The words "a charge upon and" are omitted as surplusage.

§ 7672. Recaptures: award of salvage, costs, and expenses.

(a) If a vessel or other property that has been captured by a force hostile to the United States is recaptured, and the court believes that the property had not been condemned as prize by competent authority before its recapture, the court shall award an appropriate sum as salvage.

(b) If the recaptured property belonged to the United States, it shall be restored to the United States, and costs and expenses ordered to be paid by the court shall be paid from the Treasury.

(c) If the recaptured property belonged to any person residing within or under the protection of the United States, the court shall restore the property to its owner upon his claim and on payment of such sum as the court may award as salvage, costs, and expenses.

(d) If the recaptured property belonged to any person permanently residing within the territory and under the protection of any foreign government in amity with the United States, and, by the law or usage of that government, the property of a citizen of the United States would be restored under like circumstances of recapture, the court shall, upon the owner's claim, restore the property to him under such terms as the law or usage of that government would require of a citizen of the United States under like circumstances. If no such law or usage is known, the property shall be restored upon the payment of such salvage, costs, and expenses as the court orders.

(e) Amounts awarded as salvage under this section shall be paid to the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7672	34 U. S. C. 1158 (less last sentence).	R. S. 4652 (less last sentence).

In subsection (c) the words "restore the property" are substituted for the words "adjudge to be restored." A similar substitution is made in subsection (d).

In subsection (d) the words "foreign government" are substituted for the words "foreign prince, government, or state".

Subsection (e) is derived from the next to the last sentence of R. S. 4652 which, when enacted, read:

"The whole amount awarded as salvage shall be decreed to the captors and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize."

The act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, repealed all laws authorizing the distribution of prize money to captors. Accordingly, 34 U. S. C. 1158 states:

"The whole amount awarded as salvage shall be disposed of as in the case of proceeds of property condemned as prize."

As shown in § 7668 of this title, the net proceeds of property condemned as prize must be decreed to the United States. Subsection (e) is phrased so as to state directly, instead of by reference, the fact that the amount awarded as salvage is paid to the government. While this is apparently inconsistent with R. S. 4652 as originally enacted, it is consistent with the intent expressed by Congress in the provision of the act of March 3, 1899 (supra), which repealed provisions relating to the distribution of prize money and bounty to crews. This act, it is true, did not mention salvage; and salvage money is still occasionally awarded to crews of naval vessels. However, such occasions are rare, and it is the general

policy of the Department of the Navy not to claim salvage on behalf of its personnel. No case appears in which salvage derived from prize has been claimed for such personnel. Prize salvage is more closely related to prize money than it is to other salvage. The determination by Congress that captors should not share in the proceeds of prizes is, therefore, as in 34 U. S. C. 1158, carried through the revised section to salvage derived from prize. The word "amounts" is substituted for the words "the whole amount".

§ 7673. Allowance of expenses to marshals.

The marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, and sale or other disposal of the prize property, and for executing any order of the court in the prize cause. Charges of the marshal for expenses or disbursements shall be allowed only upon his oath that they have been necessarily incurred for the purpose stated. (Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7673	34 U. S. C. 1153.	R. S. 4645.

34 U. S. C. 1153 and the revised section reflect the act of May 28, 1896, ch. 252, § 6, 29 Stat. 179, which provided that marshals should receive annual salaries in lieu of the fees and emoluments previously allowed them.

§ 7674. Payment of witness fees.

If the court allows fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the marshal shall pay the fees. He shall be repaid from any money deposited to the order of the court in the cause. Any amount not so repaid to the marshal shall be allowed him as witness fees paid by him in cases in which the United States is a party. (Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7674	34 U. S. C. 1157.	R. S. 4651.

§ 7675. Commissions of auctioneers.

(a) The Secretary of the Navy may establish a scale of commissions to be paid to auctioneers employed to make sales of prize property. These commissions are in full satisfaction of expenses as well as services. The scale may in no case allow a commission in excess of—

(1) ½ of 1 percent on any amount exceeding $10,000 on the sale of a vessel; and

(2) 1 percent of any amount exceeding $10,000 on the sale of other prize property.

(b) If no such scale is established, auctioneers in prize causes shall be paid such compensation as the court considers just under the circumstances of each case. (Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7675	34 U. S. C. 1156.	R. S. 4650.

The word "amount" is substituted for the word "sum".

§ 7676. Compensation of prize commissioners and special prize commissioners.

(a) Naval prize commissioners and naval special prize commissioners may not receive compensation for their services in prize causes other than that to which they are entitled as officers of the Navy.

(b) Prize commissioners and special prize commissioners, except naval prize commissioners and naval special prize commissioners, are entitled to just and suitable compensation for their services in prize causes. The amount of compensation in each cause shall be determined by the court and allowed as costs.

(c) Annually, on the anniversary of his appointment, each prize commissioner and special prize commissioner, except a naval prize commissioner or a naval special prize commissioner, shall submit to the Attorney General an account of all amounts received for his services in prize causes within the previous year. Of the amounts reported, each such commissioner may retain not more than $3,000, which is in full satisfaction for all his services in prize causes for that year. He shall pay any excess over that amount into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7676 (a)	34 U. S. C. 1137 (as applicable to compensation of naval prize commissioner); 34 U. S. C. 1163 (as applicable to compensation of naval special prize commissioner).	R. S. 4621 (as applicable to compensation of naval prize commissioner); Nov. 14, 1945, ch. 472, § 2, 59 Stat. 581. Aug. 18, 1942, ch. 553, § 5 (as applicable to compensation of naval special prize commissioner), 56 Stat. 746.
7676 (b)	34 U. S. C. 1154.	R. S. 4646.
7676 (c)	34 U. S. C. 1155.	R. S. 4647.

In subsection (c) the words "on the anniversary of his appointment" are inserted for clarity, as "year" in the context of this section means a year of service as prize commissioner. The words "and shall be credited to the fund for paying naval pensions" are omitted because the act of June 26, 1934, ch. 756, § 9, 48 Stat. 1229, abolished the naval pension fund and provided that moneys previously required to be paid into it should be deposited in the Treasury as miscellaneous receipts. The words "as miscellaneous receipts" are omitted as surplusage. The word "amounts" is substituted for the word "sums".

34 U. S. C. 1154 and 1155 and this section reflect the act of May 28, 1896, ch. 252, § 6, 29 Stat. 179, 180, which provided that United States attorneys should receive fixed annual salaries in lieu of the fees and emoluments previously authorized.

§ 7677. Accounts of clerks of district courts.

(a) The clerk of each district court, for the purpose of the final decree in each prize cause, shall keep account of—

(1) the amount deposited with the Treasurer or public depositary, subject to the order of the court in the cause; and

(2) the amounts ordered to be paid therefrom as costs and charges.

(b) The clerk shall draw the orders of the court for the payment of costs and allowances and for the disposition of the residue of the prize fund in each cause.

(c) The clerk shall send to the Secretary of the Treasury and the Secretary of the Navy—

(1) copies of final decrees in prize causes; and

(2) a semi-annual statement of the amounts allowed by the court, and ordered to be paid, within the preceding six months to the prize commissioners and special prize commissioners for their services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7677	34 U. S. C. 1152.	R. S. 4644.

34 U. S. C. 1152 and this section reflect modifications of R. S. 4644 effected by—

(1) Act of May 28, 1896, ch. 252, § 6, 29 Stat. 179, which provided for fixed annual salaries for United States attorneys and marshals;

(2) Act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed all laws authorizing distribution of prize proceeds to captors;

(3) Act of February 26, 1919, ch. 49, § 1, 40 Stat. 1182, which provided that clerks of United States district courts should receive fixed annual salaries; and

(4) Act of May 29, 1920, ch. 214, 41 Stat. 654, which abolished the offices of assistant treasurers and distributed their functions.

§ 7678. Interfering with delivery, custody, or sale of prize property.

Whoever willfully does, or aids or advises in the doing of, any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any claimant of that property, shall be fined not more than $10,000 or imprisoned not more than five years, or both. (Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7678	34 U. S. C. 1167.	Mar. 4, 1909, ch. 321, § 38, 35 Stat. 1096.

The words "captor or" between "any" and "claimant" are omitted because the act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, repealed all laws authorizing the distribution of prize proceeds to captors. These words were apparently carried over inadvertently to § 38 of the 1909 act from the source of that section, namely R. S. 5441.

The section is worded in the style of Title 18, U. S. Code.

§ 7679. Powers of district court over prize property notwithstanding appeal.

Notwithstanding an appeal, the district court may make and execute all necessary orders for the custody and disposal of prize property. (Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7679	34 U. S. C. 1147.	R. S. 565; R. S. 4637.

34 U. S. C. 1147 and this section reflect—

(1) Act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed all laws authorizing distribution of prize proceeds to captors;

(2) Acts of March 3, 1911, ch. 231, § 128, 36 Stat. 1133, and February 13, 1925, ch. 229, § 1, 43 Stat. 938, which defined the appellate jurisdiction of the United States circuit courts, and provided that the Supreme Court should not directly review district court decisions except in specified cases, not including prize cases; and

(3) Act of June 25, 1948, ch. 646, 62 Stat. 869, which repealed the acts of February 13, 1925, and March 3, 1911, supra, but enacted similar provisions and changed the name of United States Circuit Courts of Appeals to United States Courts of Appeals for the several circuits.

Reference to the court is omitted from 34 U. S. C. 1147 and from the revised section in view of the 1948 act.

§ 7680. Appeals and amendments in prize causes.

(a) A United States Court of Appeals may allow an appeal in a prize cause if it appears that a notice of appeal was filed with the clerk of the district court within thirty days after the final decree in that cause.

(b) A United States Court of Appeals, if in its opinion justice requires it, may allow amendments in form or substance of any appeal in a prize cause. (Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7680	34 U. S. C. 1146.	R. S. 1006; R. S. 4636.

34 U. S. C. 1146 and this section reflect—

(1) Acts of March 3, 1911, ch. 231, § 128, 36 Stat. 1133, and February 13, 1925, ch. 229, § 1, 43 Stat. 938, which defined the appellate jurisdiction of the United States Circuit Courts of Appeals; and

(2) Act of June 25, 1948, ch. 646, 62 Stat. 869, which repealed the 1911 and 1925 acts, but enacted similar provisions and changed the name of the circuit courts to United States Courts of Appeals for the several circuits.

The words "or of intention to appeal" are omitted as surplusage. Formerly "notices of appeal" were filed in some courts and "notices of intention to appeal" were filed in others. The difference was in terminology, not in substance. These notices are now known as "notices of appeal". The words "next" and "the rendition of" are omitted as surplusage.

§ 7681. Reciprocal privileges to cobelligerent.

(a) A cobelligerent of the United States that consents to the exercise of jurisdiction conferred by section 7652 (a) of this title with respect to any prize of the United States brought into the territorial waters of the cobelligerent or appropriated for the use of the United States within those territorial waters shall be given, upon proclamation by the President of the United States, like privileges with respect to any prize captured under the authority of that cobelligerent and brought into the territorial waters of the United States or appropriated for the use of the cobelligerent within the territorial waters of the United States.

(b) Reciprocal recognition shall be given to the jurisdiction acquired by courts of a cobelligerent under this section and full faith and credit shall be given to all proceedings had or judgments rendered in the exercise of that jurisdiction. (Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7681	34 U. S. C. 1165.	Aug. 18, 1942, ch. 553, § 7, 56 Stat. 747.

The words "taking or" before "appropriation" and the words "taken or" before "appropriated" are omitted as surplusage.

RECIPROCAL PRIVILEGES

The Governments listed below are accorded like privileges with respect to prizes captured under authority of the said Governments and brought into the territorial waters of the United States or taken or appropriated in the territorial waters of the United States for the use of the said Governments, namely: Australia, Proc. No. 2617, Aug. 16, 1944, 9 F. R. 9969; Canada, Proc. No. 2594, Sept. 27, 1943, 8 F. R. 13217; India, Proc. No. 2601, Dec. 6, 1943, 8 F. R. 16351; New Zealand, Proc. No. 2582, April 2, 1943, 8 F. R. 4275; United Kingdom, Proc. No. 2575, Feb. 2, 1944, 8 F. R. 1429.

Chapter 657.—STAY OF JUDICIAL PROCEEDINGS

Sec.
7721. Scope of chapter.
7722. Stay of suit.
7723. Stay of proceedings for preserving evidence after stay of suit.
7724. Stay of proceedings for taking evidence before suit is filed.
7725. Stay extended or shortened.
7726. Reconsideration of stay.
7727. Duration of stay.
7728. Restricted certificate.
7729. Investigation before issue of certificate.
7730. Evidence admissible when witness is not available.

§ 7721. Scope of chapter.

(a) This chapter applies to any suit against the United States under sections 781—790 of title 46 for—

(1) damage caused by a vessel in the naval service; or

(2) compensation for towage or salvage services, including contract salvage, rendered to a vessel in the naval service.

(b) In this chapter "vessel in the naval service" means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7721 (a)	46 U. S. C. 791 (2d sentence).	July 3, 1944, ch. 399, § 1 (2d sentence), 58 Stat. 723.
7721 (b)	46 U. S. C. 793.	July 3, 1944, ch. 399, § 3, 58 Stat. 724.

In subsection (a) the words "wherein a claim is made" are omitted as surplusage. The words "vessel in the naval service" are substituted for the words "vessel in the Navy, or in the naval service" for brevity. No change in meaning results, since the term used in subsection (a) is defined in subsection (b).

In subsection (b) the words "service in" are substituted for the words "part of" to conform to the terminology used in 14 U. S. C. 3.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7722, 7724 of this title.

§ 7722. Stay of suit.

(a) Whenever in time of war the Secretary of the Navy certifies to a court, or to a judge of a court, in which a suit described in section 7721 of this title is pending, that the prosecution of the suit would tend to endanger the security of naval operations in the war, or would tend to interfere with those operations, all further proceedings in the suit shall be stayed.

(b) A stay under this section does not suspend the issue of process to take or preserve evidence to be used in the trial or prevent the completion of action under similar process issued before the stay. (Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7722 (a)	46 U. S. C. 791 (1st sentence, less applicability to duration of stay).	July 3, 1944, ch. 399, § 1 (1st sentence, less applicability to duration of stay), 58 Stat. 723.
7722 (b)	46 U. S. C. 791 (less 1st and 2d sentences and less proviso).	July 3, 1944, ch. 399, § 1 (less 1st and 2d sentences and less proviso), 58 Stat. 723.

In subsection (a) the word "forthwith" is omitted as surplusage.

In subsection (b) the words "of proceedings in pending suits as provided" are omitted as surplusage. The words "does not suspend" are substituted for the words "shall not operate to suspend". The words "of the issues" and "the authority of" are omitted as surplusage. The words "issued before the stay" are substituted for the words "already issued at the time of such stay of suit".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7723 of this title.

§ 7723. Stay of proceedings for preserving evidence after stay of suit.

If, at the time of certification under section 7722 of this title, or at any time before the termination of the stay based on the certificate, the Secretary of the Navy files with the court an additional certificate to the effect that the issue of any process to preserve evidence or the completion of action on process previously issued would tend to endanger the security of the United States or of any of its naval or military operations in the war, or would tend to interfere with those operations, then all proceedings for the taking or preserving of evidence to be used by either party in the trial shall be stayed. (Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7723	46 U. S. C. 791 (proviso, less applicability to duration of stay).	July 3, 1944, ch. 399, § 1 (proviso, less applicability to duration of stay), 58 Stat. 723.

The word "stayed" is substituted for the word "suspended" for uniformity and clarity.

§ 7724. Stay of proceedings for taking evidence before suit is filed.

(a) If in time of war, with respect to any claim against the United States on which a suit described in section 7721 of this title would lie, the Secretary of the Navy certifies to the court, or to a judge of the court, in which proceedings are pending for—

(1) the granting of a dedimus potestatem to take depositions;

(2) a direction to take depositions in perpetuam rei memoriam; or

(3) the taking of depositions or production of evidence pursuant to such dedimus potestatem or direction, or pursuant to any other proceedings for the purpose;

that the proceedings would tend to endanger the security of the United States or any of its naval or military operations in the war, or would tend to interfere with those operations, then the proceedings may not be started or, if they have been started, they shall, when the certificate is filed, be stayed.

(b) The time during which a claimant may file suit of the type described in section 7721 of this title is computed by excluding the time during which a stay under this section or any extension of such a stay is in effect. (Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7724	46 U. S. C. 792 (less applicability to duration of stay).	July 3, 1944, ch. 399, § 2 (less applicability to duration of stay), 58 Stat. 724.
7724	46 U. S. C. 796.	July 3, 1944, ch. 399, § 6, 58 Stat. 726.

In subsection (b) the words "upon a claim against the United States" and "as to any proceedings by or on behalf of such claimant for the taking of a deposition or the production of evidence in connection with or in relation to such claim" are omitted as surplusage.

§ 7725. Stay extended or shortened.

The Secretary of the Navy, when a stay under this chapter is in effect, may file with the court, or a judge of the court, a certificate extending or shortening the time stated in the prior certificate. The filing of such a new certificate extends or shortens the stay to the period specified in the new certificate or terminates the stay if the new certificate so states. (Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7725	46 U. S. C. 794 (1st, and 9th (less proviso), sentences).	July 3, 1944, ch. 399, § 4 (1st, and 9th (less proviso), sentences), 58 Stat. 724).

The words "or suspension", "either of prosecution of the suit or of the taking of testimony", "during which the prosecution of such suit or taking of such deposition or production of evidence would tend to endanger the security of the United States or of such operations in time of war, or to interfere therewith", "as the case may be", and "in relation to which it is made shall continue in effect" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7727 of this title.

§ 7726. Reconsideration of stay.

(a) A claimant or party who considers himself adversely affected by a stay under this chapter may serve a written notice on the Secretary of the Navy at Washington, D. C., requesting him to reconsider the stay previously issued and to issue a new certificate. The notice shall identify the stay by means of an attached copy of the certificate of the Secretary or a sufficient description of the stay. The notice may not contain any recital of the facts or circumstances involved.

(b) Within ten days after receiving notice under this section, the Secretary or his designee shall hold a secret meeting at which the claimant or party, or his representative, may present any facts and arguments he thinks material.

(c) Within ten days after a hearing under this section, the Secretary shall file with the court that ordered the stay a new certificate stating whether the stay is then to be terminated or for what period the stay is to continue in effect. If the Secretary fails to file a new certificate, the court, upon application by the claimant or party, shall issue an order directing the Secretary to file a new certificate within a specified time. (Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7726 (a)	46 U. S. C. 794 (2d, 3d, and 4th sentences).	July 3, 1944, ch. 399, § 4 (2d, 3d, and 4th sentences), 58 Stat. 724.
7726 (b)	46 U. S. C. 794 (5th sentence).	July 3, 1944, ch. 399. § 4 (5th sentence), 58 Stat. 724.
7726 (c)	46 U. S. C. 794 (6th and 7th sentences).	July 3, 1944, ch. 399, § 4 (6th and 7th sentences), 58 Stat. 724.

In subsection (a) the words "then in effect", "upon which the stay is based", and "for its identification" are omitted as surplusage.

In subsection (b) the words "with respect to whether or not a stay should be issued or maintained" are omitted as surplusage. The words "his designee" are substituted for the words "some official designated by him" for brevity.

In subsection (c) the words "that ordered the stay" are substituted for the words "in which said stay is pending or the court in which the proceeding stayed was instituted" for brevity and clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7727 of this title.

§ 7727. Duration of stay.

A stay of proceedings under this chapter remains in effect for the period specified in the certificate upon which it was based unless the Secretary of the Navy issues a new certificate under section 7725 or 7726 of this title changing the termination date. However, a stay under this chapter may not remain in force longer than six months after the cessation of hostilities. (Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7727	46 U. S. C. 791 (1st sentence as applicable to duration of stay, and proviso as applicable to duration of stay).	July 3, 1944, ch. 399, § 1 (1st sentence as applicable to duration of stay, and proviso as applicable to duration of stay), 58 Stat. 723.
7727	46 U. S. C. 792 (as applicable to duration of stay).	July 3, 1944, ch. 399, § 2 (as applicable to duration of stay), 58 Stat. 724.
7727	46 U. S. C. 794 (8th sentence and proviso of 9th sentence).	July 3, 1944, ch. 399, § 4 (8th sentence and proviso of 9th sentence), 58 Stat. 724.

§ 7728. Restricted certificate.

The Secretary of the Navy may restrict a certificate issued under this chapter so that it stays only the taking of testimony of certain witnesses or the

production of evidence on certain subjects. The proceedings not stayed may continue. (Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7728	46 U. S. C. 794 (10th sentence).	July 3, 1944, ch. 399, § 4 (10th sentence), 58 Stat. 724.

The words "The Secretary of the Navy may restrict a certificate" are substituted for the words "Any certificate * * * by the Secretary of the Navy * * * may, in his discretion, be restricted." The words "the production of" are inserted for clarity. The words "in which event" are omitted as surplusage.

§ 7729. Investigation before issue of certificate.

The Secretary of the Navy may not issue a certificate under this chapter until he satisfies himself by investigation that it is necessary. (Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7729	46 U. S. C. 794 (less 1st 10 sentences).	July 3, 1944, ch. 399, § 4 (less 1st 10 sentences), 58 Stat. 724.

§ 7730. Evidence admissible when witness is not available.

Whenever the court is satisfied by appropriate evidence or by agreement of counsel that the United States or the claimant is unable after reasonable efforts to secure the testimony of a witness and—

(1) the United States or the claimant has been prevented by a stay under this chapter from examining the witness; or

(2) the United States establishes that it has refrained from bringing a suit or from taking the testimony of the witness in a pending suit to avoid endangering the security of naval operations or interfering with such operations;

the court shall receive in evidence in place of the testimony of the witness—

(1) the affidavit of the witness duly sworn to before a notary public or other authorized officer; or

(2) the statement or testimony of the witness before a court-martial, a court of inquiry, or an investigation; but the use of such statement or testimony does not, in any litigation, make the remainder of the record admissible or compel the United States to produce the remainder of the record.

The court shall give such weight to the affidavit, statement, or testimony as it considers proper under the circumstances. (Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7730	46 U. S. C. 795.	July 3, 1944, ch. 399, § 5, 58 Stat. 725.

The words "naval", "board of investigation", and "Coast Guard investigation" are omitted as surplusage.

Chapter 659.—NAVAL MILITIA

Sec.
7851. Composition.
7852. Appointment and enlistment in reserve components.
7853. Release from Militia duty upon order to active duty in reserve components.
7854. Availability of material for Naval Militia.

§ 7851. Composition.

The Naval Militia consists of the Naval Militia of the States, the Territories, and the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7851	50 U. S. C. 1071	July 9, 1952, ch. 608, § 501, 66 Stat. 500.

§ 7852. Appointment and enlistment in reserve components.

In the discretion of the Secretary of the Navy, any member of the Naval Militia may be appointed or enlisted in the Naval Reserve or the Marine Corps Reserve in the grade for which he is qualified. (Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7852	50 U. S. C. 1072. * * *	July 9, 1952, ch. 608, § 502, 66 Stat. 500.

This section is written to indicate that the Secretary of the Navy has discretion in authorizing the appointment or enlistment in the Naval Reserve of members of the Naval Militia but does not make such appointments or enlistments. Section 593 of this title, based on 50 U. S. C. 942, 943, provides the manner in which all reserve appointments are made, and § 510 of this title, based on 50 U. S. C. 941, 952, 956 provides the authority to enlist persons in the reserve components. As worded, this section removes the conflicting statement of appointing authority, and allows appointments and enlistments to be controlled by these other provisions. The words "rank" and "or rating" are omitted as covered by the word "grade".

§ 7853. Release from Militia duty upon order to active duty in reserve components.

When ordered to active duty, a member of the Naval Reserve or the Marine Corps Reserve who is a member of the Naval Militia is relieved from all service and duty in the Naval Militia from the date of active duty specified in his orders until he is released from active duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7853	50 U. S. C. 1073.	July 9, 1952, ch. 608, § 503, 66 Stat. 500.

The words "in the service of the United States" are omitted as covered by the definition of "active duty" in § 101 of this title. The words "is relieved" are substituted for the words "shall stand relieved".

§ 7854. Availability of material for Naval Militia.

Under regulations prescribed by the Secretary of the Navy, vessels, material, armament, equipment,

and other facilities of the Navy and the Marine Corps available to the Naval Reserve and the Marine Corps Reserve may also be made available for issue or loan to any State, any Territory, or the District of Columbia for the use of its Naval Militia if—

(1) at least 95 percent of the members of the portion or unit of the Naval Militia to which the facilities would be made available are members of the Naval Reserve or the Marine Corps Reserve; and

(2) the organization, administration, and training of the Naval Militia conform to standards prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
7854	50 U. S. C. 1074.	July 9, 1952, ch. 608, § 504, 66 Stat. 500.

The words "are or may be made", before the word "available", are omitted as surplusage.

In clause (1) the word "members" is substituted for the word "personnel".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

Subtitle D.—Air Force

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[1] A section 8010 was added at the beginning of chapter 803, Department of the Air Force, without an amendment to this analysis.

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AMENDMENTS

1968—Pub. L. 90–377, § 5, July 5, 1968, 82 Stat. 288, eliminated chapter 851: "United States Disciplinary Barracks".

Pub. L. 90–235, § 8(6), Jan. 2, 1968, 81 Stat. 764, eliminated chapter 847: "The Uniform".

1964—Pub. L. 88–647, title III, § 301(27), Oct. 13, 1964, 78 Stat. 1073 eliminated chapter 905.

1960—Pub. L. 86–616, §§ 7(b), 8(b), July 12, 1960, 74 Stat. 393, 395, substituted "Substandard Performance of Duty" for "Failure to Meet Standards" in the heading of chapter 859 and added chapter 860.

1958—Pub. L. 85–861, § 1 (193), Sept. 2, 1958, 72 Stat. 1538, substituted "8841" for "[No present sections]" in the heading of chapter 863.

PART I.—ORGANIZATION

801. Definitions. [No present sections.]
803. Department of the Air Force ..... 8011 [1]
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Chapter 801.—DEFINITIONS

[No present sections]

Chapter 803.—DEPARTMENT OF THE AIR FORCE

Sec.

8010. Organization.
8011. Department of the Air Force: seal.
8012. Secretary of the Air Force: powers and duties; delegation by.
8013. Under Secretary of the Air Force; Assistant Secretaries of the Air Force.
8014. Comptroller of the Air Force: appointment; functions.
8017. Secretary of the Air Force: successors to duties.
8019. Office of Air Force Reserve: appointment of Chief.

AMENDMENTS

1967—Pub. L. 90–168, § 2(20), Dec. 1, 1967, 81 Stat. 525, added item 8019.

1964—Pub. L. 88–426, title III, §§ 305(40)(B), 306(j)(8), Aug. 14, 1964, 78 Stat. 427, 432, eliminated "; compensation" from item 8012, and struck out item 8018.

1962—Pub. L. 87–651, title II, § 213(b), Sept. 7, 1962, 76 Stat. 524, added item 8010.

1958—Pub. L. 85–861, § 1 (154) (B), Sept. 2, 1958, 72 Stat. 1513, added item 8018.

§ 8010. Organization.

The Department of the Air Force is separately organized under the Secretary of the Air Force. It operates under the authority, direction, and control of the Secretary of Defense. (Added Pub. L. 87–651, title II, § 213(a), Sept. 7, 1962, 76 Stat. 524.)

CROSS REFERENCES

Cooperation with Office of Secretary of Defense in carrying out this section, see section 136 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 136 of this title.

§ 8011. Department of the Air Force: seal

The Secretary of the Air Force shall have a seal for the Department of the Air Force. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal. (Aug. 10, 1956, ch. 1041, 70A Stat. 488.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8011	5: 626 (g).	July 26, 1947, ch. 343, § 207 (g), 61 Stat 503.

The words "of office" are omitted as surplusage. The words "a design" are substituted for the words "such device".

EX. ORD NO. 9902. SEAL FOR THE DEPARTMENT OF THE AIR FORCE

Ex. Ord. No. 9902, Nov. 1, 1947, 12 F. R. 7153, provided:

Whereas section 207 (g) of the National Security Act of 1947, approved July 26, 1947 (Public Law 253, 80th Congress 1st Session) provides, in part, that the Secretary of the Air Force shall cause a seal of office to be made for the Department of the Air Force of such device as the President shall approve; and

Whereas the Secretary of the Air Force has caused to be made and has recommended that I approve a seal the design of which accompanies and is hereby made a part of this order, and which is described in heraldic terms as follows:

Shield: Per fess nebuly abased azure and argent, in chief a thunderbolt or inflamed proper.

Crest: On a wreath argent and azure an American bald eagle, wings displayed and partially elevated proper in front of a cloud argent.

Encircling the shield and crest an arc of thirteen stars and below the shield the inscription "MCMXLVII".

On a band encircling the whole the inscriptions "Department of the Air Force" and "United States of America."

When illustrating the seal in color the background shall be ultramarine blue, the shield a light blue and white, and the thunderbolt in gold with flames in natural color. The twists of the wreath shall be alternated white and blue, and the eagle shall be in natural color in front of a white cloud. The thirteen stars shall be white, and the Roman numerals shall be gold. The encircling band shall be white edged in gold with black letters.

And whereas it appears that such seal is of suitable design and is appropriate for establishment as the official seal of the Department of the Air Force:

Now, therefore, by virtue of and pursuant to the authority vested in me by the said section 207 (g) of the National Security Act of 1947, I hereby approve such seal as the official seal of the Department of the Air Force.

HARRY S. TRUMAN

§ 8012. Secretary of the Air Force: powers and duties; delegation by.

(a) There is a Secretary of the Air Force appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Air Force.

(b) The Secretary is responsible for and has the authority necessary to conduct all affairs of the Department of the Air Force, including—

(1) functions necessary or appropriate for the training, operations, administration, logistical support and maintenance, welfare, preparedness, and effectiveness of the Air Force, including research and development; and

(2) such other activities as may be prescribed by the President or the Secretary of Defense as authorized by law.

He shall perform such other duties relating to Air Force affairs, and conduct the business of the Department in such manner, as the President or the Secretary of Defense may prescribe. The Secretary is responsible to the Secretary of Defense for the operation and efficiency of the Department. After first informing the Secretary of Defense, the Secretary may make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

(c) The Secretary may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Air Force and to the Assistant Secretaries of the Air Force. Officers of the Air Force shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or an Assistant Secretary.

(d) The Secretary or, as he may prescribe, the Under Secretary or an Assistant Secretary shall supervise all matters relating to—

(1) the procurement activities of the Department of the Air Force;

(2) planning for the mobilization of materials and industrial organizations essential to the wartime needs of the Air Force; and

(3) activities of the reserve components of the Air Force.

(e) The Secretary, as he considers appropriate, may assign, detail, and prescribe the duties of the members of the Air Force and civilian personnel of the Department of the Air Force.

(f) The Secretary may prescribe regulations to carry out his functions, powers, and duties under this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 488; Sept. 2, 1958, Pub. L. 85–861, § 1(152), 72 Stat. 1513; Sept. 7, 1962, Pub. L. 87–651, title II, § 211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(7), 306(j)(7), 78 Stat. 423, 432.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8012 (a)	5: 626 (a).	July 26, 1947, ch. 343, § 207 (a), 61 Stat. 502; Aug. 10, 1949, ch. 412, § 12 (b), 63 Stat. 591.
8012 (b)	5: 626–2 (a); 5: 190.	
8012 (c)	5: 626–2 (b).	
8012 (d)	5: 626–2 (c).	Sept. 19, 1951, ch. 407, § 101 (less (e)), 65 Stat. 326; Aug. 3, 1954, ch. 652, § 3 (c), 68 Stat. 650.
8012 (e)	5: 626–2 (d); 5: 626 (e).	
8012 (f)	No source.	R. S. 216.
8012 (g)	5: 626a.	July 26, 1947, ch. 343, § 207 (e), 61 Stat. 502.
		July 26, 1947, ch. 343, § 301 (b) (last sentence); restated Aug. 10, 1949, ch. 412, § 10 (a) (last sentence of § 301 (b)), 63 Stat. 585; Oct. 15, 1949, ch. 695, § 1 (words after 2d semicolon), 63 Stat. 880.

In subsection (a), 5: 626 (a) (1st 21 words of 1st sentence) is omitted as superseded by 5: 171 (b) (1).

In subsection (b), 5: 190 and 5: 626–2 (a), which define the duties and responsibilities of the Secretary of the Air Force in general terms, are combined to reflect the provisions of the National Security Act of 1947, as amended (5 U. S. C. 171 et seq.), relating to the authority of the Secretary of Defense. The words "relative to military commissions, the military forces, the warlike stores of the United States", in 5: 190, are omitted as covered by the enumeration in 5: 626–2 (a). The appropriation authorization in 5: 626–2 (a) is omitted as surplusage.

In subsection (d), the words "in addition to other duties" and "and of other business pertaining thereto" are omitted as surplusage. The word "supervise" is substituted for the words "be charged with supervision".

In subsection (e), 5: 626 (e) is omitted as covered by 5: 626–2 (d). 5: 626–2 (d) (words after semicolon) is omitted as surplusage.

Subsection (f) is inserted to make express the Secretary's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

AMENDMENTS

1964—Pub. L. 88–426, § 306(j)(7), eliminated "; compensation" from the catchline.

Subsec. (g). Pub. L. 88–426, § 305(7), repealed subsec. (g), which prescribed the compensation of the Secretary. See section 5313 of Title 5, Government Organization and Employees.

1962—Subsec. (b). Pub. L. 87–651 inserted sentences providing that the Secretary is responsible to the Secretary of Defense for the operation and efficiency of the Department, and permitting the Secretary, after first informing the Secretary of Defense, to make such recommendations to Congress relating to the Department of Defense as he may consider appropriate.

1958—Subsec. (g). Pub. L. 85–861 substituted "$22,000" for "$18,000".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

CROSS REFERENCES

Armed Forces Policy Council, member of, see section 171 (a) (5) of this title.

Chief of Staff, duties, see section 8034 of this title.

Compensation of Secretary, see section 5313 of Title 5, Government Organization and Employees.

Cooperation with Office of Secretary of Defense in carrying out subsec. (b) of this section, see section 136 of this title.

Courts-martial, authority to convene, see sections 822–824 of this title.

Establishment of advisory committees and panels for research and development activities, see section 174 (a) of this title.

Report to Congress, see section 686 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136, 8034 of this title.

§ 8013. Under Secretary of the Air Force; Assistant Secretaries of the Air Force.

There are an Under Secretary of the Air Force and four Assistant Secretaries of the Air Force in the Department of the Air Force. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 489; Aug. 6, 1958, Pub. L. 85–599 § 8 (c), 72 Stat. 520; Sept. 2, 1958, Pub. L. 85–861, § 1 (153), 72 Stat. 1513; Aug. 14, 1964, Pub. L. 88–426, title III, § 305 (8), 78 Stat. 423; Dec. 1, 1967, Pub. L. 90–168, § 2 (15), 81 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8013 (a)	5: 626 (d); 5: 626–1 (a) (less last 9 words).	July 26, 1947, ch. 343, § 207 (d), 61 Stat. 502; Aug. 3, 1954, ch. 652, § 3 (b), 68 Stat. 650.
8013 (b)	5: 626–1 (a) (last 9 words); 5: 626b.	Sept. 19, 1951, ch. 407, § 102 (a), 65 Stat. 357; Aug. 3, 1954, ch. 652, § 3 (a), 68 Stat. 649. July 26, 1947, ch. 343, § 302; restated Aug. 10, 1949, ch. 412, § 10 (b), 63 Stat. 585.

Subsection (b) combines those parts of 5: 626–1 (a) and 5: 626b which deal with the compensation of the Under and Assistant Secretaries of the Air Force. 5: 626b provides that their compensation shall be "at the rate of $15,000 per annum or at the rate hereafter prescribed by law for assistant secretaries of executive departments". Section 302 of the National Security Act of 1947, as amended, provided that their compensation should be "at the rate of $10,330 a year or at the rate hereafter prescribed by law for assistant secretaries of executive departments". Section 5 (a) of the act of October 15, 1949, ch. 695, 63 Stat. 880, specifies an annual salary of $15,000 for assistant secretaries of executive departments. 5: 626–1 (a) provides that the Under Secretary and Assistant Secretaries "shall receive the compensation prescribed by law". In the revised subsection the current rate of compensation is omitted as surplusage. 5: 626b (last 10 words) is omitted as superseded by section 8012 (c) of this title.

AMENDMENTS

1967—Pub. L. 90–168 struck out the subsec. designations (a) and (b) and, in the substance of the section, raised from three to four the number of Assistant Secretaries of the Air Force and added provision for an Assistant Secretary of the Air Force for Manpower and Reserve Affairs with the principal duty of overall supervision of manpower and reserve component affairs of the Department of the Air Force.

1964—Subsec. (b). Pub. L. 88–426 repealed subsec. (b), which prescribed the compensation of the Under Secretary and of each of the Assistant Secretaries. See section 5315 of Title 5, Government Organization and Employees.

1953—Subsec. (a). Pub. L. 85–599 reduced the number of Assistant Secretaries from four to three, and omitted provisions which authorized the Secretary to designate one of the Assistant Secretaries as the Assistant Secretary of the Air Force for Financial Management and as Comptroller of the Air Force.

Subsec. (b). Pub. L. 85–861 substituted "and of each of the four Assistant Secretaries is $20,000 a year" for "and of the Assistant Secretaries is that prescribed by law for assistant secretaries of executive departments".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–599 effective six months after Aug. 6, 1958, see section 13 of Pub. L. 85–599 set out as a note under section 3013 of this title.

CROSS REFERENCES

Compensation of Under Secretary and Assistant Secretaries, see section 5315 of Title 5, Government Organization and Employees.

§ 8014. Comptroller of the Air Force: appointment; functions.

(a) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Air Force shall have the following matters in the Department of the Air Force organized and conducted consistently with the operations of the Office of the Comptroller of the Department of Defense:

(1) Budgeting.

(2) Accounting.

(3) Progress and statistical reporting.

(4) Internal audit.

(5) Administrative organization structure, and managerial procedures, relating to the matters covered by clauses (1)—(4).

(b) There are a Comptroller of the Air Force and a Deputy Comptroller of the Air Force in the Department of the Air Force. They shall be appointed by the Secretary of the Air Force. The Secretary may appoint either civilian or military personnel to these offices. If either the Comptroller or the Deputy Comptroller is not a civilian, the other must be a civilian.

(c) Subject to the authority of the Secretary of the Air Force, the Comptroller is responsible for the matters in the Department of the Air Force named in subsection (a) (1)—(5).

(d) The Comptroller is under the direction and supervision of, and is directly responsible to, either the Secretary of the Air Force, the Under Secretary, or an Assistant Secretary. However, this subsection does not prevent the Comptroller from having concurrent responsibility to the Chief of Staff, the Vice Chief of Staff, or a Deputy Chief of Staff, if the Secretary so prescribes. (Aug. 10, 1956, ch. 1041, 70A Stat. 489.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8014 (a)	5: 172a (a).	July 26, 1947, ch. 343, § 402; added Aug. 10, 1949, ch. 412, § 11 (402), 63 Stat. 586.
8014 (b)	5: 172a (b) (less 3d and 5th sentences).	
8014 (c)	5: 172a (b) (3d sentence).	
8014 (d)	5: 172a (b) (5th sentence).	

In subsection (b). the second sentence is inserted for clarity. The last sentence makes express the rule, necessarily implied in the source text, that the Deputy Comptroller may be appointed from either civilian or military personnel, and that if the Deputy Comptroller is not a civilian, the Comptroller must be.

In subsection (c), the words "matters in the Department of the Air Force named in subsection (a) (1)—(5)" are substituted for the words "all budgeting, accounting, progress and statistical reporting, and internal audit in their respective departments and for the administrative organization structure and managerial procedures relating thereto", to avoid repetition. 5: 626b (last 10 words) is omitted as superseded by section 8012 (c) of this title.

§ 8017. Secretary of the Air Force: successors to duties.

(a) If the Secretary of the Air Force dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347 of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force in order of their length of service as such.

(3) The Chief of Staff.

(b) Performance of the duties of the Secretary by the Chief of Staff or any officer of the Air Force designated under section 3347 of title 5 shall not be considered as the holding of a civil office within the meaning of section 973(b) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 489; Nov. 2, 1966, Pub. L. 89–718, § 23, 80 Stat. 1118; Jan. 2, 1968, Pub. L. 90–235, § 4(a)(9), 81 Stat. 760.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8017 (a)	5: 626–1 (b).	Sept. 19, 1951, ch. 407, § 102 (less (a)), 65 Stat. 327.
8017 (b)	5: 626–1 (c).	

In subsection (a), the word "person" is substituted for the words "officer of the United States". The words "until a successor is appointed" are omitted as surplusage.

Subsection (b) is substituted for 5: 626–1 (c) and states the effect of section 8544 (b) of this title.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–235 substituted "section 973(b) of this title" for "section 8544(b) of this title."

1966—Pub. L. 89–718 substituted "section 3347 of title 5" for "section 6 of title 5" wherever appearing.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 8018. Repealed. Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427.

Section, Pub. L. 85–861, § 1(154)(A), Sept. 2, 1958, 72 Stat. 1513, prescribed the compensation of the General Counsel of the Department of the Air Force, and is now covered by section 5316 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first pay period which begins on or after July 1, 1964, see section 501 of Pub. L. 88–426.

§ 8019. Office of Air Force Reserve: appointment of Chief.

(a) There is in the executive part of the Department of the Air Force an Office of Air Force Reserve which is headed by a chief who is the adviser to the Chief of Staff, on Air Force Reserve matters.

(b) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Air Force Reserve from officers of the Air Force Reserve not on active duty, or on active duty under section 265 of this title, who—

(1) have had at least 10 years of commissioned service in the Air Force;

(2) are in grade of brigadier general and above; and

(3) have been recommended by the Secretary of the Air Force.

(c) The Chief of Air Force Reserve holds office for four years, but may be removed for cause at any time. He is eligible to succeed himself. If he holds a lower reserve grade, he shall be appointed in the grade of major general for service in the Air Force Reserve. (Added Pub. L. 90–168, § 2(19), Dec. 1, 1967, 81 Stat. 524.)

EFFECTIVE DATE

Section effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

Chapter 805.—THE AIR STAFF

Sec.
8031. Composition: assignment and detail of members of Air Force and civilians.
8032. General duties.
8033. Reserve components of Air Force; policies and regulations for government of: functions of National Guard Bureau with respect to Air National Guard.
8034. Chief of Staff: appointment; duties.
8035. Vice Chief of Staff; Deputy Chiefs of Staff: succession to duties of Chief of Staff and Vice Chief of Staff.
8036. Surgeon General: appointment, grade.

AMENDMENTS

1965—Pub. L. 89–288, § 5(b), Oct. 22, 1965, 79 Stat. 1050, added item 8036.

§ 8031. Composition: assignment and detail of members of Air Force and civilians.

(a) There is in the executive part of the Department of the Air Force an Air Staff consisting of—

(1) The Chief of Staff;

(2) the Vice Chief of Staff;

(3) not more than five Deputy Chiefs of Staff;

(4) other members of the Air Force assigned or detailed to the Air Staff; and

(5) civilians in the Department of the Air Force assigned or detailed to the Air Staff.

(b) The Air Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(c) Not more than 2,800 officers of the Air Force may be assigned or detailed to permanent duty in the executive part of the Department of the Air Force. However, this limitation does not apply in time of war, or of national emergency declared by Congress, or whenever the President finds that it is in the national interest to increase the number of officers in the executive part of the Department. The Secretary shall report annually to Congress the number of officers in the executive part of the Department of the Air Force and the justification therefor.

(d) No commissioned officer who is assigned or detailed to duty in the executive part of the Department of the Air Force may serve for a tour of duty of more than four years. However, the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest. No officer may be assigned or detailed to duty in the executive part of the Department of the Air Force within two years after relief from that duty, except upon a special finding by the Secretary that the assignment or detail is necessary in the public interest. This subsection does not apply in time of war, or of national emergency declared by Congress. (Aug. 10, 1956, ch. 1041, 70A Stat. 490; Nov. 2, 1966, Pub. L. 89–718, § 45, 80 Stat. 1121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8031 (a)	10: 1811 (a).	Sept. 19, 1951, ch. 407, § 201, 65 Stat. 327.
8031 (b)	10: 1811 (b).	
8031 (c)	10: 1811 (c).	
8031 (d)	10: 1811 (d).	

In subsection (a), the words "an Air Staff consisting of—" are substituted for the words "a staff, which shall be known as the Air Staff, and which shall consist of—". The words "under regulations prescribed by the Secretary of the Air Force" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (b), 10: 1811 (b) (proviso) is omitted as superseded by section 264 (c) of this title.

In subsection (c), the third sentence is substituted for 10: 1811 (c) (1st 13 words and 1st proviso). The words "officers and employees * * * or under the jurisdiction of" are omitted as surplusage.

In subsections (c) and (d), the word "hereafter" is omitted, since all wars and emergencies declared by Congress before September 19, 1951, have been terminated.

In subsection (d), the words "now or hereafter" are omitted as surplusage and as executed. The second sentence is substituted for 10: 1811 (d) (last 31 words of 1st sentence). The third sentence is substituted for 10: 1811 (d) (2d sentence). 10: 1811 (d) (1st 13 words of last sentence) is omitted as executed. The words "This subsection does not apply" are substituted for the words "and shall be inapplicable".

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–718 changed the reporting requirement from quarterly to annually.

SUBMISSION OF ANNUAL REPORT

Prior to the amendment of section by Pub. L. 89–718, the reporting requirement contained in subsec. (c) was modified by Pub. L. 89–348, § 2 (3), Nov. 8, 1965, 79 Stat. 1312, to change the required report from quarterly to annually.

§ 8032. General duties.

(a) The Air Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Air Force, and the Chief of Staff.

(b) The Air Staff shall—

(1) prepare for such employment of the Air Force, and for such recruiting, organizing, supplying, equipping, training, serving, mobilizing, and demobilizing of the Air Force, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Air Force and its preparation for military operations;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) act as agent of the Secretary and the Chief of Staff in coordinating the action of all organizations of the Department of the Air Force; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Aug. 6, 1958, Pub. L. 85–599, § 4 (h), 72 Stat. 517.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8032 (a)	10: 1815 (a).	Sept. 19, 1951, ch. 407, § 205 65 Stat. 329.
8032 (b)	10: 1815 (b).	

In subsection (a), the word "furnish" is substituted for the word "render".

In subsection (b) (1), the words "power, duty, or function of" are substituted for the words "power vested in, duty imposed upon, or function assigned to".

In subsection (b) (2), the words "all questions affecting" and "state of" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b) (1). Pub. L. 85–599 substituted "prepare for such employment of the Air Force" for "prepare such plans for the national security, for employment of the Air Force for that purpose, both separately and in conjunction with the land and naval forces".

§ 8033. Reserve components of Air Force; policies and regulations for government of: functions of National Guard Bureau with respect to Air National Guard.

(a) There is in the Office of the Secretary of the Air Force an Air Reserve Forces Policy Committee on Air National Guard and Air Force Reserve Policy which shall review and comment upon major policy matters directly affecting the reserve components of the Air Force and the Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Chief of Staff, and the Assistant Secretary responsible for reserve affairs.

(b) The committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Air Force on duty with the Air Staff;

(2) five members of the Air National Guard of the United States not on active duty;

(3) five members of the Air Force Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matters affecting both the Air National Guard of the United States and Air Force Reserve are being considered. However, when any matter solely affecting one of the Air Force Reserve components is being considered, it shall be acted upon only by the Subcommittee on Air National Guard Policy or the Subcommittee on Air Force Reserve Policy, as appropriate.

(e) The Subcommittee on Air National Guard Policy consists of the members of the Committee other than the Air Force Reserve members.

(f) The Subcommittee on Air Force Reserve Policy consists of the members of the Committee other than the Air National Guard members.

(g) Membership on the Air Staff Committee is determined by the Secretary of the Air Force and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Air Force, the Secretary of the Air Force, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Air National Guard of the United States and the Air Force Reserve on duty with the Air Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Air Staff while on that duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 491; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(17), 72 Stat. 1565; Dec. 1, 1967, Pub. L. 90–168, § 2(21), 81 Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8033 (a)	10: 38 (1st par., less last 37 words).	June 3, 1916, ch. 134, § 5 (less last par.); June 4, 1920, ch. 227, subch. I, § 5 (1st 7 pars.); Sept. 22, 1922, ch. 423, § 1, July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647; added June 15, 1933, ch. 87, § 2 (less last par.), 48 Stat. 153; June 3, 1938, ch. 319; July 14, 1939, ch. 269; June 28, 1950, ch. 383, § 401 (b), 64 Stat. 271.
8033 (b)	10: 38 (last 37 words of 1st par.).	
8033 (c)	10: 38 (1st sentence, less proviso, of 2d par.).	
8033 (d)	10: 38 (proviso of 1st sentence of 2d par.).	
8033 (e)	10: 38 (2d sentence, and 3d sentence less proviso, of 2d par.).	
8033 (f)	10: 38 (proviso of 3d sentence, and last sentence, of 2d par.).	July 26, 1947, ch. 343, § 207 (f), 61 Stat. 503.
8033 (g)	5: 626 (f).	

In subsection (a), the words "the following subjects" are inserted for clarity.

In subsections (a) and (c), the words "of officers", after the word "committee", are inserted for clarity. The words "and of" are substituted for the words "to which shall be added".

In subsection (e), the words "For the purpose specified herein" are omitted as surplusage. The words "on that duty" are substituted for the words "so serving".

In subsection (g), the word "perform" is substituted for the words "be charged with". All of 5: 626 (f) except the first proviso of the first sentence is omitted as executed. The words "Territories, Puerto Rico, the Canal Zone, and the District of Columbia" are inserted to conform to other sections of this title which, in describing the National Guard, also include these jurisdictions.

AMENDMENTS

1967—Pub. L. 90–168 amended section generally, and among other changes, redesignated former subsec. (e) as subsec. (h) and increased from seven to eight the number of subsecs. in the section and in such subsecs. (a)—(h) restated with certain changes the existing authority relating to the Staff Committee on Air Force Reserve Policy within the Office of the Secretary of the Air Force, reduced the membership of the Committee from 21 to 15, reduced the grade requirements so as to permit inclusion of colonels, and provided that the Committee review and comment on all major policies affecting Air Force Reserve matters and that the Committee comments accompany any final submission to the Chief of Staff and Assistant Secretary responsible for Reserve matters.

1958—Subsec. (d). Pub. L. 85–861 substituted "affecting the organization, distribution, training, appointment, assignment, promotion, or discharge of members of the Air Force Reserve and those of either" for "affecting the Air Force Reserve and either".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Air National Guard, see section 101 et seq. of Title 32, National Guard.

Reserve Forces Policy Board, designation of two officers of Air National Guard of the United States and two Air Force Resrve officers as members, see section 175 (a) (8) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 175 of this title; title 37 section 204.

§ 8034. Chief of Staff: appointment; duties.

(a) The Chief of Staff shall be appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. He serves during the pleasure of the President. In time of war or national emergency declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his regular or reserve grade, and is counted as one of the officers authorized to serve in a grade above lieutenant general under section 8066 of this title.

(c) Except as otherwise prescribed by law and subject to section 8012 (c) and (d) of this title, the Chief of Staff performs his duties under the direction of the Secretary of the Air Force, and is directly responsible to the Secretary for the efficiency of the Air Force, its preparedness for military operations, and plans therefor.

(d) The Chief of Staff shall—

(1) preside over the Air Staff;

(2) send the plans and recommendations of the Air Staff to the Secretary, and advise him with regard thereto;

(3) after approval of the plans or recommendations of the Air Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision over such of the members and organizations of the Air Force as the Secretary of the Air Force determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title.

(5) perform the duties prescribed for him by sections 141 and 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492; Aug. 6, 1958, Pub. L. 85–599, § 4 (d), (e), 72 Stat. 517; Sept. 7, 1962, Pub. L. 87–651, title I, § 114, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, § 403, 81 Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8034 (a)	10: 1812 (1st sentence).	Sept. 19, 1951, ch. 407, §§ 202, 204, 65 Stat. 328.
8034 (b)	10: 1812 (less 1st sentence).	
8034 (c)	10: 1814 (a) (1st 10 words); 10: 1814 (b) (2d sentence); 10: 1814 (c).	June 3, 1916, ch. 134, § 5 (last par.); added June 15, 1933, ch. 87, § 2 (last par.), 48 Stat. 154.
8034 (d)	10: 38 (last par.); 10: 1814 (a) (less 1st 10 words); 10: 1814 (b) (less 2d sentence).	

In subsection (a), the words "not for" are substituted for the words "no person shall serve as Chief of Staff for a term of".

In subsection (b), the words "so serving" are substituted for the words "holding office as such". The words "regular or reserve" are substituted for the word "permanent", since there are no other "permanent" grades in the Air Force. The words "in the Air Force" are omitted as surplusage. The words "and shall take rank as prescribed by law" are omitted as superseded by section 743 of this title. The words "He shall receive the compensation prescribed by law" are omitted as covered by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

In subsection (c), the provisions of 10: 1814 relating to the direction of the Secretary of the Air Force over the Chief of Staff are combined. The words "and subsection (c) of this section" and "state of" are omitted as surplusage.

In subsection (d), 10: 38 (last par.) is omitted as covered by 10: 1814 (a). The words "and other provisions of law" are substituted for the words "and by other laws".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–22 changed the requirement that the Chief of Staff be reappointed only with the advice and consent of the Senate by providing for his reappointment for a term of not more than four years by the President without such advice and consent in a time of war or national emergency as declared by the Congress.

1962—Subsec. (d). Pub. L. 87–651 substituted "under section 124 of this title" for "pursuant to section 202(j) of the National Security Act of 1947, as amended" in cl. (4).

1958—Subsec. (d) (4). Pub. L. 85–599, § 4 (d) redesignated former subsec. (d) (5) as (d) (4), and required the Chief of Staff to exercise supervision only as the Secretary of the Air Force determines and in a manner consistent with the full operational command vested in unified or specified combatant commanders. Former subsec. (d) (4), which related to command over the air defense, strategic, tactical, and other major commands, was repealed by Pub. L. 85–599, § 4 (e).

Subsecs. (d) (5) and (d) (6). Pub. L. 85–599, § 4 (e), redesignated former subsecs. (d) (6) and (d) (7) as (d) (5) and (d) (6).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–22 effective Jan. 1, 1969, see section 405 of Pub. L. 90–22, set out as a note under section 3034 of this title.

CROSS REFERENCES

Air National Guard in Federal service, detail as chief and assistant chief of staff of wings, see section 8542 of this title.

Armed Forces Policy Council, member of, see section 171 (a) (10) of this title.

Chief of Staff to President, appointment, see section 8531 of this title.

Higher retired grade for service in special position, see section 8962 of this title.

Personal money allowance, see section 414 of Title 37, Pay and Allowances of the Uniformed Services.

Rank, see section 743 of this title.

§ 8035. Vice Chief of Staff; Deputy Chiefs of Staff: succession to duties of Chief of Staff and Vice Chief of Staff.

(a) The Vice Chief of Staff and the Deputy Chiefs of Staff shall be general officers detailed to those positions.

(b) If the Chief of Staff is absent or disabled or if that office is vacant, the officer who is highest on the following list and who is not absent or disabled shall, unless otherwise directed by the President, perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases:

(1) The Vice Chief of Staff.

(2) The Deputy Chiefs of Staff in order of seniority.

(c) If the Vice Chief of Staff is absent or disabled or if that office is vacant, the senior Deputy Chief of Staff who is not absent or disabled shall, unless otherwise directed by the Secretary of the Air Force, perform the duties of the Vice Chief of Staff until a successor is designated or the absence or disability ceases.

(d) The Vice Chief of Staff has such authority and duties with respect to the Department of the Air Force as the Chief of Staff, with the approval of the Secretary of the Air Force, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff. (Aug. 10, 1956, ch. 1041, 70A Stat. 492; Aug. 6, 1958, Pub. L. 85–599, § 6 (d), 72 Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8035 (a)	10: 1813 (a) (1st sentence).	Sept. 19, 1951, ch. 407, § 203, 65 Stat. 328.
8035 (b)	10: 1813 (a) (less 1st sentence).	
8035 (c)	10: 1813 (b).	

In subsection (a), the words "of the Air Force" are omitted as surplusage.

In subsection (b), the words "if the Chief of Staff is absent or disabled or if that office is vacant" are substituted for 10: 1813 (a) (1st 18 words of last sentence). The words "the officer who is highest on the following list and" are inserted for clarity. The words "until his successor is appointed" are omitted as surplusage.

In subsection (c), the words "If the Vice Chief of Staff is absent or disabled or if that office is vacant" are substituted for 10: 1813 (b) (1st 19 words).

AMENDMENTS

1958—Subsec. (d). Pub. L. 85–599 added subsec. (d).

§ 8036. Surgeon General: appointment, grade.

There is a Surgeon General of the Air Force who is appointed by the President by and with the advice and consent of the Senate from officers of the Air Force who are designated as medical officers under section 8067(a) of this title. The Surgeon General, while so serving, has the grade of lieutenant general. (Added Pub. L. 89–288, § 5(a), Oct. 22, 1965, 79 Stat. 1050.)

Chapter 807.—THE AIR FORCE

Sec.
8061. Regulations.
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8080. Air National Guard of the United States: authority of officers with respect to Federal status.

AMENDMENTS

1967—Pub. L. 90–130, § 1(25), Nov. 8, 1967, 81 Stat. 382, eliminated item 8071 which read: "Temporary grade of colonel in the Air Force: appointment of women."

1960—Pub. L. 86–603, § 1(3)(B), July 7, 1960, 74 Stat. 358, added item 8080.

§ 8061. Regulations.

The President may prescribe regulations for the government of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 493.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8061	10: 16.	July 15, 1870, ch. 294, § 20, 16 Stat. 319; Mar. 1, 1875, ch 115, 18 Stat. 337.

The word "prescribe" is substituted for the words "make and publish". 10: 16 (last 35 words) is omitted as surplusage.

CROSS REFERENCES

General regulatory powers of President, see section 121 of this title.

§ 8062. Policy; composition; aircraft authorization.

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) There is a United States Air Force within the Department of the Air Force.

(c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(d) The Air Force consists of—

(1) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;

(2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and

(3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all members of the Air Force, including those not assigned to units; necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(e) Subject to subsection (f) of this section and chapter 831 of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.

(f) There are authorized for the Air Force 24,000 serviceable aircraft or 225,000 airframe tons of serv-

iceable aircraft, whichever the Secretary of the Air Force considers appropriate to carry out this section. This subsection does not apply to guided missiles. (Aug. 10, 1956, ch. 1041, 70A Stat. 493.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8062 (a)	10: 20.	July 26, 1947, ch. 343, § 208 (a), (f), 61 Stat. 503; Aug. 10, 1949, ch. 412, § 12 (d), 63 Stat. 591.
8062 (b)	5: 626c (a).	
8062 (c)	5: 626c (f).	
8062 (d)	10: 20r (a); 10: 1831; 50: 1091.	
8062 (e)	10: 20r (b).	July 10, 1950, ch. 454, §§ 2, 201, 203, 64 Stat. 321, 323, 324.
8062 (f)	10: 20t.	Sept. 19, 1951, ch. 407, § 301, 65 Stat. 329.
		July 9, 1952, ch. 608, § 601, 66 Stat. 501.

In subsection (a), 10: 20 (1st 19 words) is omitted as surplusage. The words "any areas occupied by the United States" are substituted for the words "occupied areas wherever located".

Subsection (b) is substituted for 5: 626c (a) (1st sentence). 5: 626c (a) (last sentence) is omitted as executed.

In subsection (d), the words "consists of" are substituted for the word "includes".

In subsection (d) (1), 10: 20r (a) is omitted as superseded by 10: 1831. The words "all persons serving in the Air Force under call or * * * under any provision of law, including members of the Air National Guard of the several States, Territories, and the District of Columbia when in the service of the United States pursuant to call as provided by law" are omitted as covered by the words "the Air National Guard while in the service of the United States". 50: 1091 (last sentence) is omitted, since the components listed include their members.

In subsection (d) (2), the words "or inducted" are omitted as covered by the word "conscripted".

In subsection (e), the words "Effective on July 10, 1950" are omitted as executed. The words "the limitations imposed by" are omitted as surplusage. The words "not to exceed" are omitted as surplusage, since the revised section states the authorized number and any number over that would not be authorized. The words "and chapter 31 of this title" are substituted for the reference to 10: 20s to make it clear that the authority for a 70 group Air Force is subject to all provisions which prescribe the authorized personnel strength of the Air Force.

In subsection (f), the word "considers" is substituted for the words "may determine is more". The words "aggregate" and "amount" are omitted as surplusage. The words "carry out this section" are substituted for the words "fulfill the requirements of the Air Force of the United States for aircraft necessary to carry out the purposes of this chapter, section 481 of this title, and sections 235, 235a, 628, and 628a of title 5", since the purposes to which the reference is made are stated in the revised section. The last sentence is substituted for 10: 20t (proviso).

CROSS REFERENCES

Transfer, reassignment, consolidation or abolition of functions, powers and duties, see section 125 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 125, 9531 of this title.

§ 8066. Generals and lieutenant generals.

(a) The President may designate positions of importance and responsibility to carry the grade of general or lieutenant general. He may assign to those positions officers of the Air Force on active duty in any grade above brigadier general. While he holds one of those positions an officer has the grade specified for the position if appointed thereto by and with the advice and consent of the Senate.

(b) The number of positions designated under subsection (a) may not be more than 15 percent of the number of general officers on active duty. Not more than 25 percent of those positions may be designated as positions to be held by officers in the grade of general.

(c) General officers on the active list of the Regular Air Force who are specifically authorized by law to hold any civil office under the United States, or any instrumentality thereof, are in addition to the numbers authorized by this section.

(d) Appointment to the grade of general or lieutenant general under subsection (a) does not vacate the Regular or Reserve grade held by the officer. When his appointment under that subsection terminates, he is entitled to resume any other grade that he may then be entitled to hold. (Aug. 10, 1956, ch. 1041, 70A Stat. 494; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (36), 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8066 (a)	10: 506b (b) (less 37 words before 1st proviso, and less last 3 provisos).	Aug. 7, 1947, ch. 512, § 504 (b) (less 3d proviso), 61 Stat. 886.
8066 (b)	10: 506b (b) (2d proviso).	
8066 (c)	10: 506b (b) (last proviso).	
8066 (d)	10: 506b (b) (37 words before 1st proviso).	

In subsection (a), the word "may" is substituted for the words "is authorized from time to time, to". The word "grade" is substituted for the word "rank". The words "officers of the Air Force on active duty in any grade above brigadier general" are substituted for the words "any of the general officers holding office in the grade of major general or higher grade, under permanent or temporary appointments (including general officers of the Army of the United States and general officers of each of the components thereof who may be serving on active Federal duty)". The last sentence is substituted for the words "and such officers so designated and assigned, shall have the rank, title, pay and allowances of a general or lieutenant general, as the case may be, while so serving", and for 10: 506b (b) (1st proviso).

In subsection (c), the words "are in addition to the numbers authorized by this section" are substituted for 10: 506b (b) (1st 24 words of last proviso). The words "by law to hold any civil office under the United States" are substituted for the words "by Acts of Congress to hold appointments in the Diplomatic or Consular Service of the Government or to hold any civil office under the Government".

Subsection (d) is substituted for 10: 506b (b) (37 words before 1st proviso).

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 eliminated words "in the Air Force" following "importance and responsibility".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Chief of Staff counted as one of the officers authorized to serve in a grade above lieutenant general under this section, see section 8034 of this title.

Higher retired grade for service in special positions, see section 8962 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8034, 8962 of this title.

§ 8067. Designation: officers to perform certain professional functions.

(a) Medical functions in the Air Force shall be performed by commissioned officers of the Air Force

who are qualified under regulations prescribed by the Secretary of the Air Force in conformity with section 8289 or 8294 of this title, and who are designated as medical officers.

(b) Dental functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary in conformity with section 8294 of this title, and who are designated as dental officers.

(c) Veterinary functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as veterinary officers.

(d) Medical service functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as medical service officers.

(e) Nursing functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary in conformity with section 8291 of this title, and who are designated as Air Force nurses.

(f) Medical specialist functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as medical specialists.

(g) Judge advocate functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as judge advocates.

(h) Chaplain functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary in conformity with section 8293 of this title, and who are designated as chaplains.

(i) Other functions in the Air Force requiring special training or experience shall be performed by members of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as being in named categories. (Aug. 10, 1956, ch. 1041, 70A Stat. 494; Sept. 2, 1958, Pub. L. 85-861, § 1 (156), 72 Stat. 1513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8067 (a)	10: 1837 (a) (as applicable to medical officers).	Sept. 19, 1951, ch. 407, § 307 (less (d)), 65 Stat. 330.
8067 (b)	10: 1837 (a) (as applicable to dental officers).	June 24, 1952, ch. 457 (less 1st and last provisos), 66 Stat. 156.
8067 (c)	10: 1837 (a) (as applicable to veterinary officers).	
8067 (d)	10: 1837 (a) (as applicable to medical service officers).	
8067 (e)	10: 1837 (a) (as applicable to nurses).	
8067 (f)	10: 1837 (a) (as applicable to women medical specialists).	
8067 (g)	10: 1837 (a) (as applicable to judge advocates).	
8067 (h)	10: 1837 (a) (as applicable to chaplains).	
8067 (i)	10: 1837 (a) (less categories covered by subsections (a)—(h)); 10: 1837 (b), (c); 10: 81-2 (less 1st and last provisos).	

The references in clauses (4), (6), and (7) of 10: 1837 (a) are omitted, since the laws to which reference is made deal with qualifications for appointment as commissioned officers and do not specify professional qualifications prerequisite to designation to duties requiring special training or experience. The reference in clause (8) is omitted as executed.

10: 1837 (b) and (c) are omitted, since, except in the case of a reference to a law not presently in effect, their substance is covered by including the laws referred to in various revised sections of this title (see the distribution tables). 10: 81-2 (less 1st and last provisos) is omitted as unnecessary.

In subsections (a)—(d), (g), and (h), the words "commissioned officers" are substituted for the word "members", in 10: 1837 (a), since, under the laws to which reference is made, only commissioned officers may be designated to perform these functions.

In subsections (e) and (f), the words "female commissioned officers" are substituted for the word "members", in 10: 1837 (a), since, under the laws to which reference is made, only female commissioned officers may be designated to perform these functions.

AMENDMENTS

1958—Subsec. (e). Pub. L. 85-861 eliminated the word "female" which preceded "commissioned officers".

Subsec. (f). Pub. L. 85-861 eliminated the word "female" which preceded "commissioned officers" and "women" which preceded "medical specialists".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8036, 8208, 8209, 8296, 8297, 8306, 8307, 8549, 8579, 8848 of this title.

§ 8071. Repealed. Pub. L. 90-130, § 1(25), Nov. 8, 1967, 81 Stat. 382.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 495, provided for the appointment of a female Air Force officer in the temporary grade of colonel.

§ 8072. Judge Advocate General: appointment; duties.

(a) There is a Judge Advocate General in the Air Force, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Air Force. The term of office is four years, but may be sooner terminated or extended by the President. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(b) The Judge Advocate General of the Air Force shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General shall, in addition to other duties prescribed by law—

(1) receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

(2) perform such other legal duties as may be directed by the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8072 (a)	10: 1840 (a).	Sept. 19, 1951, ch. 407, § 310 (a), (b) (less 1st sentence), 65 Stat. 332.
8072 (b)	50: 741.	May 5, 1950, ch. 169, § 13 (as applicable to Air Force), 64 Stat. 147.
8072 (c)	10: 62, 10: 1840 (b) (last sentence).	R. S. 1199. June 23, 1874, ch. 458, § 2, 18 Stat. 244.

In subsection (a), the words "subject to the provisions of section 741 of Title 50" are omitted as surplusage.

The words "but may be sooner terminated, or extended, by the President" are substituted for 10: 1840 (a) (last 11 words of 1st sentence, and 2d sentence). 10: 1840 (a) (1st 46 words of 3d sentence) is omitted as surplusage. 10: 1840 (a) (last sentence) is omitted as executed. The words "by the President, by and with the advice and consent of the Senate", as they relate to the appointment as a major general in the Regular Air Force, are omitted as covered by section 8284 of this title.

In subsection (b), the words "Hereafter" and "exclusive of the present incumbents" are omitted as surplusage. The words "at least" are substituted for the words "not less than a total".

In subsection (c), the act of June 23, 1874, ch. 458, § 2 (words before semicolon of 1st sentence, and last sentence), 18 Stat. 244, are not contained in 10: 62. They are also omitted from the revised section, since the Air Force does not have organic corps created by statute.

§ 8074. Commands: territorial organization.

(a) The Air Force shall be divided into such organizations as the Secretary of the Air Force may prescribe.

(b) For Air Force purposes, the United States, its Territories, its possessions, and other places in which the Air Force is stationed or is operating, may be divided into such areas as directed by the Secretary. Officers of the Air Force may be assigned to command Air Force activities, installations, and personnel in those areas. In the discharge of the Air Force's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(c) The Military Air Transport Service is redesignated as the Military Airlift Command. (Aug. 10, 1956, ch. 1041, 70A Stat. 495; Aug. 6, 1958, Pub. L. 85–599, § 4(f), 72 Stat. 517; June 11, 1965, Pub. L. 89–37, title III, § 306(a), 79 Stat. 129.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8074 (a)	10: 1838 (a) (1).	Sept. 19, 1951, ch. 407, §§ 308, 309, 65 Stat. 332.
8074 (b)	10: 1838 (a) (2).	
8074 (c)	10: 1838 (b).	
8074 (d)	10: 1839.	

In subsection (b), the words "from time to time" are omitted as surplusage.

In subsection (d), the words "have the duties and powers" are substituted for the words "shall perform such duties and exercise such powers". The words "of America", "elements of", "other provisions of", and "so assigned" are omitted as surplusage.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89–37 added subsec. (c).

1958—Subsec. (a). Pub. L. 85–599, § 4 (f) (1), substituted provisions permitting the Air Force to be divided into such organizations as the Secretary of the Air Force may prescribe for provisions which established an air-defense, a strategic, and a tactical command in the Air Force.

Subsec. (b). Pub. L. 85–599, § 4 (f) (2), redesignated former subsec. (d) as (b), and repealed former subsecs. (b) and (c) which permitted the Secretary of the Air Force to establish additional commands and organizations in the interest of efficiency and economy of operation, and, for the duration of any war or national emergency, to establish new major commands or to discontinue or consolidate major commands.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 306(b) of Pub. L. 89–37 provided that: "The amendment made by subsection (a) of this section [adding subsec. (c) to this section] shall become effective January 1, 1966."

§ 8075. Regular Air Force: composition.

(a) The Regular Air Force is the component of the Air Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Air Force.

(b) The Regular Air Force includes—

(1) the officers and enlisted members of the Regular Air Force;

(2) the professors, registrar, and cadets at the United States Air Force Academy; and

(3) the retired officers and enlisted members of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 496; Aug. 6, 1958, Pub. L. 85–600, § 1 (13), 72 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8075 (a)	10: 1832 (a).	Sept. 19, 1951, ch. 407, § 302, 65 Stat. 329; Apr. 1, 1954, ch. 127, § 7, 68 Stat. 48.
8075 (b)	10: 1832 (less (a)).	

In subsection (b), the words "holding appointments or enlisted in the Regular Air Force as now or hereafter provided by law", "and such other persons as are now or may hereafter be specified by law", and "commissioned * * * warrant officers" are omitted as surplusage, since the revised section lists all persons in the Regular Air Force. 10: 1832 (b) (last sentence) is omitted as executed.

AMENDMENTS

1958—Subsec. (b) (2). Pub. L. 85–600 included the registrar of the Air Force Academy.

§ 8076. Air Force Reserve: composition.

The Air Force Reserve is a reserve component of the Air Force to provide a reserve for active duty. It consists of the members of the officers' section of the Air Force Reserve and of the enlisted section of the Air Force Reserve. It includes all Reserves of the Air Force who are not members of the Air National Guard of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8076	10: 1833; 50: 1092.	Sept. 19, 1951, ch. 407, § 303, 65 Stat. 330. July 9, 1952, ch. 608, § 602, 66 Stat. 501.

The first sentence is substituted for 10: 1833. The word "Reserves" is substituted for the words "Reserve officers and Reserve enlisted members", in 50: 1092. The words "other than those", in 50: 1092, are omitted as surplusage.

§ 8077. Air National Guard of United States: composition.

The Air National Guard of the United States is the reserve component of the Air Force that consists of—

(1) federally recognized units and organizations of the Air National Guard; and

(2) members of the Air National Guard who are also Reserves of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8077	50: 1111; 50: 1112 (less (a)).	July 9, 1952, ch. 608, §§ 701, 702 (less (a)), 66 Stat. 501, 502.

The words "and references in this chapter, in the absence of express provision otherwise, are to be construed accordingly", in 50: 1111, are omitted as executed by the revised sections of this title. 50: 1111 (last sentence) is omitted, since "National Guard of the United States", with respect to the Army, is designated as "Army National Guard of the United States" throughout this title; and both it and the "Air National Guard of the United States" are referred to separately throughout this title. The words "are also" are substituted for the words "in addition to their status as such", in 50: 1112 (less (a)). The words "same commissioned, warrant, or enlisted", in 50: 1112, are omitted as surplusage.

CROSS REFERENCES

Air National Guard generally, see section 101 et seq. of Title 32, National Guard.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8078. Air National Guard: when a component of Air Force.

The Air National Guard while in the service of the United States is a component of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8078	10: 1835 (last 16 words).	Sept. 19, 1951, ch. 407, § 305 (last 16 words), 65 Stat. 330.

CROSS REFERENCES

Air National Guard generally, see section 101 et seq. of Title 32, National Guard.

§ 8079. Air National Guard of United States: status when not in Federal service.

When not on active duty, members of the Air National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Air National Guard. (Aug. 10, 1956, ch. 1041, 70A Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8079	50: 1119 (less 1st sentence).	July 9, 1952, ch. 608, § 709 (less 1st sentence), 66 Stat. 503.

The word "uniformed" is omitted as surplusage. The words "in the service of the United States" are omitted as surplusage.

CROSS REFERENCES

Air National Guard generally, see section 101 et seq. of Title 32, National Guard.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8080. Air National Guard of the United States: authority of officers with respect to Federal status.

Under regulations to be prescribed by the Secretary of the Air Force, officers of the Air National Guard of the United States who are not on active duty may—

(1) order members of the Air National Guard of the United States or, with the approval of the Secretary of the Army, members of the Army National Guard of the United States, to active duty for training under section 672(d) of this title;

(2) enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(3) with respect to their Federal status, promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(Added Pub. L. 86-603, § 1(3)(A), July 7, 1960, 74 Stat. 357.)

PART II.—PERSONNEL

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AMENDMENTS

1968—Pub. L. 90-377, § 5, July 5, 1968, 82 Stat. 288, eliminated chapter 851: "United States Disciplinary Barracks".

Pub. L. 90-235, § 8(6), Jan. 2, 1968, 81 Stat. 764, eliminated chapter 847: "The Uniform".

1960—Pub. L. 86-616, §§ 7(b), 8(b), July 12, 1960, 74 Stat. 393, 395, substituted "Substandard Performance of Duty" for "Failure to Meet Standards" in the heading of chapter 859 and added chapter 860.

1958—Pub. L. 85-861, § 1 (193), Sept. 2, 1958, 72 Stat. 1538, substituted "8841" for "[No present sections]" in the heading of chapter 863.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 8062 of this title.

Chapter 831.—STRENGTH

Sec.
8201. Air Force: members on active duty.
8202. Air Force: officers in certain commissioned grades.
8203. Regular Air Force: members on active duty.

Sec.
8204. Regular Air Force: commissioned officers on active list.
8205. Regular Air Force: commissioned officers on active list, exclusive of certain categories.
8206. Regular Air Force: commissioned officers on active list; Air Force nurses.
8207. [1] Regular Air Force: commissioned officers on active list; Air Force medical specialists.
8208. Regular Air Force: commissioned officers on active list; female commissioned officers, other than those designated under section 8067 of this title to perform professional functions.
8209. Regular Air Force: commissioned officers on active list; special categories.
8210. Regular Air Force: strength in grade; general officers.
8211. Regular Air Force: strength in grade; promotion-list officers.
8212. Regular Air Force; Air Force Reserve; Air National Guard of United States: strength in grade; temporary increases.
8213. Regular Air Force: warrant officers on active list.
8214. Regular Air Force: enlisted members on active duty.
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8217. Reserves: commissioned officers in an active status.
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8221. Air Force Reserve.
8222. Air Force Reserve, exclusive of members on active duty.
8223. Air Force Reserve: warrant officers.
8224. Air National Guard of United States.
8225. Air National Guard and Air National Guard of United States, exclusive of members on active duty.
8230. Personnel detailed outside Department of Defense.

AMENDMENTS

1967—Pub. L. 90–130, § 1(26)(F), Nov. 8, 1967, 81 Stat. 382, struck out "; female enlisted members on active duty" following "female warrant officers on active list" in item 8215.

1958—Pub. L. 85–861, § 1 (165), Sept. 2, 1958, 72 Stat. 1516, substituted "Air Force medical specialists" for "women medical specialists" in item 8207, inserted "Air Force Reserve; Air National Guard of United States" in item 8212, and added items 8217–8219 and 8230.

§ 8201. Air Force: members on active duty.

(a) The authorized strength of the Air Force in members on active duty, exclusive of—

(1) officer candidates;

(2) aviation cadets;

(3) Reserves on active duty for training;

(4) members paid from appropriations for the Air National Guard or the Air Force Reserve;

(5) Reserves ordered to active duty in an emergency; and

(6) enlisted members in a reserve officers' training corps or serving as cadets at the United States Air Force Academy, the United States Military Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 502,000.

(b) The authorized daily average strength of the Air Force in members on active duty during the fiscal year, exclusive of—

(1) officer candidates;

(2) Reserves on active duty for training purposes only;

(3) members employed in the Selective Service System; and

(4) enlisted members in a reserve officers' training corps or serving as cadets at the United States Air Force Academy, the United States Military Academy, or the United States Coast Guard Academy, or as midshipmen at the United States Naval Academy or in the Naval Reserve;

is 502,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 497; Sept. 2, 1958, Pub. L. 85–861, § 1 (157), 72 Stat. 1514; Oct. 13, 1964, Pub. L. 88–647, title III, § 301 (20), 78 Stat. 1073.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8201 (a)	10: 20s (a).	July 10, 1950, ch. 454, § 202 (a), 64 Stat. 323.
8201 (b)	50 App.: 452.	June 24, 1948, ch. 625, § 2; restated June 19, 1951, ch. 144, § 1 (b), 65 Stat. 76.

Subsections (a) and (b) are in force concurrently according to an opinion of the Judge Advocate General of the Army (JAGA 1952/2294, 4 Mar. 1952).

In subsection (a), the reference to one-year enlistees as an excepted category, in 10: 20s (a), is omitted to conform to 50 App.: 452. The one-year enlistee program was abolished by section 1 (h) of the 1951 amendments to the Universal Military Training and Service Act, 65 Stat. 80.

In subsection (a) (4), the word "members" is substituted for the word "persons".

In subsection (a) (5), the word "hereafter" is omitted, since all emergencies declared before July 11, 1950, have been terminated.

In subsection (a) (3) and (5), and (b) (2), the word "Reserves" is substituted for the words "personnel of the Reserve components".

In subsection (b) (3), the word "members" is substituted for the words "personnel of the armed forces".

AMENDMENTS

1964—Subsec. (a)(6). Pub. L. 88–647, § 301(20)(A), inserted "in a reserve officers' training corps or" following "members."

Subsec. (b)(4). Pub. L. 88–647, § 301(20)(B), inserted "in a reserve officers' training corps or" following "members."

1958—Subsec. (a) (6). Pub. L. 85–861 added subsec. (a) (6).

Subsec. (b) (4). Pub. L. 85–861 added subsec. (b) (4).

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8203, 8214, 8222, 8225 of this title.

§ 8202. Air Force: officers in certain commissioned grades.

(a) The authorized strength of the Air Force in officers on active duty in each of the following grades on the last day of each fiscal year, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, is, except as provided in subsections

[1] Analysis does not conform to section catchline.

(e) and (f), based on the actual strength of the Air Force in those officers, as follows:

If the actual strength[1] is—	The authorized strength in grade is—			
	For general officers	For colonels	For lieutenant colonels	For majors
50,000	312	3,133	6,065	9,455
60,000	324	3,540	6,822	11,298
70,000	336	3,857	7,427	13,125
80,000	349	4,107	7,920	14,936
90,000	363	4,299	8,316	16,740
100,000	380	4,440	8,620	18,530
110,000	398	4,750	9,350	20,295
120,000	416	5,020	10,056	22,056
130,000	434	5,273	10,725	23,803
140,000	452	5,484	11,368	25,536
150,000	470	5,665	12,000	27,255
160,000	478	5,842	12,608	28,976
170,000	486	5,974	13,175	30,685
180,000	495	6,075	13,716	32,328

[1] As determined by the Secretary of the Air Force.

If the actual strength is determined to be between two of the figures named in the first column of the table, the corresponding authorized strengths in grade are determined by mathematical interpolation between the respective authorized strengths named in the table. If it is determined to be more than 180,000, the Secretary shall fix the corresponding authorized strengths in grade in general conformity with the table.

(b) Not more than one-half of the general officer strength may be in grades above brigadier general.

(c) A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(d) In time of war, or of national emergency declared after May 5, 1954, by Congress or the President, the President may suspend the operation of any provision of this section.

(e) The authorized strengths of the Air Force in officers who are designated as medical or dental officers of the Air Force in grades below brigadier general shall be based on the needs of the Air Force as determined by the Secretary under regulations to be prescribed by the Secretary of Defense.

(f) In determining the authorized strength of the Air Force under subsection (a), the strengths authorized for those who are designated as medical or dental officers of the Air Force shall be excluded. (Aug. 10, 1956, ch. 1041, 70A Stat. 498; Sept. 2, 1958, Pub. L. 85–861, § 1(158), 72 Stat. 1514; Dec. 28, 1967, Pub. L. 90–228, § 1(4), (5), 81 Stat. 745.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8202 (a)	10: 1843; 10: 1844; 10: 1846; 10: 1848.	May 5, 1954, ch. 180, §§ 301—306, 403, 68 Stat. 69, 70.
8202 (b)	10: 1845.	
8202 (c)	10: 1847.	
8202 (d)	10: 1849.	

In subsection (a), the words "The authorized strength * * * is" are substituted for the words "The number * * * shall not exceed". The words "(exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis)" are substituted for 10: 1846. The words "commissioned" and "circumstances require that" are omitted as surplusage.

Subsection (c) is substituted for 10: 1847.

In subsection (d), the words "the operation of any provision of" are substituted for the words "all or any part of the provisions of".

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–228, § 1(4), inserted ", except as provided in subsections (e) and (f)," after "basis, is".

Subsecs. (e), (f). Pub. L. 90–228, § 1(5), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85–861 substituted "an authorized appointment" for "an appointment".

INCREASE IN AUTHORIZED STRENGTH IN GRADES OF COLONEL AND LIEUTENANT COLONEL

Pub. L. 89–606, § 1, Sept. 26, 1966, 80 Stat. 849, provided: "That, beginning with the date of enactment of this Act [Sept. 26, 1966] through June 30, 1972, the columns under the headings 'For colonels' and 'For lieutenant colonels' contained in the table in section 8202(a) of title 10, United States Code [subsec. (a) of this section], are suspended. For such period such columns shall read as follows:

"For colonels	For lieutenant colonels
3,500	6,500
3,859	7,706
4,218	8,911
4,577	10,116
4,936	11,321
5,295	12,527
5,654	13,732
6,013	14,937
6,372	16,142
6,730	17,348
7,089	18,533
7,449	19,758
7,807	20,963
8,166	22,169".

INCREASE IN NUMBER OF OFFICERS WHO MAY SERVE IN GRADE OF LIEUTENANT COLONEL AND MAJOR

Pub. L. 89–606, § 2, Sept. 26, 1966, 80 Stat. 849, provided that:

"For a period of six years after the effective date of this Act [Sept. 26, 1966], the authorized strengths [including the temporary increases, in the case of lieutenant colonels, through June 30, 1972, authorized by section 1 of Pub. L. 89–606] prescribed by section 8202 of title 10, United States Code [this section], may be exceeded (1) by 1,000 for the grade of lieutenant colonel; and (2) by the following numbers for the grade of major:

"Fiscal years following enactment:	*Number to exceed authorized strength*
First	9,500
Second	7,917
Third	6,334
Fourth	4,751
Fifth	3,168
Sixth	1,585

However, the authority to exceed the authorized strengths by 1,000 for the grade of lieutenant colonel, and 1,500 for the grade of major authorized by this section may be used only in the event that drastic reductions or increases in the authorized strength of the commissioned officers on active duty in the Air Force occur within a short period of time and that such changes seriously impede promotions to the grade of major and lieutenant colonel as determined by the Secretary of the Air Force, who shall notify the Committees on Armed Services of the Senate and of the House of Representatives not later than 60 days following the utilization of any of the numbers covered in this sentence."

Pub. L. 89–157, Aug. 31, 1965, 79 Stat. 611, provided: "That, for the period July 1, 1965, through June 30, 1966, the table in section 8202(a) of title 10, United States Code [subsec. (a) of this section], as it relates to colonels and lieutenant colonels, is suspended. For this period the authorized strengths of the Air Force in officers on active duty in the grades of colonel and lieutenant colonel, exclusive of officers on active duty for training only and officers serving with other departments or agencies on a reimbursable basis, may not exceed 6,300 and 15,901, respectively."

INCREASE IN NUMBER OF OFFICERS WHO MAY SERVE IN GRADE OF LIEUTENANT COLONEL

Pub. L. 87-194, Sept. 1, 1961, 75 Stat. 424, as amended by Pub. L. 88-63, July 17, 1963, 77 Stat. 79, permitted, for the period Sept. 1, 1961 to June 30, 1965, the authorized strength prescribed for the grade of lieutenant colonel to be exceeded by not more than 4,000.

INCREASE IN NUMBER OF OFFICERS WHO MAY SERVE IN GRADE OF MAJOR

Pub. L. 86-335, Sept. 21, 1959, 73 Stat. 600, permitted, during the period beginning on Sept. 21, 1959, and ending at the close of June 30, 1961, the authorized strength prescribed for the grade of major to be exceeded by not more than 3,000.

CROSS REFERENCES

Vacancies in officer grade in Regular Air Force, filling by appointment in higher grade, see section 8442 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8210 of this title.

§ 8203. Regular Air Force: members on active duty.

The authorized strength of the Regular Air Force in members on active duty, exclusive of officer candidates and aviation cadets, is 502,000 less the number of members of the Air Force on active duty who are neither members of the Regular Air Force nor members of the Air Force in the categories listed in section 8201 (a) (1)—(6) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 498; Sept. 2, 1958, Pub. L. 85-861, § 1 (159), 72 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8203	No source.	No source.

The revised section is inserted to make explicit in the law the authorized strength of the Regular Air Force, which has heretofore been implied from provisions relating to the strength of the Air Force in members on active duty. The implication is based on an opinion of the Judge Advocate General of the Army construing the same laws as they affect the Army. That opinion (JAGA 1951/1549, 14 Feb. 1951) concludes that the authorized strength of the Regular Army is the same as the authorized strength of the Army in members on active duty, exclusive of the categories named in section 8201 (a) (1)—(4) of this title, less the number of nonregulars on active duty. In stating those members excluded, reference is made only to officer candidates and aviation cadets, since there are no regulars in the other categories listed in section 8201 (a) of this title. An express statement in the law of the authorized strength of the Regular Air Force is desirable, since other sections, for example section 8207 of this title, expressly refer to that authorized strength.

AMENDMENTS

1958—Pub. L. 85-861 substituted "section 8201(a) (1)—(6)" for "section 8201(a)(1)—(5)".

§ 8204. Regular Air Force: commissioned officers on active list.

The authorized strength of the Regular Air Force in commissioned officers on the active list is the sum of—

(1) the numbers authorized by section 8205 of this title;

(2) the number of permanent professors of the United States Air Force Academy authorized by section 9331 of this title and the registrar thereof; and

(3) the numbers in designated categories specifically authorized by law as additional numbers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 6, 1958, Pub. L. 85-600, § 1 (14), 72 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8204	No source.	No source.

The revised section is inserted to make it clear that the total authorized strength of the Regular Air Force in commissioned officers on the active list includes the additional numbers authorized for the permanent professors of the Air Force Academy and any numbers in designated categories specially authorized by law as additional numbers, excluded from the strength of 27,500 specified in section 8205 of this title.

AMENDMENTS

1958—Pub. L. 85-600 included the registrar of the Air Force Academy.

§ 8205. Regular Air Force: commissioned officers on active list, exclusive of certain categories.

(a) The authorized strength of the Regular Air Force in commissioned officers on the active list, exclusive of permanent professors and the registrar of the United States Air Force Academy and members in designated categories specifically authorized by law as additional numbers, is 69,425.

(b) Subject to subsection (a), the Secretary of Defense, with the approval of the President, shall estimate each year, for each of the five years following that year, the strength of the Regular Air Force in commissioned officers on the active list exclusive of officers specifically authorized by law as additional numbers. (Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 6, 1958, Pub. L. 85-600, § 1 (15), 72 Stat. 523; Sept. 2, 1958, Pub. L. 85-861, § 1 (160), 72 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8205	10: 20s (b) (less last 17 words).	July 10, 1950, ch. 454, § 202 (b) (less last 17 words), 64 Stat. 323.

The reference to professors of the Air Force Academy is inserted, since professors of the United States Military Academy are, under section 3205 of this title, excluded from the authorized strength of the Regular Army.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861, § 1 (160) (A), designated existing provisions as subsec. (a), and § 1 (160) (B), substituted "69,425" for "27,500".

Subsec. (a). Pub. L. 85-600 excluded the registrar of the Air Force Academy.

Subsec. (b). Pub. L. 85-861, § 1 (160) (C), added subsec. (b).

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8204 of this title.

§ 8206. Regular Air Force: Commissioned officers on active list; Air Force nurses.

(a) The authorized strength in Air Force nurses on the active list of the Regular Air Force is as prescribed by the Secretary of the Air Force within the authorized strength of the Regular Air Force in commissioned officers on the active list.

(b) Repealed. Pub. L. 90–130, § 1(26)(A), Nov. 8, 1967, 81 Stat. 382.

(Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(1), 71 Stat. 386; Nov. 8, 1967, Pub. L. 90–130, § 1(26)(A), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8206 (a)	10: 166 (a) (less proviso of last sentence).	Apr. 16, 1947, ch. 38, § 101 (a), 61 Stat. 41.
8206 (b)	10: 166 (a) (proviso of last sentence); 10: 166f (b) (1st 22 words of 1st sentence).	Apr. 16, 1947, ch. 38, § 107 (b) (1st 22 words of 1st sentence); restated May 16, 1950, ch. 186, § 3 (c) (b) (1st 22 words of 1st sentence). 64 Stat. 161.

In subsection (a), the figure "549" results from the allocation of the original figure 2,558 heretofore made between the Army and the Air Force under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). (See Joint Army and Air Force Adjustment Regulation No. 1–11–62, May 16, 1949.) This allocation has had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change the allocation, expired. 10: 166 (a) (1st 20 words of 1st sentence) is omitted as inapplicable to the Air Force. 10: 166 (a) (1st sentence, less 1st 20 words) is omitted as superseded by section 8012 (e) of this title. 10: 166 (a) (words of last sentence before proviso) is omitted as inapplicable to the Air Force because of section 8296 of this title.

In subsection (b), the last sentence is inserted, since a different grade structure is prescribed by section 8211 of this title for categories for which promotion lists are authorized.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which provided that, of the authorized strength of the Air Force in Air Force nurses on the active list of the Regular Air Force, not more than five could be in the regular grade of colonel and not more than one hundred and seven could be in the regular grade of lieutenant colonel.

1957—Pub. L. 85–155 substituted "Commissioned" for "commissioned" in the catchline.

Subsec. (a). Pub. L. 85–155 substituted "is as prescribed by the Secretary of the Air Force within the authorized strength of the Regular Air Force in commissioned officers on the active list" for "is 549, or 6/1,000 of the authorized strength prescribed by section 8203 of this title, whichever is greater".

Subsec. (b). Pub. L. 85–155 permitted not more than 5 officers in the regular grade of colonel, and not more than 107 in the regular grade of lieutenant colonel, and eliminated provisions which restricted officers in the grades of lieutenant colonel and major to not more than 7/1,000 and 16/1,000, respectively, of the authorized strength, and which empowered the Secretary of the Air Force to prescribe the authorized strength of the Air Force nurses on the active list in the regular grade of captain.

SAVINGS PROVISIONS

Sections 304 and 305 of Pub. L. 85–155 provided that:

"SEC. 304. This Act [amending sections 3069, 3070, 3206, 3207, 3288, 3291, 3296—3299, 3304, 3305, 3888, 3915, 3916, 3927, 3991, 5140, 5444, 5449, 5702, 5707, 5708, 5753, 5762, 5773, 5775, 5776, 5782, 6377—6379, 6381, 6388, 6395, 6396, 8206, 8207, 8212, 8285—8288, 8297, 8298—8301, 8303, 8305, 8888, 8915, 8927, and 8991 of this title, and repealing sections 3881, 3882, 3887, 3912, 3928, 8291, 8304, 8881, 8882, 8887, 8912, and 8928 of this title] does not affect—

"(1) the appointment of an Air Force nurse or medical specialist on the active list of the Regular Air Force on the effective date of this Act [Aug. 21, 1957]; or

"(2) the status or retired pay of any person retired under section 108 of the Army-Navy Nurses Act of 1947, as amended, or any other provision of law.

"SEC. 305. Notwithstanding any other provision of law—

"(1) an Air Force nurse or medical specialist who is on a recommended list for promotion to a higher regular grade on the effective date of this Act [Aug. 21, 1957] may, if nominated by the President and confirmed by the Senate, be promoted to that grade; and

"(2) an Air Force nurse or medical specialist who, on the effective date of this Act [Aug. 21, 1957], has been nominated by the President and confirmed by the Senate for promotion to a higher regular grade, may be promoted to that grade."

§ 8207. Regular Air Force: Commissioned officers on active list; medical specialists.

(a) The authorized strength in Air Force medical specialists on the active list of the Regular Air Force is as prescribed by the Secretary of the Air Force within the authorized strength of the Regular Air Force in commissioned officers on the active list.

(b) Repealed. Pub. L. 90–130, § 1(26)(B), Nov. 8, 1967, 81 Stat. 382.

(Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(2), 71 Stat. 386; Nov. 8, 1967, Pub. L. 90–130, § 1(26)(B), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8207 (a)	10: 166a (a) (less last sentence).	Apr. 16, 1947, ch. 38, § 102 (a), 61 Stat. 42; May 16, 1950, ch. 186, § 3 (a), 64 Stat. 160.
8207 (b)	10: 166a (a) (last sentence); 10: 166f (b) (less 2d and last sentences, and less 1st 22 words of 1st sentence).	Apr. 16, 1947, ch. 38, § 107 (b) (less 2d and last sentences, and less 1st 22 words of 1st sentence); restated May 16, 1950, ch. 186, § 3 (c) (b) (less 2d and last sentences, and less 1st 22 words of 1st sentence), 64 Stat. 161.

In subsection (a), the figure "53" results from the allocation of the original figure 409, heretofore made between the Army and the Air Force under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). This allocation has had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change the allocation, expired. Although section 3 of the act of May 16, 1950, ch. 186, 64 Stat. 161, restated the 409 figure, it is clear from the Congressional committee reports on the act of May 16, 1950, that the figure 409 was intended to be a total applicable to both the Army and the Air Force. 10: 166a (a) (1st sentence, less last 16 words) is omitted as inapplicable to the Air Force. 10: 166a (a) (last 16 words of 1st sentence) is omitted as superseded by section 8012 (e) of this title.

In subsection (b), the words "and the remainder of such authorized commissioned strength shall be in permanent commissioned grades of captain to second lieutenant inclusive" are omitted as covered by section 8291 of this title, which authorizes original designation only in the grades of first lieutenant and second lieutenant, and by section 8304 of this title, which authorizes promotions of women medical specialists only to grades below lieutenant colonel. The last sentence is inserted since a different grade structure is prescribed by section 8211 of this title for categories for which promotion lists are authorized. The words "on the active list" are inserted to conform to section 8206 (b) of this title. 10: 166a (a) (last sentence, less applicability to strength) is omitted as inapplicable to the Air Force because of section 8296 of this title. The word "regular" is substituted for the word "permanent".

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out subsec. (b), which provided that of the authorized strength in medical specialists on the active list of the Regular Air

Force, not more than one could be in the regular grade of colonel and not more than twenty could be in the regular grade of lieutenant colonel.

1957—Pub. L. 85–155 substituted "Commissioned" for "commissioned" and "medical specialists" for "women medical specialists" in the catchline.

Subsec. (a). Pub. L. 85–155 substituted "Air Force medical specialists" for "women medical specialists", and "is as prescribed by the Secretary of the Air Force within the authorized strength of the Regular Air Force in commissioned officers on the active list" for "is 53, or 9/10,000 of the authorized strength prescribed in section 8203 of this title, whichever is greater".

Subsec. (b). Pub. L. 85–155 substituted provisions relating to the authorized strength in medical specialists in the regular grade of colonel and lieutenant colonel for provisions which related to the authorized strength in women medical specialists in the regular grades of major and captain.

§ 8208. Regular Air Force: commissioned officers on active list; female commissioned officers, other than those designated under section 8067 of this title to perform professional functions.

(a) The authorized strength in female commissioned officers on the active list of the Regular Air Force, other than those designated under section 8067 of this title to perform professional functions, is as prescribed by the Secretary of the Air Force.

(b) Repealed. Pub. L. 90–130, § 1(26)(C), Nov. 8, 1967, 81 Stat. 382.

(Aug. 10, 1956, ch. 1041, 70A Stat. 499; Nov. 8, 1967, Pub. L. 90–130, § 1(26)(C), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8208 (a)	5: 627a (as applicable to commissioned officers).	June 12, 1948, ch. 449, §§ 302 (as applicable to commissioned officers), 303 (c) (less 1st sentence), 62, Stat. 371.
8208 (b)	5: 627b (c) (less 1st sentence).	

In subsection (a), 5: 627a (proviso) is omitted as executed. The words "is as prescribed" are substituted for the words "shall be determined".

In subsections (a) and (b), the words "other than those designated under section 8067 of this title to perform professional functions" are inserted, since the source statute applied only to women appointed under Title III of that statute. The words "on the active list" are inserted for clarity. The words "from time to time" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–130 struck out provision that the authorized strength in female commissioned officers on the active list of the Regular Air Force could not be more than 2 percent of the authorized strength of the Regular Air Force in commissioned officers on the active list.

Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which provided that the authorized strength of female commissioned officers on the active list in the regular grade of lieutenant colonel, other than those designated under section 8067 of this title to perform professional functions, could not exceed 10 percent of the authorized strength of female commissioned officers on the active list other than those designated under section 8067 of this title to perform professional functions.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

§ 8209. Regular Air Force: commissioned officers on active list; special categories.

The authorized strength of the Regular Air Force in commissioned officers on the active list in each of the categories of officers designated under section 8067 of this title is as prescribed by the Secretary of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 500; Sept. 2, 1958, Pub. L. 85–861, § 1(156), 72 Stat. 1513; Nov. 8, 1967, Pub. L. 90–130, § 1(26)(D), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8209	10: 506 (d).	Aug. 7, 1947, ch. 512, § 502 (d), 61 Stat. 884.

10: 506 (d) (words within parentheses) is omitted as surplusage.

AMENDMENTS

1967—Pub. L. 90–130 removed provision which had excepted Air Force nurses and medical specialists from the commissioned officers in the Regular Air Force whose authorized strength the Secretary of the Air Force has authority to prescribe.

1958—Pub. L. 85–861 eliminated the word "women" which preceded "medical specialists".

§ 8210. Regular Air Force: strength in grade; general officers.

(a) Subject to section 8202 (a) of this title, the authorized strength of the Regular Air Force in general offices on the active list is 75/10,000 of the authorized strength of the Regular Air Force in commissioned officers on the active list. Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.

(b) When the application of subsection (a) results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(c) General officers on the active list of the Regular Air Force who are specifically authorized by law to hold a civil office under the United States, or an instrumentality thereof, are not counted in determining authorized strength under this section. (Aug. 10, 1056, ch. 1041, 70A Stat. 1514; Sept. 2, 1958, Pub. L. 85–861, § 1 (161), 72 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8210 (a)	10: 506a (a) (words before 1st semicolon).	Aug. 7, 1947, ch. 512, § 503 (a) 61 Stat. 885.
8210 (b)	10: 506a (a) (less words before 1st semicolon, and less provisos).	
8210 (c)	10: 506a (a) (1st, 2d, and 3d provisos).	
8210 (d)	10: 506a (a) (4th proviso).	
8210 (e)	10: 506a (a) (last proviso).	

As enacted, section 503 (a) of the Officer Personnel Act of 1947 (10: 506a (a)) provided, subject to certain percentage limitations, for the following authorized strength of the Regular Army in general officers on the active list:

Medical Corps	16
Dental Corps	4
Veterinary Corps	1
The Chaplains	2
Army, exclusive of the above	334
Total	357

Under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)), allocations of those authorized

strengths were made between the Army and the Air Force as follows:

	Army	Air Force
Medical Corps	12	4
Dental Corps	3	1
Veterinary Corps	1	0
The Chaplains	1	1
Army and Air Force, exclusive of the above	184	150
Total	201	156

After the enactment of the Officer Personnel Act of 1947, section 308 of the Army Organization Act of 1950 (10: 61–1) provided for an Assistant Judge Advocate General and three brigadier generals in the Judge Advocate General's Corps of the Army. The creation of these four general officer spaces served to increase the mentioned authorized strength figure from 357 to 361, and the figure 201 to 205. The opinion of the Judge Advocate General of the Army (JAGA 1948/5806, 2 Sept. 1948) is in accord with that conclusion.

The revised section reflects the authorized strength of the Regular Air Force in general officers on the active list resulting from the mentioned allocation to the Air Force.

That allocation, and those mentioned in the explanation of subsection (c) below, have had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change these allocations, expired.

The word "regular" is substituted for the word "permanent" throughout the revised subsection.

In subsection (c), 10: 506a (a) (1st proviso) is omitted, since there is no authority to appoint to a regular grade above major general. 10: 506a (a) (last 65 words of 2d proviso) is omitted as executed by the declaration of a national emergency on December 16, 1950.

In subsection (c) (1), the figures "4" and "2" result from the allocation of the original figures "16" and "8".

In subsection (c) (2), the figure "1" results from the allocation of the original figures "4" and "2".

In subsection (c) (3), the figure "1" results from the allocation of the original figures "2" and "1". (The major general was allocated to the Army, the brigadier general to the Air Force.)

In subsection (c) (4), the figures "150" and "75" result from the allocation of the original figures "334" and "167". That allocation corresponds to the allotment made by the Secretary of War between the Air Corps and the Army exclusive of the Air Corps, the Medical Department, and the Chaplains, under 10: 506a (a) (3d proviso). That proviso is omitted as executed.

In subsection (e), the words "by law to hold any civil office under the United States" are substituted for the words "by Acts of Congress to hold appointments in the Diplomatic or Consular Service of the Government or to hold any civil office under the Government".

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 inserted "Subject to section 8202 (a) of this title," preceding "the", and eliminated provisions which excluded the number of commissioned officers on the active list authorized by former subsec. (b) of this section and medical service officers.

Subsec. (b). Pub. L. 85–861 redesignated former subsec. (d) as (b), and eliminated former subsec. (b) which prescribed the authorized strength of general officers as medical, dental, and veterinary officers, and as chaplains.

Subsec. (c). Pub. L. 85–861 redesignated former subsec. (e) as (c), and eliminated former subsec. (c), which prescribed the maximum number of general officers for the active list of the Regular Air Force.

§ 8211. Regular Air Force: strength in grade; promotion-list officers.

(a) Subject to subsection (b), the authorized strength of the Regular Air Force in officers in each regular grade on each of the promotion lists authorized by section 8296 of this title shall be as prescribed by the Secretary of the Air Force. A vacancy in any grade on a promotion list may be filled by an authorized appointment in any lower grade.

(b) Each strength prescribed by the Secretary under subsection (a) shall be stated as a percentage of the strength authorized for the particular list, and the schedule of percentages may be different for each list. No schedule for a list may authorize, with respect to a grade, a percentage that is higher than the sum of (1) the figure fixed for the grade according to the following table, and (2) the amounts, if any, by which the percentages fixed by the Secretary for higher grades are less than the figures fixed according to that table:

Grade	Column 1 Medical, dental, and veterinary officers, chaplains, and judge advocates	Column 2 All other promotion lists
	Percent	*Percent*
Colonel	[1] 8	[1] 8
Lieutenant colonel	14	14
Major	19	19
Captain	23	23
First lieutenant	36	18
Second lieutenant	[2] —	18

[1] Colonels whose retirement is deferred under section 8921 (b) of this title are not included within this percentage.
[2] None may be authorized by the Secretary for this category.

(Aug. 10, 1956, ch. 1041, 70A Stat. 501; Sept. 2, 1958, Pub. L. 85–861, § 1 (162), 72 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8211 (a)	10: 559 (b) (1) (1st 25 words); 10: 559 (b) (2) (1st sentence); 10: 1837 (d) (last sentence, as applicable to strength).	Aug. 7, 1947, ch. 512, § 505 (b) (1), (2) (1st sentence), 61 Stat. 888, 889; June 30, 1954, ch. 433, § 1 (a), 68 Stat. 357. Sept. 19, 1951, ch. 407, § 307 (d) (last sentence, as applicable to strength), 65 Stat. 332.
8211 (b)	10: 559 (b) (1) (less 1st 25 words): 10: 941a (d) (81st through 105th words of last proviso of clause (3)).	Aug. 7, 1947, ch. 512, § 514 (d) (81st through 105th words of last proviso of clause (3)), 61 Stat. 902.

Subsection (b) clarifies the joint effect of the scale of percentages and 10: 559 (b) (1) (3d proviso), by combining them into a single rule. The table restates in consolidated form the rules relating to the limitations applicable to the Secretary when setting authorized strengths for the several promotion lists. 10: 559 (b) (1) (2d proviso) is omitted as inapplicable to the Air Force. 10: 559 (b) (1) (last proviso) is omitted as executed.

Footnote 1 is substituted for 10: 941a (d) (81st through 105th words of last proviso of clause (3)).

Footnote 2 is substituted for 10: 559 (b) (1) (1st proviso).

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 substituted "an authorized appointment" for "an appointment".

CROSS REFERENCES

Vacancies in officer grade in Regular Air Force filling by appointment in higher grade, see section 8442 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8212. Regular Air Force; Air Force Reserve; Air National Guard of United States: strength in grade; temporary increases.

The authorized strength in any regular or reserve grade, as prescribed by or under this chapter, is

automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section 541, 1211(a), 8298, 8299, 8365 (a) and (c), 8366 (a) and (d), 8375, 8376, 8380, 8381, or 9353, of this title. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 501; Aug. 21, 1957, Pub. L. 85-155, title III, § 301(3), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85-861, § 1(163), 72 Stat. 1515; June 30, 1960, Pub. L. 86-559, § 1(48), 74 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8212	10: 166f (b) (last sentence); 10: 506c (f) (last 43 words of 1st sentence); 10: 559 (b) (2) (less 1st sentence); 10: 559b (31st through 56th words of 1st sentence); 10: 559c (k) (as applicable to strength).	Apr. 16, 1947, ch. 38, § 107 (b) (last sentence); restated May 16, 1950, ch. 186, § 3 (c) (b) (last sentence), 64 Stat. 161. Aug. 7, 1947, ch. 512, §§ 505 (b) (2) (less 1st sentence), 506 (f) (last 43 words of 1st sentence), 508 (31st through 56th words of 1st sentence), 509 (k) (as applicable to strength), 61 Stat. 889, 892, 894, 897.

The revised section consolidates various provisions permitting "temporary" strengths in grade in excess of authorized strengths. The second sentence of the revised section clarifies the meaning of the word "temporary" heretofore used in this connection. Reference is made to section 1211 (a) of this title to reflect the authority contained in that section.

AMENDMENTS

1960—Pub. L. 86-559 substituted "8370 (a) or (c), 8372(b) (except for the grade of colonel), 8374 (except for the grade of colonel), 8375, 8376 (except for general officer grades), 8380, 8381, or 9353, of this title to the extent necessary to allow the appointment of reserve officers, in grades not above lieutenant colonel, to fill prescribed mobilization or active duty requirements" for "8375, 8376, 8380, 8381, or 9353, of this title", and inserted "or not to fill one of those requirements" after "not under those sections."

1958—Pub. L. 85-861 inserted "Air Force Reserve; Air National Guard of United States" in the catchline, and included authorized strength in reserve grades, and appointments made under sections 541, 8365 (a), (c), 8366 (a), (d), 8375, 8376, 8380 and 8381 of this title.

1957—Pub. L. 85-155 eliminated reference to appointments made under section 8304 of this title.

TERMINATION DATE OF 1960 AMENDMENT

Section 1(48) of Pub. L. 86-559, as amended by Pub. L. 88-620, § 1, Oct. 3, 1964, 78 Stat. 999, provided in part that the amendment of this section by Pub. L. 86-559 was effective only until July 1, 1965.

APPOINTMENTS AND PROMOTIONS TO LIEUTENANT COLONEL AND MAJOR IN AIR NATIONAL GUARD AND AIR FORCE RESERVE WITHOUT REGARD TO PRESCRIBED AUTHORIZED STRENGTHS IN GRADE

Pub. L. 90-168, § 5, Dec. 1, 1967, 81 Stat. 526, provided that:

"From December 1, 1967, through June 30, 1969, appointments and promotions may be made without regard to the authorized strength in grade prescribed by or under chapter 831 of title 10, United States Code [this chapter], to fill vacancies in units of the Air National Guard, and in units organized to serve as units in the Air Force Reserve, as follows:

"(1) Before July 1, 1968, in the Air National Guard, 250 in the grade of lieutenant colonel and 340 in the grade of major, and in the Air Force Reserve, 270 in the grade of lieutenant colonel and 240 in the grade of major, and

"(2) After June 30, 1968, in the Air National Guard, 220 in the grade of lieutenant colonel and 300 in the grade of major, and in the Air Force Reserve, 125 in the grade of lieutenant colonel and 175 in the grade of major."

TEMPORARY INCREASES IN AUTHORIZED STRENGTH OF REGULAR AIR FORCE FOR ACADEMY GRADUATES

Section 14 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1557, provided that: "The authorized strength in any grade in the Regular Air Force is automatically increased to the minimum extent necessary to give effect to each appointment as a second lieutenant in the Regular Air Force, before the effective date of section 541 of title 10, United States Code, of any graduate of the United States Military Academy or the United States Naval Academy. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section [section 14 of Pub. L. 85-861] or under section 8212 of that title [this section], may be made in that grade."

§ 8213. Regular Air Force: warrant officers on active list.

The authorized strength of the Regular Air Force in warrant officers on the active list is 4,800. (Aug. 10, 1956, ch. 1041, 70A Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8213	10: 20s (b) (last 17 words).	July 10, 1950, ch. 454, § 202 (b) (last 17 words), 64 Stat. 323.

In subsection (b), 10: 591 (last sentence, less proviso), is omitted as superseded by 10: 20s (b) (last sentence). The words "of the Regular Army on the active list" are substituted for the words "permanent * * * in active service". The word "regular" is inserted for clarity.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

§ 8214. Regular Air Force: enlisted members on active duty.

The authorized strength of the Regular Air Force in enlisted members on active duty, exclusive of officer candidates and aviation cadets, is 502,000 less the number of members of the Air Force on active duty who are neither enlisted members of the Regular Air Force nor members of the Air Force in the categories listed in section 8201 (a) (1)—(6) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 501; Sept. 2, 1958, Pub. L. 85-861, § 1 (159), 72 Stat. 1514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8214	No source.	No source.

The revised section is inserted to make explicit in the law the authorized strength of the Regular Air Force in enlisted members on active duty, which has heretofore been implied from provisions relating to the strength

of the Air Force in members on active duty. The implication is based on an opinion of the Judge Advocate General of the Army (JAGA 1951/1549, 14 Feb. 1951), construing the same laws as applicable to the Army, that the authorized strength of the Regular Army in enlisted members on active duty is the authorized strength of the Regular Army in members on active duty, less the number of commissioned and warrant officers of the Regular Army on active duty. In stating those members excluded, reference is made only to officer candidates and aviation cadets, since there are no Regulars in the other categories listed in section 8201 (a) of this title. An express statement in the law of the authorized strength of the Regular Air Force in enlisted members on active duty is desirable, since section 8215 (b) of this title expressly refers to that authorized strength.

AMENDMENTS

1958—Pub. L. 85-861 substituted "section 8201 (a) (1)—(6)" for "section 8201 (a) (1)—(5)".

§ 8215. Regular Air Force: female warrant officers on active list.

(a) The authorized strength of the Regular Air Force in female warrant officers on the active list is as prescribed by the Secretary of the Air Force.

(b) Repealed. Pub. L. 90-130, § 1(26)(E), Nov. 8, 1967, 81 Stat. 382.

(Aug. 10, 1956, ch. 1041, 70A Stat. 502; Nov. 8, 1967, Pub. L. 90-130, § (26) (E), (F), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8215 (a)	5: 627a (as applicable to warrant officers).	June 12, 1948, ch. 449, § 302 (less applicability to commissioned officers), 62 Stat. 371.
8215 (b)	5: 627a (as applicable to enlisted members).	

In subsection (a), the words "on the active list" are inserted for clarity, and to conform to section 8213 of this title.

In subsections (a) and (b), the words "within the authorized * * * warrant, and enlisted strengths of the Regular Air Force" are omitted as surplusage. 5: 627a (proviso) is omitted as executed. The words "on active duty" are inserted for clarity.

AMENDMENTS

1967—Pub. L. 90-130, § 1(26)(F), struck out reference to female enlisted members on active duty in the section catchline.

Subsec. (a). Pub. L. 90-130, § 1(26)(E), struck out provision limiting the authorized strength of the Regular Air Force in female warrant officers on the active list to 2 percent of the authorized strength of the Regular Air Force in warrant officers.

Subsec. (b). Pub. L. 90-130, § 1(26)(E), struck out subsec. (b) which provided that the authorized strength of the Regular Air Force in female enlisted members on active duty could not be more than 2 percent of the authorized strength of the Regular Air Force in enlisted members prescribed by section 8214 of this title.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

§ 8217. Reserves: commissioned officers in an active status.

The authorized strength of the Air Force in reserve commissioned officers in an active status is 200,000. However, a higher authorized strength may be prescribed to meet mobilization requirements or to permit increases otherwise required by or resulting from the operation of any law. (Added Pub. L. 85-861, § 1 (164) (A), Sept. 2, 1958, 72 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8217	50: 1333 (a) (less 3d through last sentences).	Sept. 3, 1954, ch. 1257, § 503 (a) (less 3d through last sentences), 68 Stat. 1172.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8219 of this title.

§ 8218. Reserves: strength in grade; general officers in an active status.

The authorized strength of the Air Force in reserve general officers in an active status, exclusive of those serving as adjutants general or assistant adjutants general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, and those serving in the National Guard Bureau, is 157. (Added Pub. L. 85-861, § 1 (164) (A), Sept. 2, 1958, 72 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8218	50: 1333 (a) (4th sentence).	Sept. 3, 1954, ch. 1257, § 503 (a) (4th sentence), 68 Stat. 1172.

The words "reserve general officers in an active status" are substituted for the words "Reserve officers of the Air Force in an active status in general officer grades".

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 8219 of this title.

§ 8219. Reserves: strength in grade; commissioned officers in grades below brigadier general in an active status.

(a) Subject to subsection (b), the authorized strength of the Air Force in reserve commissioned officers in an active status in each grade below brigadier general is as prescribed by the Secretary of the Air Force. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(b) A strength prescribed by the Secretary under subsection (a) may not be higher than the percentage of the authorized strength fixed for the grade by the following table:

Grade:	*Percentage of authorized strength under sec. 8217 of this title*
Colonel	1.8
Lieutenant colonel	4.6
Major	14.0
Captain	32.0
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 8218 of this title)	47.6

(Added Pub. L. 85-861, § 1 (164) (A), Sept. 2, 1958, 72 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8219 (a)	50: 1333 (a) (1st 25 words of 3d sentence; 5th and last sentences).	Sept. 3, 1954, ch. 1257, § 503 (a) (3d, 5th, and last sentences), 68 Stat. 1172.
8219 (b)	50: 1333 (a) (3d sentence, less 1st 25 words).	

In subsection (a), 50:1333 (a) (last sentence) is omitted as surplusage, since the term "authorized strength" is defined as only a maximum strength by section 101 (21) of this title. The word "authorized" is inserted before the word "appointment" to make it clear that this section does not itself authorize original appointments or promotions.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This secton is referred to in section 123 of this title.

§ 8221. Air Force Reserve.

(a) Whenever the authorized strength of the Air Force Reserve is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the Air Force Reserve, the authorized strength of the Air Force Reserve in members in each grade is that which the Secretary of the Air Force determines to be necessary to provide for mobilization requirements. The Secretary shall review those determinations at least once each year and revise them if he considers it necessary. However, no member of the Air Force Reserve may be reduced in his reserve grade, without his consent, as a result of such a determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 502.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8221 (a)	50: 923 (as applicable to 50: 922 (f)).	July 9, 1952, ch. 608, §§ 203 (as applicable to § 202 (f)), 215 (b) (as applicable to § 202 (f)), 66 Stat. 483, 486.
8221 (b)	50: 935 (b) (as applicable to 50: 922 (f)).	

In subsection (b), the words "authorized strength * * * in members in each grade" are substituted for the words "the numbers of officers and enlisted personnel authorized in the various ranks, grades, and ratings". The word "planned" is omitted as surplusage. The words "at least once each year" are substituted for the words "not less than once annually". The words "without his consent" are substituted for the word "involuntary". The words "his reserve grade" are substituted for the words "permanent rank, grade, or rating".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

§ 8222. Air Force Reserve, exclusive of members on active duty.

The authorized strength of the Air Force Reserve, exclusive of members who are included in the strength of 502,000 authorized in section 8201 (a) of this title for members of the Air Force on active duty, is 500,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 502.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8222	10: 20s (d) (less last sentence).	July 10, 1950, ch. 454, § 202 (d) (less last sentence), 64 Stat. 323.

The exclusion clause is substituted for 10: 20s (d) (last 43 words of 1st sentence). The words "officers, warrant officers, and enlisted persons" are omitted as surplusage.

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see note set out under section 3201 of this title.

§ 8223. Air Force Reserve: warrant officers.

The Secretary of the Air Force may prescribe the authorized strength of the Air Force Reserve in warrant officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 502.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8223	10: 20s (d) (last sentence).	July 10, 1950, ch. 454, § 202 (d) (last sentence), 64 Stat. 323.

So much of 10: 20s (d) (last sentence) as relates to the authority to appoint warrant officers is omitted as covered by section 597 of this title.

§ 8224. Air National Guard of United States.

(a) Whenever the authorized strength of the Air National Guard of the United States is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the Air National Guard of the United States, the authorized strength of the Air National Guard of the United States in members in each grade is that which the Secretary of the Air Force determines to be necessary to provide for mobilization requirements. The Secretary shall review those determinations at least once each year and revise them if he considers it necessary. However, no member of the Air National Guard of the United States may be reduced in his reserve grade, without his consent, as a result of such a determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 502.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8224 (a)	50: 923 (as applicable to 50: 922 (e)).	July 9, 1952, ch. 608, §§ 203 (as applicable to § 202 (e)), 215 (b) (as applicable to § 202 (e)), 66 Stat. 483, 486.
8224 (b)	50: 935 (b) (as applicable to 50: 922 (e)).	

Subsection (a) is substituted for 50: 923 (as applicable to 50: 922 (e)).

In subsection (b), the words "authorized strength * * * in members in each grade" are substituted for the words "the numbers of officers and enlisted personnel authorized in the various ranks, grades, and ratings". The word "planned" is omitted as surplusage. The words "at least once each year" are substituted for the words "not less than once annually". The words "without his consent" are substituted for the word "involuntarily". The words "his reserve grade" are substituted for the words "permanent rank, grade, or rating".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8225. Air National Guard and Air National Guard of United States, exclusive of members on active duty.

The authorized strength of the Air National Guard and the Air National Guard of the United States, exclusive of members who are included in the strength of 502,000 authorized in section 8201 (a) of this title for members of the Air Force on active duty, is 150,000. The strength authorized by this section shall be allocated among the States and Territories, Puerto Rico, the Canal Zone, and the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 503.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8225	10: 20s (c).	July 10, 1950, ch. 454, § 202 (c), 64 Stat. 323.

The exclusion clause is substituted for 10: 20s (c) (last 34 words).

SUSPENSION OF RESTRICTIONS ON PERSONNEL STRENGTH

Suspension until July 1, 1971, see not set out under section 3201 of this title.

§ 8230. Personnel detailed outside Department of Defense.

Members of the Air Force who are detailed for duty with agencies of the United States outside the Department of Defense on a reimbursable basis are not counted in computing strengths under any law. (Added Pub. L. 85–861, § 1 (164) (B), Sept. 2, 1958, 72 Stat. 1515.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8230	5: 171s.	July 13, 1955, ch. 358, § 604, 69 Stat. 314.

The words "of the United States" are inserted for clarity. The word "strengths" is substituted for the word "numbers".

Chapter 833.—ENLISTMENTS

Sec.
8251. Definition.
8253. Air Force: persons not qualified.
8257. Regular Air Force: aviation cadets; qualifications, grade, limitations.
8258. Regular Air Force: reenlistment after service as an officer.
8259. Air Force Reserve: transfer from Air National Guard of United States.
8260. Air Force Reserve: transfer to upon withdrawal as member of Air National Guard.
8261. Air National Guard of United States.

AMENDMENTS

1968—Pub. L. 90–235, § 2(a)(4)(C), Jan. 2, 1968, 81 Stat. 756, struck out item 8252, which read: "Temporary enlistments", item 8254, which read: "Air Force: during war or emergency", item 8255, which read: "Regular Air Force: recruiting campaigns", item 8256, which read: "Regular Air Force: qualifications, term, grade", item 8262, which read: "Extension of enlistment for members needing medical care or hospitalization", and item 8263, which read: "Voluntary extension of enlistment".

1958—Pub. L. 85–861, § 1(166) (C), (D), Sept. 2, 1958, 72 Stat. 1516, eliminated ": enlistment" following "United States" in item 8261, and added item 8263.

CROSS REFERENCES

Appointment of enlisted members to cadetships at the Air Force Academy, see section 9342 of this title.

Articles of Military Code to be explained, see section 937 of this title.

Detail of members of Air Force as students, observers, and investigators, see section 9301 of this title.

Fraudulent or unlawful enlistment, punishment, see sections 883, 884 of this title.

Oath of enlistment, see section 502 of this title.

§ 8251. Definition.

In this chapter "enlistment" means original enlistment or reenlistment. (Aug. 10, 1956, ch. 1041, 70A Stat. 503.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8251	No source.	No source.

The revised section is inserted for clarity.

§ 8252. Repealed. Pub. L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 503, provided that temporary enlistments could be made only in the Air Force without specification of component.

§ 8253. Air Force: persons not qualified.

In time of peace, no person may be accepted for original enlistment in the Air Force unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8. (Aug. 10, 1956, ch. 1041, 70A Stat. 503; Aug. 17, 1961, Pub. L. 87–143, § 1(2), 75 Stat 364; Jan. 2, 1968, Pub. L. 90–235, § 2(a) (4) (A), 81 Stat. 756.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8253 (a)	10: 622.	R. S. 1118; Feb. 27, 1877, ch. 69 (17th par.), 19 Stat. 242; July 29, 1941, ch. 325, 55 Stat. 606.
8253 (b)	10: 623; 10: 624.	R. S. 1998; restated Aug. 22, 1912, ch. 336, § 1, 37 Stat. 356; Oct. 14, 1940, ch. 876, § 504 (9th clause), 54 Stat. 1172.
8253 (c)	10: 625.	Aug. 1, 1894, ch. 179, § 2, 28 Stat. 216; June 14, 1920, ch. 286, 41 Stat. 1077.

In subsection (a), the words "an armed force" are substituted for the words "the military service of the United States". The words "and no person" are omitted as surplusage. The last sentence is substituted for 10: 622 (proviso). The words "by regulations or otherwise" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. Since the authority to enlist deserters "in meritorious cases", granted to the Secretary by 10: 622 is equivalent to or broader than his authority to do so under 10: 624, the applicability of 10: 624 to 10: 622 is omitted as surplusage.

In subsection (b), the word "soldier", in 10: 623, is omitted as covered by the word "person". The last sentence is substituted for 10: 624.

In subsections (b) and (c), the first 15 words and the proviso of section 2 of the act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10: 623 or 625. They are also omitted from the revised section, since the first 15 words are superseded by section 8256 (a) of this title, and the proviso is executed.

In subsection (c), the words "(except an Indian)", in section 2 of the act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10: 625. They are also omitted from the revised section, since section 201 (b) of the

act of October 14, 1940, ch. 876, 54 Stat. 1138 (8 U. S. C. 601), provides that Indians are citizens and nationals of the United States. The words "may be accepted for original" are substituted for the words "shall be enlisted for the first".

AMENDMENTS

1968—Pub. L. 90–235 struck out provisions formerly set out as subsec. (a) disqualifying insane persons, intoxicated persons, deserters and convicted felons from service in the Air Force, and provisions formerly set out as subsec. (b) disqualifying from reenlistment in the Air Force persons whose service during their last term of enlistment was not honest and faithful, and redesignated as entire section provisions formerly set out as subsec. (c).

1961—Subsec. (c). Pub. L. 87–143 substituted "a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8" for ", or has made a legal declaration of intention to become, a citizen of the United States."

CROSS REFERENCES

Nationality and naturalization, see section 1401 et seq. of Title 8, Aliens and Nationality.

Naturalization through service in armed forces, see sections 1439 and 1440 of Title 8.

Persons effecting unlawful enlistment, punishment, see section 884 of this title.

§§ 8254 to 8256, Repealed. Pub. L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756.

Section 8254, act Aug. 10, 1956, ch. 1041, 70A Stat. 503, provided for temporary enlistments in the Air Force during war or emergency.

Section 8255, act Aug. 10, 1956, ch. 1041, 70A Stat. 504, provided for recruiting campaigns to obtain enlistments in the Regular Air Force.

Section 8256, act Aug. 10, 1956, ch. 1041, 70A Stat. 504, set forth the qualifications for and term of enlistments in the Regular Air Force and the grade in which such enlistments were made.

MEMBERS OF ARMY AND AIR FORCE SERVING UNDER ENLISTMENTS FOR UNSPECIFIED PERIODS ON JAN. 2, 1968; CONTINUANCE IN STATUS; DISCHARGE.

Members of Air Force serving under enlistments for unspecified periods on Jan. 2, 1968, continued in that status and discharged in accordance with laws applicable on Jan. 1, 1968, see section 3(c) of Pub. L. 90–235, set out as a note under section 3256 of this title.

§ 8257. Regular Air Force: aviation cadets; qualifications, grade, limitations.

(a) The grade of aviation cadet is a special enlisted grade in the Regular Air Force.

(b) Any male citizen of the United States may be enlisted as an aviation cadet, if he is otherwise qualified.

(c) Any male enlisted member of the Regular Air Force who is otherwise qualified may be designated, with his consent, as an aviation cadet by the Secretary of the Air Force.

(d) Except in time of war or of emergency declared by Congress, at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Air Force or the Regular Army who are eligible and qualified. No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as second lieutenant in the Air Force Reserve, and will serve on active duty as such for a period of three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(e) While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 504; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (37), 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8257 (a)	10: 297a.	June 3, 1941, ch. 165, §§ 1, 3 (1st and 2d sentences), 55 Stat. 239.
8257 (b)	10: 299 (1st sentence, less last 19 words).	
8257 (c)	10: 291f–2 (less 1st 55 words of 1st proviso); 10: 299 (last 19 words of 1st sentence).	June 13, 1949, ch. 199, § 3, 63 Stat. 175.
8257 (d)	10: 291f–2 (1st 55 words of 1st proviso); 10: 299 (2d sentence).	

In subsection (b), the words "Under such regulations as the Secretary of the Army may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (c), the words "who is otherwise qualified" and "with his consent" are substituted for 10: 291f–2 (less 1st 55 words of 1st proviso).

In subsection (d), the first sentence is substituted for 10: 291f–2 (proviso). The words "after June 13, 1940" (the date of enactment of the source statute) are substituted for the word "hereafter", in 10: 291f–2. The words "after June 13, 1949", in 10: 291f–2, are omitted as executed. The first 17 words of the last sentence are substituted for 10: 299 (1st 20 words of 2d sentence). Clause (2) is substituted for 10: 299 (proviso of 2d sentence).

AMENDMENTS

1958—Subsec. (e). Pub. L. 85–861 added subsec. (e).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8356 of this title.

§ 8258. Regular Air Force: reenlistment after service as an officer.

Any former enlisted member of the Regular Air Force who has served on active duty as a reserve officer of the Air Force, or who was discharged as an enlisted member to accept a temporary appointment as an officer of the Air Force, is entitled to be reenlisted in the Regular Air Force in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Air Force prescribes for exceptional circumstances) after termination of that service. However, if his service as an officer terminated by a general discharge, he may, under regulations to be prescribed by the Secretary of the Air Force, be so reenlisted. (Aug. 10, 1956, ch. 1041, 70A Stat. 505; Aug. 8, 1958, Pub. L. 85–603, § 1 (3), 72 Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8258	10: 631a (less last proviso).	July 14, 1939, ch. 267, § 1 (less last proviso); restated May 29, 1954, ch. 249, § 19 (b) (less last proviso), 68 Stat. 166.

The words "former" and "as an enlisted member" are inserted for clarity. The words "credit for service" are substituted for the words "of service". The words "in his grade" are substituted for the words "in the appropriate enlisted grade". The words "he applies" are substituted for the words "application * * * shall be made". The words "Hereafter" and "while on active duty" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85-603 limited entitlement to be reenlisted in enlisted grade to those officers whose service terminated by an honorable discharge and those relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and provided that persons whose service terminated by a general discharge, may, under regulations to be prescribed by the Secretary of the Air Force, be so reenlisted.

CROSS REFERENCES

Service by enlisted member as an officer counted as enlisted service, see section 8684 of this title.

§ 8259. Air Force Reserve: transfer from Air National Guard of United States.

Under such regulations as the Secretary of the Air Force may prescribe, and with the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, an enlisted member of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve. Upon transfer, he is eligible for promotion to the highest regular or reserve grade ever held by him in the Air Force, if his service has been honorable. (Aug. 10, 1956, ch. 1041, 70A Stat. 505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8259	50: 1116 (less last 15 words of 1st sentence, as applicable to enlistments).	July 9, 1952, ch. 608, § 706 (less last 15 words of 1st sentence, as applicable to enlistments), 66 Stat. 503.

The words "at any time", in 50: 1116 (1st sentence), and "of any person" and "from the National Guard of the United States or from the Air National Guard of the United States", in 50: 1116 (2d sentence), are omitted as surplusage. The words "highest regular or reserve grade ever held by him in the Air Force" are substituted for the words "Highest permanent grade previously held in * * * the Air Force or any component thereof", since "permanent" grades are held only as a Regular or Reserve and there are no "non-permanent" grades held in a component.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title; title 32 section 323.

§ 8260. Air Force Reserve: transfer to upon withdrawal as member of Air National Guard.

Unless discharged from his enlistment as a Reserve, an enlisted member of the Air National Guard of the United States who ceases to be a member of the Air National Guard becomes a member of the Air Force Reserve. An enlisted member who so becomes a member of the Air Force Reserve ceases to be a member of the Air National Guard of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8260	50: 1117 (as applicable to enlistments).	July 9, 1952, ch. 608, § 707 (as applicable to enlistments), 66 Stat. 503.

The words "enlistment as a Reserve" are substituted for the words "enlistment as a * * * Reserve enlisted member".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8261. Air National Guard of United States.

(a) Except as provided in subsection (c), to become an enlisted member of the Air National Guard of the United States, a person must—

(1) be enlisted in the Air National Guard;

(2) subscribe to the oath set forth in section 304 of title 32; and

(3) be a member of a federally recognized unit or organization of the Air National Guard in the grade in which he is to be enlisted as a Reserve.

(b) Under regulations to be prescribed by the Secretary of the Air Force, a person who enlists or reenlists in the Air National Guard, or whose term of enlistment or reenlistment in the Air National Guard is extended, shall be concurrently enlisted or reenlisted, or his term of enlistment or reenlistment shall be concurrently extended, as the case may be, as a Reserve of the Air Force for service in the Air National Guard of the United States.

(c) A member of the Air Force Reserve who enlists in the Air National Guard in his reserve grade, and is a member of a federally recognized unit or organization thereof, becomes a member of the Air National Guard of the United States and ceases to be a member of the Air Force Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 505; Oct. 4, 1961, Pub. L. 87-378, § 4, 75 Stat. 808.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8261 (a)	50: 952 (proviso).	July 9, 1952, ch. 608, §§ 228 (proviso), 705 (less (a)), 66 Stat. 488, 503.
8261 (b)	50: 1115 (less (a)).	

In subsection (a), the words "To become an enlisted member of * * * a person must" are substituted for the words "That no person shall become an enlisted member * * * hereunder, unless he first". The words "in the grade in which he is to be enlisted as a Reserve" are substituted for the words "in the same grade" for clarity.

In subsections (a) and (b), the word "duly" is omitted as surplusage.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87-378, § 4(1), substituted "subsection (c)" for "subsection (b)."

Subsec. (b). Pub. L. 87-378, § 4(2), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 87–378, § 4(2), redesignated former subsec. (b). as (c).

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87–378 not effective with respect to any enlistment, reenlistment, or appointment entered into or made before Oct. 4, 1961, see section 6 of Pub. L. 87–378, set out as a note under section 3261 of this title.

CROSS REFERENCES

Members of reserve components, qualifications, see section 510 of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 510 of this title.

§§ 8262, 8263. Repealed. Pub. L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756.

Section 8262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 506; Sept. 2, 1958, Pub. L. 85–861, § 1(166)(A), 72 Stat. 1516, provided for extension of enlistment of members of the Air Force needing medical care or hospitalization.

Section 8263, added Pub. L. 85–861, § 1(166)(B), Sept. 2, 1958, 72 Stat. 1516, amended Pub. L. 87–649, § 14c(53), Sept. 7, 1962, 76 Stat. 501 provided for voluntary extension of enlistments in the Air Force.

Chapter 835.—APPOINTMENTS IN THE REGULAR AIR FORCE

Sec.
8281. Commissioned officer grades.
8284. Commissioned officers: appointment, how made.
8285. Commissioned officers: original appointment; qualifications.
8286. Commissioned officers: original appointment; age limitations.
8287. Commissioned officers: original appointment; service credit.
8288. Commissioned officers: original appointment; determination of grade.
8289. Commissioned officers; medical officers; original appointment; professional examination.
8293. Commissioned officers; chaplains: original appointment; examination.
8294. Commissioned officers; medical and dental officers: original appointment; additional method authorized as exception to general procedure.[1]
8295. Commissioned officers: original appointment; determination of place on promotion list.
8296. Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion.
8297. Selection boards.
8298. Commissioned officers: promotion to first lieutenant; effect of failure of promotion.
8299. Commissioned officers: promotion to captain, major, or lieutenant colonel.
8300. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure.
8301. Commissioned officers: promotion to captain, major, or lieutenant colonel: officers with special qualifications.
8302. Commissioned officers; medical, dental, and veterinary officers: promotion to captain, major, or lieutenant colonel; professional examination.
8303. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel.
8305. Commissioned officers: promotion to colonel.
8306. Commissioned officers: promotion to brigadier general.
8307. Commissioned officers: promotion to major general.
8308. Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate.
8309. Commissioned officers: physical examination for promotion.
8310. Warrant officers: original appointment; qualifications.
Sec.
8312. Officers: acceptance of promotion.
8313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency.
8314. Commissioned officers: promotion not to be delayed by another appointment.

[1] Section catchline amended without amending analysis.

AMENDMENTS

1958—Pub. L. 85–861, §§ 1(177)(B), 33(a)(38), Sept. 2, 1958, 72 Stat. 1520, 1566, substituted "officers" for "Officers" in item 8309, and added item 8314.

1957—Pub. L. 85–155, title III, § 301(15), Aug. 21, 1957, 71 Stat. 388, eliminated items 8291 and 8304.

§ 8281. Commissioned officer grades.

The commissioned grades in the Regular Air Force are:

(1) Major general.
(2) Brigadier general.
(3) Colonel.
(4) Lieutenant colonel.
(5) Major.
(6) Captain.
(7) First lieutenant.
(8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 507.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8281	10: 506 (a) (last 24 words).	Aug. 7, 1947, ch. 512, § 502 (a) (last 24 words), 61 Stat. 884.

CROSS REFERENCES

Rank, see section 741 of this title.

§ 8284. Commissioned officers: appointment, how made.

Appointments in commissioned grades in the Regular Air Force shall be made by the President, by and with the advice and consent of the Senate. (Aug. 10, 1956, ch. 1041, 70A Stat. 507.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8284	10: 506 (a) (less last 24 words); 10: 506c (a).	Aug. 7, 1947, ch. 512, §§ 502 (a) (less last 24 words), 506 (a), 61 Stat. 883, 890.

The words "In addition to the officers permanently appointed in general officer grades above that of major general (authorized by other provisions of law)", in 10: 506 (a), are omitted as surplusage, since no appointments are authorized in the Regular Air Force above the grade of major general. The words "additional" and "subject to the conditions and limitations set forth", in 10: 506c (a), are omitted as surplusage. The words "Within the authorized active list commissioned officer strength of the Regular Army", in 10: 506c (a), are omitted, since, unless otherwise specified, all appointments must be within the authorized strength.

§ 8285. Commissioned officers: original appointment; qualifications.

(a) To be eligible for original appointment in a commissioned grade in the Regular Air Force, except with a view to designation as a medical or dental officer, and except as provided in section 9353 (b) of this title, a person must—

(1) be a citizen of the United States;
(2) be at least 21 years of age;
(3) be of good moral character;
(4) be physically qualified for active service; and

(5) have such other qualifications as the Secretary of the Air Force may prescribe.

In addition, to be eligible for original appointment with a view to designation as an Air Force nurse, a person must be a graduate of a hospital or university school of nursing and a registered nurse.

(b) The Secretary of the Air Force shall convene selection boards, to meet at times prescribed by him, to consider persons who are eligible for original appointment in the Regular Air Force other than with a view to designation as medical or dental officers, or as Air Force nurses or medical specialists. Each board shall be composed of at least five commissioned officers of the Regular Air Force. A recommendation for appointment may be made only by a majority of the total membership of the board.

(c) The President may remove from the list of persons recommended by the board the name of any person who in his opinion is not qualified for appointment.

(d) The name of each person credited with service under section 8287 (a) (4) of this title who was appointed during the preceding calendar year, the grade in which appointed, and the justification therefor shall be reported before July 16 of each year, beginning in 1958, to the Committees on Armed Services of the Senate and House of Representatives. (Aug. 10, 1956, ch. 1041, 70A Stat. 507; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (4), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, § 1 (167), 72 Stat. 1516.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8285	10: 506c (b).	Aug. 7, 1947, ch. 512, § 506(b), 61 Stat. 890.

The first 10 words and the words "a person must" are substituted for 10: 506c (b) (1st 14 words). The words "except under section 8294 (a) of this title" are inserted, since that section is an exception to the general provisions of this section. (See opinion of the Judge Advocate General of the Army (1948/2124, 1 Mar. 1948).) The word "military" is omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 designated existing provisions as subsec. (a), and substituted "except with a view to designation as a medical or dental officer, and except as provided in section 9353(b) of this title" for "except under section 8294(a) of this title".

Subsecs. (b)—(d). Pub. L. 85–861 added subsecs. (b)—(d).

1957—Pub. L. 85–155 inserted provisions requiring a person to be a graduate of a hospital or university school of nursing and a registered nurse in order to be eligible for original appointment as an Air Force nurse

CROSS REFERENCES

Original appointments in grades of captain through colonel with a view to designation as medical or dental officers, see section 8294 of this title.

§ 8286. Commissioned officers: original appointment; age limitations.

(a) A person may not be originally appointed in a commissioned grade in the Regular Air Force, except with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, if on the date of his appointment he has already passed his thirtieth birthday. However, the maximum age—

(1) is increased by the period of active commissioned service in the armed forces performed after the appointee became 21 years of age and before his appointment; and

(2) may be waived by the Secretary of the Air Force for any category in which, in his opinion, there are not enough officers with the required qualifications.

(b) Notwithstanding subsection (a), a person may not be originally appointed in a commissioned grade in the Regular Air Force, except with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, if he is above the age that would permit him to complete 20 years of active commissioned service in the armed forces before his fifty-fifth birthday. (Aug. 10, 1956, ch. 1041, 70A Stat. 507; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (5), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, § 1 (168), 72 Stat. 1517.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8286 (a)	10: 506c (e) (less provisos).	Aug. 7, 1947, ch. 512, § 506 (e), 61 Stat. 891.
8286 (b)	10: 506c (e) (provisos).	

In subsection (a), the word "originally" is substituted for the word "initially". The words "if on the date of his appointment he has already passed his" are substituted for the words "when the length of time from date of birth to date of appointment exceeds". In clause (4), the word "other" is substituted for the words "except those hereinafter specifically mentioned". The exception as to section 8291 of this title is inserted, since the source statute did not apply to appointment with a view to designation as an Air Force nurse or woman medical specialist under that revised subsection. The exception as to section 8294 (a) of this title is inserted, since the source statute did not apply to appointment with a view to designation as a medical service officer under that revised subsection. (See opinion of the Judge Advocate General of the Army (1948/2124, 1 Mar. 1948).)

In subsection (b), the first eight words are substituted for 10: 506c (e) (1st 22 words of 1st proviso). The words "the period of active commissioned service in the Air Force, and in the Army, after" are substituted for the words "by the number of years, months, and days, of active Federal service * * * as a commissioned officer in the Army of the United States or any component thereof subsequent to". The words "after the appointee became 21 years of age" are substituted for the words "by such person after attaining the age of twenty-one years". 10: 506c (e) (last proviso) is omitted as executed.

AMENDMENTS

1958—Pub. L. 85–861 amended section generally, and among other changes, substituted provisions prohibiting original appointment of a person who, on the date of his appointment, has already passed his thirtieth birthday, for provisions which prohibited original appointment of a person as a chaplain who has passed his thirty-fourth birthday, as a medical officer, dental officer, veterinary officer, or judge advocate who has passed his thirty-second birthday, as a medical service officer who has passed his thirtieth birthday, and of all other persons who have passed their twenty-seventh birthday, and inserted provisions permitting waiver by the Secretary, and prohibiting appointment if a person is above the age that would permit him to complete 20 years of active commissioned service before his fifty-fifth birthday.

1957—Subsec. (a). Pub. L. 85–155, § 301(5)(A), eliminated a reference to section 8291 within the exception clause.

Subsec. (c). Pub. L. 85–155, § 301(5)(B), added subsec. (c).

CROSS REFERENCES

Original appointments in grades of captain through colonel with a view to designation as medical or dental officers, see section 8294 of this title.

§ 8287. Commissioned officers: original appointment; service credit.

(a) For the purpose of determining grade, position on a promotion list, seniority in his grade in the Regular Air Force, and eligibility for promotion, a person originally appointed in a commissioned grade in the Regular Air Force, other than a person appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, shall be credited, at the time of his appointment—

(1) with the active commissioned service in the armed forces that he performed after becoming 21 years of age and before his appointment;

(2) three years, if he is appointed in the Regular Air Force with a view to designation as a chaplain, judge advocate, or veterinary officer;

(3) under such regulations as the Secretary may prescribe, three years, if he is appointed in the Regular Air Force with a view to designation as a medical service officer and if he holds a degree of doctor of philosophy or a comparable degree in a science allied to medicine, so recognized by the Secretary;

(4) under regulations to be prescribed by the Secretary, not more than eight years, if he is one of not more than 100 persons in any calendar year who are appointed from civil life or from Reserves of the Air Force who have qualifications not otherwise available from members of the Air Force on active duty; and

(5) under regulations to be prescribed by the Secretary, not more than two years, if he is appointed while on active duty in the Air Force.

(b) For the purposes set forth in subsection (a), a person originally appointed in a commissioned grade in the Regular Air Force with a view to designation as an Air Force nurse or medical specialist shall be credited, at the time of appointment, with all active commissioned service in the armed forces after December 6, 1941, performed after becoming 21 years of age and before appointment. However, not more than 14 years of service may be so credited. For the same purposes, a person who is originally appointed in the grade of first lieutenant under section 8288(b) of this title and who has not performed at least three years of active commissioned service in the armed forces after December 6, 1941, shall be credited with that amount of service.

(c) Notwithstanding any other provision of law, a person who was a cadet at the United States Air Force Academy or the United States Military Academy, or a midshipman at the United States Naval Academy, may not be originally appointed in a commissioned grade in the Regular Air Force before the date on which his classmates at that academy are graduated and appointed as officers. A person who was a cadet or midshipman at, but was not graduated from, one of those academies may not be credited, upon original appointment as a commissioned officer of the Regular Air Force, with longer service than that credited to any member of his class at that academy whose service in the Air Force, or in the Army and the Air Force, has been continuous since graduation.

(d) A graduate of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy who is originally appointed as a second lieutenant in the Regular Air Force is not entitled to any service credit under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 508; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (6), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, § 1 (169), 72 Stat. 1517; Sept. 30, 1966, Pub. L. 89–609, § 1(28), 80 Stat. 854.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8287 (a)	10: 506c (c) (1st sentence).	Aug. 7, 1947, ch. 512, § 506 (c), (f) (last 23 words of last sentence), 61 Stat. 890; June 30, 1954, ch. 433, § 1 (b), 68 Stat. 357.
8287 (b)	10: 506c (c) (words of 2d sentence before last semicolon).	
8287 (c)	10: 506c (c) (words of 2d sentence after last semicolon).	
8287 (d)	10: 506c (c) (less 1st and 2d sentences).	
8287 (e)	10: 506c (f) (last 23 words of last sentence).	

In subsection (a), the word "originally" is substituted for the word "initially". The words "in a commissioned grade" are substituted for the words "commissioned an officer". The words "active commissioned service in the Air Force, and in the Army, after * * * that he performed after becoming 21 years of age and before" are substituted for the words "an amount of service equivalent to the total period of active Federal service performed after attaining the age of twenty-one years as a commissioned officer in the Army of the United States or any component thereof subsequent to * * * and prior to".

In subsections (a) and (b), the words "except a person appointed under section 8294 (a) of this title" are inserted, since the service credit provisions of the revised section do not apply to appointments made under that section.

In subsection (c), the word "originally" is inserted for clarity. The words "in a commissioned grade" are substituted for the words "commissioned an officer". The words "an amount * * * equal to" are omitted as surplusage.

In subsection (d), the words "in a commissioned grade" are substituted for the words "commissioned an officer". The words "No * * * may" are substituted for the words "Any * * * shall not". The word "formerly" is omitted as surplusage.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89–609 struck out "her" preceding "appointment" in two instances and "that she" preceding "performed after becoming".

1958—Pub. L. 85–861 amended section generally, and among other changes, incorporated in subsec. (a) provisions contained in former subsecs. (a), (c) and (d) and added clauses (4) and (5); reenacted subsec. (b); and incorporated in subsecs. (c) and (d) subject matter contained in former subsecs. (e) and (f), which subject matter was amended to reflect references to United States Military Academy and United States Naval Academy.

1957—Subsec. (a). Pub. L. 85–155, § 301(6)(A), substituted "except as provided in subsection (b) of this section and except for persons" for "except a person".

Subsec. (b). Pub. L. 85–155, § 301(6)(B), added subsec. (b). Former subsec. (b) redesignated (c).

Subsecs. (c)—(f). Pub. L. 85–155, § 301(6)(C), redesignated former subsecs. (b)—(e) as (c)—(f), respectively.

INCREASE OF SERVICE CREDIT FOR CERTAIN OFFICERS OF REGULAR AIR FORCE

Section 27 of Pub. L. 85-861 provided that:

"(a) Notwithstanding any other provision of law, the years of service credited to an officer of the Regular Air Force on July 20, 1956, for the purposes of sections 8287, 8888 (2) (A)—(C) and (E)—(G), and 8927 (a) (1)—(3) and (5)—(7) and (b)(2) of title 10, United States Code, may be increased, but not by more than two years, under regulations to be prescribed by the Secretary of the Air Force.

"(b) Each officer who, as a result of being credited with service under this section, becomes eligible for mandatory consideration for promotion under section 8299 or 8300 of title 10, United States Code, shall be considered by the next regularly convened selection board considering officers of his grade and category.

"(c) An officer whose service is increased under this section may have his date of rank in regular grade and his position on the applicable promotion list adjusted to reflect his increased service."

SERVICE CREDIT ADJUSTMENT FOR AIR FORCE NURSES OR MEDICAL SPECIALISTS

Section 302 of Pub. L. 85-155 provided that: "The Secretary of the Air Force may convene boards of officers to review the records and compute the service of each Air Force nurse or medical specialist who is on the active list of the Regular Air Force on the effective date of this Act [August 21, 1957], in order to adjust the service credited to each of them to reflect the service authorized to be credited under section 8287 (b) of Title 10, United States Code [this section]. When that adjustment is made, the officers whose credit is so adjusted shall be given precedence for promotion purposes in accordance with their adjusted dates of rank. If, as a result of readjustment of service credit under this section, an officer becomes eligible for promotion, she shall be considered for promotion by the next selection board considering officers of her grade and category. If she is promoted on the recommendation of that board, her date of regular grade and her position on the applicable promotion list shall be adjusted to reflect her increased service."

CROSS REFERENCES

Original appointments in grades of captain through colonel with a view to designation as medical or dental officers, see section 8294 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8285, 8288, 8295, 8888, 8927 of this title.

§ 8288. Commissioned officers: original appointment; determination of grade.

(a) Except for a person appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, the commissioned grade in which a person is originally appointed in the Regular Air Force, based on the service credited under section 8287 (a) of this title, is:

(1) For persons with less than three years of service—second lieutenant.

(2) For persons with at least three, but less than seven, years of service—first lieutenant.

(3) For persons with at least seven, but less than 14, years of service—captain.

(4) For persons with at least 14, but less than 21, years of service—major.

(5) For persons with at least 21 years of service—lieutenant colonel.

(b) Based on the service credited under section 8287 (b) of this title, the commissioned grade in which an Air Force nurse or medical specialist is originally appointed in the Regular Air Force is:

(1) For persons with less than three years of service who on the date of nomination have not passed their twenty-seventh birthday and who are not qualified under clause (2)—second lieutenant.

(2) For persons with less than seven years of service who are qualified under regulations prescribed by the Secretary of the Air Force and who on the date of nomination have not passed their thirtieth birthday—first lieutenant.

(3) For persons with at least seven years of service who on the date of nomination have not passed their thirty-ninth birthday—captain.

The maximum ages specified in clauses (1) and (2) of this subsection are increased by the period of active commissioned service which the member performed in the armed forces after December 6, 1941, but not by more than five years. (Aug. 10, 1956, ch. 1041, 70A Stat. 508; Aug. 21, 1957, Pub. L. 85-155, title III, § 301 (7), 71 Stat. 387; Sept. 2, 1958, Pub. L. 85-861, § 1 (170), 72 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8288	10: 506c (d) (1st sentence).	Aug. 7, 1947, ch. 512, § 506 (d) (1st sentence), 61 Stat. 891.

The exception as to section 8294 of this title is inserted, since the grade in which persons are appointed under that section are not limited by this revised section. The tenth through twentieth words are substituted for 10: 506c (d) (1st 14 words). The words "at least" are substituted for the word "more". The words "who have no service credit and those who are credited", "shall be appointed in the grade of", and "who are credited" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 inserted provisions relating to grade of persons with at least 14 but less than 21 years of service, and of persons with at least 21 years of service.

Subsec. (a). Pub. L. 85-155, § 301(7)(A)(C), designated existing provisions as subsec. (a), and substituted "subsection (b) of this section and section 8294" for "section 8294", and "section 8287(a), (c), (d), or (e)" for "section 8287".

Subsec. (b). Pub. L. 85-155, § 301(7)(D), added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8287 of this title.

§ 8289. Commissioned officers; medical officers: original appointment; professional examination.

No person may be originally appointed as a first lieutenant in the Regular Air Force with a view to designation as a medical officer, until he passes an examination of his professional fitness before an examining board composed of at least three medical officers designated by the Secretary of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8289	10: 93.	Apr. 23, 1908, ch. 150, § 4, 35 Stat. 67.

The words "may be originally appointed" are substituted for the words "shall receive an appointment". The words "in the Regular Air Force" are inserted, since the source statute when enacted applied only to members of that component. The words "until he passes an

examination" are substituted for the words "unless he shall have been examined and approved". The words "of his professional fitness" are inserted to distinguish the examination required by the revised section from the required physical examination.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8067 of this title.

§ 8291. Repealed. Pub. L. 85-155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 509, related to original appointments in the Regular Air Force of nurses or woman medical specialists, and prescribed qualifications for appointment as a nurse.

§ 8293. Commissioned officers; chaplains: original appointment; examination.

No person in civil life may be originally appointed in the Regular Air Force with a view to designation as a chaplain unless he has passed an examination prescribed by the President as to his moral, mental, and physical qualifications. (Aug. 10, 1956, ch. 1041, 70A Stat. 509.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8293	10: 232	Mar. 2, 1899, ch. 352, § 7, 30 Stat. 979.

The words "in the Regular Air Force" are inserted, since the source statute historically applied only to the regular component. The word "originally" is inserted for clarity. The word "satisfactorily" is omitted as surplusage. Only so much of the third proviso of section 7 of the act of March 2, 1899, ch. 352, 30 Stat. 979, as relates to chaplains is contained in 10: 232. The applicability of the third proviso to judge advocates is also omitted from the revised section as covered by sections 8285 and 8286 of this title. The applicability of the third proviso to paymasters is similarly omitted, since the Finance Corps is not a continuation of the Pay Department (see opinion of the Judge Advocate General of the Army (SPJAG 168, 27 Mar. 1942)). The second proviso of section 7 of that act is omitted as superseded by section 8504 of this title; the last proviso as executed; and the remainder as inapplicable to the Air Force, since it does not have organic corps created by statute.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(2) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8067 of this title.

§ 8294. Commissioned officers; medical and dental officers; original appointment.

(a) Original appointments in the Regular Air Force may be made in the grades of first lieutenant through colonel with a view to designation as medical or dental officers, as the needs of the Air Force require. These appointments may be made only from qualified doctors of medicine, osteopathy, or dentistry, as the case may be, who are citizens of the United States and who have such other qualifications as the Secretary of the Air Force may prescribe. In addition, to be eligible for appointment under this section with a view to designation as a medical officer, a doctor of osteopathy must—

(1) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(2) be licensed to practice medicine, surgery, or osteopathy in a State or Territory or in the District of Columbia;

(3) under regulations to be prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for appointment under this section in the grade for which that person is applying; and

(4) have such other qualifications as the Secretary of the Air Force prescribes after considering the recommendation, if any, of the Surgeon General.

(b) For the purposes of determining grade, position on a promotion list, seniority in his grade in the Regular Air Force, and eligibility for promotion, an officer appointed under subsection (a) shall be credited with the amount of service prescribed by the Secretary, but not less than four years. However, a doctor of medicine or osteopathy who has completed an internship of one year, or the equivalent may not be credited with less than five years. (Aug. 10, 1956, ch. 1041, 70A Stat. 509; Sept. 2, 1958. Pub. L. 85-861, § 1 (173), 72 Stat. 1518.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8294 (a)	10: 91a (1st and 2d sentences); 10: 121a (1st and 2d sentences).	Aug. 5, 1947, ch. 494, § 201, 61 Stat. 777.
8294 (b)	10: 91a (less 1st and 2d sentences); 10: 121a (less 1st and 2d sentences).	

In subsection (a), the words "Notwithstanding sections 8285, 8286, and 8287 of this title" are inserted, since this section is an exception to those sections. (See opinion of the Judge Advocate General of the Army (1948/2124, 1 Mar. 1948). The words "Subject to any limitation of the commissioned strength of the Army prescribed by law", in 10: 91a and 121a, are omitted, since unless otherwise specified all appointments must be within the authorized strength. The words "the President, by and with the advice and consent of the Senate", in 10: 91a and 121a, are omitted as covered by section 8284 of this title. The words "in the Regular Air Force" are substituted for the word "permanent", in 10: 91a and 121a, since historically the source statute applied only to the Regular component. The words "in grades of captain through colonel" are substituted for the words "with rank not above that of colonel", in 10: 91a and 121a, since appointments in the grade of first lieutenant must be made under sections 8285, 8286, and 8287 of this title. (See JAGA 1948/2124, cited above.) The words "as the needs of the Air Force require" are substituted for the words "in such numbers as the needs of the service may require", in 10: 91a and 121a.

In subsection (b), the words "An officer appointed under subsection (a)" are substituted for the words "The doctors of medicine [dentists] so appointed", in 10: 91a and 121a.

AMENDMENTS

1958—Pub. L. 85-861 eliminated words "additional method authorized as exception to general procedure" from the catchline.

Subsec. (a). Pub. L. 85-861 authorized appointments in the grade of first lieutenant, permitted appointment of certain osteopaths, and prescribed the qualifications for osteopaths.

Subsec. (b). Pub. L. 85-861 substituted provisions relating to crediting of service for persons appointed

under subsection (a) for purposes of determining grade, position on a promotion list, seniority in grade, and eligibility for promotion, and requiring doctors of medicine or osteopathy who have completed an internship of one year, or the equivalent, to be credited with at least five years of service, for provisions which required officers appointed under subsection (a) to be credited for promotion with the minimum number of years of service required for promotion of officers of the corps to the grade in which they are appointed.

ADJUSTMENT OF SERVICE CREDIT FOR MEDICAL AND DENTAL OFFICERS APPOINTED BEFORE MAY 1, 1956

Authorization to convene boards of officers to review the records and compute the service of medical and dental officers appointed before May 1, 1956, see section 19 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1559, set out as a note under section 3294 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8067, 8444 of this title.

§ 8295. Commissioned officers: original appointment; determination of place on promotion list.

The name of each person who is originally appointed in a commissioned grade in the Regular Air Force and whose name is to be carried on a promotion list, other than a person appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist, shall be placed on the applicable promotion list immediately below the junior officer of the same grade on that list who has the same or the next longer service credited to him under section 8287 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 510; Sept. 2, 1958, Pub. L. 85-861, § 1 (174), 72 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8295	10: 506c (d) (less 1st sentence).	Aug. 7, 1947, ch. 512, § 506 (d) (less 1st sentence), 61 Stat. 891.

The words "originally appointed in a commissioned grade in the Regular Air Force" are substituted for the words "so appointed". The words "if any" and "junior" are inserted for clarity.

AMENDMENTS

1958—Pub. L. 85-861 excluded officers appointed with a view to designation as a medical or dental officer or as an Air Force nurse or medical specialist.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8296. Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion.

(a) The names of all commissioned officers in grades below brigadier general on the active list of the Regular Air Force, except Air Force nurses, medical specialists, those in special categories otherwise excluded under law, and professors and the registrar of the United States Air Force Academy shall be carried on promotion lists in descending order of grade and rank in the Regular Air Force. Air Force nurses and medical specialists may be carried on promotion lists, but only on separate promotion lists maintained under subsection (b). Officers whose names are carried on a promotion list may be called "promotion-list officers".

(b) A separate promotion list may be maintained for commissioned officers of the Regular Air Force in each of the following categories:

(1) Chaplains.
(2) Judge Advocates.
(3) Medical officers.
(4) Dental officers.
(5) Veterinary officers.
(6) Medical service officers.
(7) Air Force nurses.
(8) Air Force medical specialists.
(9) Any category established by the Secretary of the Air Force under section 8067 (i) of this title.

(c) The names of all regular officers, other than Air Force nurses and medical specialists, not on a list maintained under subsection (b) shall be carried on the Air Force promotion list.

(d) If a promotion-list officer is transferred from one category to another whose officers are carried on a different promotion list, his name shall be placed upon the promotion list to which he is transferred among the officers of his grade in accordance with seniority as determined under section 8574 (b) of this title.

(e) Unless specifically provided otherwise, upon the promotion of a promotion-list officer, his name shall be placed at the foot of the list of officers of his grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 510; Aug. 6, 1958, Pub. L. 85-600, § 1 (16), 72 Stat. 523; Sept. 2, 1958, Pub. L. 85-861, § 1 (156), (175), 72 Stat. 1513, 1519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8296 (a)	10: 559 (a); 10: 559 (d) (1).	Aug. 7, 1947, ch. 512, § 505 (a), (c) (1)—(7), (d) (1), (3) (last sentence), (4), 61 Stat. 888, 889.
8296 (b)	10: 559 (c) (2)—(7); 10: 1837 (d) (less last sentence).	
8296 (c)	10: 559 (c) (1).	
8296 (d)	10: 559 (d) (3) (last sentence).	Sept. 19, 1951, ch. 407, § 307 (d) (less last sentence), 65 Stat. 332.
8296 (e)	10: 559 (d) (4).	

In subsection (a), the words "permanent" and "as hereinafter prescribed", in 10: 559 (a), are omitted as surplusage. 10: 559 (a) (last sentence) is omitted, since the term defined therein was not used in the source statute. The second sentence is inserted for clarity. The words "in descending order of grade and rank in the Regular Air Force" are substituted for 10: 559 (d) (1) (1st sentence). 10: 559 (d) (1) (less 1st sentence) is omitted as surplusage.

Subsection (b) is substituted for 10: 559 (c) (2)—(7) and 1837 (d) (less last sentence).

Subsection (b) (2), (7)—(9) is inserted, since separate promotion lists are authorized for those categories by 10: 1837 (d).

In subsection (d), the words "promotion list" are inserted for clarity. The words "his name shall be placed" are substituted for the words "shall have his name entered". The words "to which he is transferred" are substituted for the word "new". The word "relative" is omitted as surplusage.

In subsection (e), the word "promotion" is substituted for the word "appointment". The words "his grade" are substituted for the words "the grade in which appointed". The words "in any grade" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861, § 1(156), eliminated the word "women" which preceded "medical specialists" in two instances.

Subsec. (a). Pub. L. 85-600 included the registrar of the Air Force Academy within the enumeration of officers excepted.

Subsec. (b)(8). Pub. L. 85-861, § 1(175), substituted "Air Force medical specialists" for "women medical specialists".

Subsec. (c). Pub. L. 85-861, § 1(156), eliminated the word "women" which preceded "medical specialists".

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8211 of this title.

§ 8297. Selection boards.

(a) Under such regulations as he may prescribe, the Secretary of the Air Force shall detail selection boards, to meet at times prescribed by him, to recommend promotion-list officers and brigadier generals of the Regular Air Force for promotion in the Regular Air Force. Each board shall be composed of at least five officers of the Regular Air Force who hold a regular or temporary grade above lieutenant colonel, and who are senior in regular grade to, and who outrank, any officer considered by that board. However, a selection board considering—

(1) Under section 8300 (a) or (b) of this title female promotion list officers others than those designated under section 8067 of this title, may include female promotion list officers who are not designated under that section, who are senior in regular grade, to and who outrank, any female officer being considered by that board; and

(2) Air Force nurses or medical specialists, may include Air Force nurses or medical specialists, as the case may be, in a temporary or regular grade above major.

(b) No selection board may serve longer than one year and no member may serve on two consecutive boards for promotions to the same grade, if the second board considers any officer considered but not recommended for promotion by the first.

(c) Each member of a selection board must swear that he will perform his duties without prejudice or partiality, having in view the special fitness of officers and the efficiency of the Air Force.

(d) Except as otherwise provided by law, promotion-list officers and brigadier generals of the Regular Air Force may be promoted to the regular grades of captain through major general only when recommended by a selection board. A recommendation for promotion must be made by the majority of the total membership of the board. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.

(e) Not later than 10 days after a board first meets, any officer eligible for consideration by that board is entitled to send a letter, through official channels, calling attention to matters of record in the Department of the Air Force concerning himself that he considers important. The letter may not contain any reflection upon the character, conduct, or motives of any officer, or criticism of any officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 510; Aug. 21, 1957, Pub. L. 85-155, title III, § 301(8), 71 Stat. 387; July 12, 1960, Pub. L. 86-616, § 6(1), 74 Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8297 (a)	5: 627b (f); 10: 559a (a) (2); 10: 559a (a) (4).	Aug. 7, 1947, ch. 512, § 507 (a) (less (6) and (7), (c)), 61 Stat. 892, 893.
8297 (b)	10: 559a (a) (3).	
8297 (c)	10: 559a (a) (8).	June 12, 1948, ch. 449, § 303 (f), 62 Stat. 371.
8297 (d)	10: 559a (a) (1); 10: 559a (a) (5).	
8297 (e)	10: 559a (c).	

In subsection (a), the words "shall detail selection boards, to meet at times prescribed by him" are substituted for 10: 559a (a) (2) (1st 12 words of 1st sentence and 2d sentence). The last 17 words of the first sentence are inserted for clarity, because of revised subsection (c). The words "who hold a regular or temporary grade * * * and who are senior in regular grade to, and who outrank" are substituted for the words "holding commissions in a grade * * * either in the Regular Army or under temporary appointment in the Army of the United States" and "Board members must be senior in permanent grade and temporary rank". The last sentence is substituted for 5: 627b (f). 10: 559a (a) (4) (proviso) is omitted as inapplicable to the Air Force.

In subsection (b), 10: 559a (a) (3) (1st 17 words) is omitted as surplusage. The word "promotion" is substituted for the words "that grade".

In subsection (d), the words "regular grades of captain through major general" are substituted for the enumeration of grades, and the words "permanently * * * in the Regular Army", in 10: 559a (a) (1).

In subsection (e), the words "is entitled to send" are substituted for the words "shall have the right to forward". The words "a board first meets" are substituted for the words "the convening of said board". The word "letter" is substituted for the words "written communication". The words "in the consideration of his case" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (d). Pub. L. 86-616 authorized a board that is to recommend officers for promotion whom it considers to be the best qualified to recommend only those officers whom it also considers to be fully qualified.

1957—Subsec. (a). Pub. L. 85-155 inserted provisions permitting a selection board considering Air Force nurses or medical specialists to include Air Force nurses or medical specialists in a temporary or regular grade above major.

ESTABLISHMENT OF BOARDS FOR CONTINUATION ON THE ACTIVE LIST OF COLONELS OR LIEUTENANT COLONELS

Secretary of the Air Force authorized to convene boards to recommend for continuation on the active list, officers on the active list in the regular grade of colonel or lieutenant colonel who have at least 20 years of service and who have been considered more than twice but not recommended for promotion, see section 10 of Pub. L. 86-616, set out as a note under section 3297 of this title.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8298. Commissioned officers: promotion to first lieutenant; effect of failure of promotion.

(a) A promotion-list officer in the grade of second lieutenant shall be promoted to the regular grade of first lieutenant upon completing three years of service with which he is entitled to be credited for promotion. If a promotion-list officer in that grade is found to be not fully qualified, he shall be discharged under section 8814 of this title.

(b) Vacancies in the grade of first lieutenant on a promotion list may be filled by promoting second lieutenants on that list with less than three years of service, in order of seniority, under regulations prescribed by the Secretary of the Air Force. This

subsection does not apply to Air Force nurses or medical specialists. (Aug. 10, 1956, ch. 1041, 70A Stat. 511; Aug. 21, 1957, Pub. L. 85–155, title III, § 301, (9), title IV, § 401 (1), 71 Stat. 387, 390.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8298 (a)	10: 559b (1st sentence, less 31st through 56th words; and 2d sentence).	Aug. 7, 1947, ch. 512, 508 (less 30th through 56th words of 1st sentence), 61 Stat. 894.
8298 (b)	10: 559b (less 1st and 2d sentences).	
8298 (c)	No source.	

In subsection (a), the last 16 words of the first sentence are substituted for 10: 559b (words within parentheses). The words "If a promotion-list officer in that grade" are substituted for the words "Second lieutenants". The words "shall have their commissions revoked" are omitted as surplusage.

In subsection (b), the words "may be filled by promoting * * * with less than" are substituted for the words "may * * * be promoted and appointed in the grade of first lieutenant before completion". The words "in order of seniority" are substituted for the words "but no officer in the grade of second lieutenant will be promoted under the provisions of this section ahead of any officer in that grade whose name appears above his on the promotion list concerned". The words "Whenever there are" are omitted as surplusage. 10: 559b (last sentence) is omitted as executed.

Subsection (c) is inserted for clarity. Although Air Force nurses and women medical specialists may be "promotion-list" officers under section 8296 of this title, their promotion is governed by section 8304 of this title.

AMENDMENTS

1957—Subsec. (b). Pub. L. 85–155, § 301(9), made subsection inapplicable to Air Force nurses or medical specialists.

Subsec. (c). Pub. L. 85–155, § 401(1), repealed subsec. (c), which made section inapplicable to Air Force nurses and women medical specialists.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8212 of this title.

§ 8299. Commissioned officers: promotion to captain, major, or lieutenant colonel.

(a) Promotion-list officers shall be promoted to the regular grades of captain, major, and lieutenant colonel, under subsections (b) and (c), or eliminated from the active list under section 8303 of this title.

(b) Without regard to vacancies, each promotion-list officer whose regular grade is first lieutenant, captain, or major shall be considered by a selection board for promotion to the next higher regular grade, far enough in advance of the date on which he will complete 7, 14, or 21 years of service with which he is entitled to be credited for promotion, as the case may be, that if recommended, he may be promoted on the date on which he will complete that service.

(c) Having in view the number of actual and anticipated vacancies on a promotion list in the regular grade of captain, major, or lieutenant colonel, the Secretary of the Air Force may direct a selection board to consider and recommend officers on that list for promotion to the next higher regular grade without regard to length of service. However, no officer may be considered for promotion under this section more than two years before the date on which it is anticipated that he will be promoted if recommended, and unless the same board considers all officers above him on that list who are not on a recommended list.

(d) The names of promotion-list officers recommended for promotion under this section and section 8301 of this title shall be carried on permanent recommended lists of their grade and promotion list in the same order among themselves as on the applicable promotion list, and they shall be promoted in that order. A promotion may be made whenever there is a vacancy, but it is not mandatory that the authorized numbers be maintained in any grade on any promotion list.

(e) Whenever an officer is promoted under subsection (b), all officers in the same grade and on the same promotion list whose names are on the recommended list above that of the officer who must be promoted because of length of service shall be promoted at the same time and shall retain among themselves their existing seniority.

(f), (g) Repealed. Pub. L. 90–130, § 1(27)(A), Nov. 8, 1967, 81 Stat. 382.

(h) A promotion-list officer who has been twice considered and not recommended for promotion to any one regular grade may not again be considered for promotion under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 511; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(10), title IV, § 401(1), 71 Stat. 387, 390; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(21), 72 Stat. 1565; Sept. 30, 1966, Pub. L. 89–609, § 1(29), 80 Stat 854; Nov. 8, 1967, Pub. L. 90–130, § 1(27)(A), 81 Stat 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8299 (a)	10: 559c (a).	Aug. 7, 1947, ch. 512, § 509 (a)—(d), (f), (j), and (k) (less applicability to strength), 61 Stat. 894, 895, 896, 897.
8299 (b)	10: 559c (b).	
8299 (c)	10: 559c (c); 10: 559c (d) (less proviso).	
8299 (d)	10: 559c (f); 10: 559c (j).	
8299 (e)	10: 559c (k) (less applicability to strength.).	June 12, 1948, ch. 449, § 303 (d), (h) (4th proviso), 62 Stat. 371, 372.
8299 (f)	5: 627b (d); 5: 627b (h) (4th proviso).	
8299 (g)	10: 559c (d) (proviso).	
8299 (h)	No source.	

In subsection (a), the words "After January 1, 1949" are omitted as executed. The words "and appointed in" are omitted as surplusage. 10: 559c (a) (proviso) is omitted as inapplicable to the Air Force.

In subsection (b), the words "Without regard to" are substituted for the words "Irrespective of the existence of any". The words "next higher regular grade" are substituted for the words "permanent grade of captain, major, and lieutenant colonel". The words "with which he is entitled to be credited for promotion" are substituted for 10: 559c (b) (words within parentheses). The words "such officer", "by the selection board", "to and appointed in such grade", and "length of" are omitted as surplusage.

In subsection (c), the words "Having in view" are substituted for the words "based upon", in 10: 559c (c). The words "to the next higher regular grade" are substituted for the words "to such grades", in 10: 559c (c). The words "in permanent grade of first lieutenant, captain, major, respectively" and "of such officers", in 10: 559c, (c), are omitted as surplusage. The words "However, no * * * may" are substituted for the words "In no instance shall any", in 10: 559c (d). The words "for promotion under this section" are substituted for the words "by any selec-

tion board for promotion to the grade of captain, major, lieutenant colonel", in 10: 559c (d). The word "promoted" is substituted for the words "appointed in that grade". The last 20 words of the last sentence are substituted for 10: 559c (d) (last sentence, less proviso).

In subsection (d), the words "of their grade and promotion list in the same order among themselves as on the applicable promotion list" are substituted for 10: 559c (f) (last 11 words of 1st sentence, and 2d sentence). The last eight words of the first sentence and the first 11 words of the last sentence are substituted for 10: 559c (f) (last sentence) and 559c (j) (1st sentence). The words "promotions and appointments to fill vacancies may be made at any time", in 10: 559c (j), are omitted as surplusage.

In subsection (e), 10: 559c (k) (1st 7, and 56th through 110th, words) is omitted, as relating only to authorized strength. The words "is promoted under subsection (b)" are substituted for 10: 559c (k) (11th through 55th words). The words "promoted at the same time" are substituted for the words "simultaneously appointed in that grade".

In subsection (f), the words "other than those designated under section 8067 of this title to perform professional functions" are inserted, since 5: 627b (d), as enacted, was applicable only to women appointed under title III of the Women's Armed Services Integration Act of 1948, of which 5: 627b (d) was a part, and not to those appointed under other provisions of law. The words "in the number * * * for that category" are substituted for the words "when a vacancy exists in the number of lieutenant colonels * * * for female officers", in 5: 627b (d). The words "selected and", in 5: 627b (d), are omitted as surplusage. The words "because of failure" are substituted for the words "by reason of not having been selected for", in 5: 627b (h) (4th proviso).

Subsection (h) is inserted for clarity. Although Air Force nurses and women medical specialists may be "promotion-list" officers under section 8296 of this title, their promotion is governed by section 8304 of this title.

AMENDMENTS

1967—Subsec. (a). Pub. I. 90–130 struck out references to subsecs. (f) and (g) of this section.

Subsec. (c). Pub. L. 90–130 eliminated provision which had excepted the promotion of Air Force nurses or medical specialists to the grade of captain, major, or lieutenant colonel from the effect of subsec. (c).

Subsec. (f). Pub. L. 90–130 struck out subsec. (f) which provided for the limitation upon the promotion of female promotion-list officers under which a restriction to the filling of vacancies in the number authorized by the Secretary from recommendations of selection boards was imposed.

Subsec. (g). Pub. L. 90–130 struck out subsec. (g) which covered the promotion of Air Force nurses and medical specialists to the regular grade of lieutenant colonel.

Subsec. (h). Pub. L. 90–130 struck out exception restricting the provisions of subsec. (h) to other than officers covered by subsec. (f) of this section.

1966—Subsec. (g). Pub. L. 89–609 substituted "creditable" for "with which she is entitled to be credited".

1958—Subsec. (h). Pub. L. 85–861 made subsection inapplicable to officers covered by subsection (f) of this section.

1957—Subsec. (a). Pub. L. 85–155, § 301(10)(A), inserted a reference to subsection (g).

Subsec. (c). Pub. L. 85–155, § 301(10)(B), made subsection inapplicable to the promotion of Air Force nurses or medical specialists to the grade of captain, major, or lieutenant colonel.

Subsec. (g). Pub. L. 85–155, § 301(10)(C), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 85–155, § 301(10)(D), redesignated former subsec. (g) as (h). Former subsec. (h), which made section inapplicable to Air Force nurses and women medical specialists, was repealed by Pub. L. 85–155, § 401(1).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SERVICE CREDIT FOR CERTAIN OFFICERS ON ACTIVE LIST OF REGULAR AIR FORCE ON JULY 20, 1956

Section 26 of Pub. L. 85–861 provided that:

"(a) Each officer who, as a result of being credited with service under section 207 (a) or (b) of the Armed Forces Regular Officer Augmentation Act of 1956 (70 Stat. 586), becomes eligible for mandatory consideration for promotion under section 8299 or 8300 of title 10, United States Code, shall be considered by a selection board convened for that purpose in the manner prescribed in section 8297 of that title. If he is recommended for promotion by that board, his name shall be placed on the applicable promotion list immediately below that of the junior officer on that list having the same or next longer service for promotion purposes, and a date of rank shall be given him accordingly. If he is not recommended for promotion by that board, he is a deferred officer. However, such an officer may not, because of this failure of recommendation, have his years of service reduced under section 8303 of title 10, United States Code, and he shall be considered by the next regularly convened selection board considering officers of his grade and category. If he is recommended for promotion by that board, his years of service for promotion purposes shall be reduced so that he will be junior by at least one day to the junior officer who was considered and recommended for promotion by the selection board that failed to recommend him for promotion, and who has the same or next longer period of service. If he is not recommended by that selection board, he shall be treated as provided in section 8303(d) of title 10, United States Code.

"(b) An officer whose service is adjusted under this section may have his date of rank in regular grade and his position on the applicable promotion list adjusted to reflect his increased service."

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8212, 8300, 8301, 8303 of this title.

§ 8300. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure.

(a) When promotion-list officers in the regular grade of first lieutenant, captain, or major are to be considered, under section 8299 of this title, by a selection board for promotion to the next higher regular grade to fill existing or anticipated vacancies, the Secretary of the Air Force may direct the board to—

(1) consider officers in the specified grade in the order of their seniority on the promotion list concerned;

(2) recommend those who are fully qualified for promotion;

(3) pass over those not so qualified; and

(4) continue this procedure until the number of officers specified by him is recommended.

(b) When a promotion-list officer in the regular grade of first lieutenant, captain, or major must be considered under section 8299 of this title for promotion because of length of service, or because he is on a promotion list above an officer who must be considered for that reason, the Secretary may—

(1) furnish the board a list of officers to be considered for promotion to the grade concerned; and

(2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

(c) Instead of the procedures set forth in subsection (a) or (b), the Secretary may furnish to the board a list of promotion-list officers to be considered and may direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration for the first time. (Aug. 10, 1956, ch. 1041, 70A Stat. 513; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(11), 71 Stat. 388; July 12, 1960, Pub. L. 86–616, § 6(2), 74 Stat. 391; Nov. 8, 1967, Pub. L 90–130, § 1(27)(B), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8300 (a)	10: 559c (e) (1).	Aug. 7, 1947, ch. 512, § 509 (e), 61 Stat. 895.
8300 (b)	10: 559c (e) (2).	
8300 (c)	10: 559c (e) (3).	

In subsection (a), the words "to the next higher regular grade" are substituted for the words "to the grade of captain, major, and lieutenant colonel, respectively". The words "specified grade" are substituted for the words "in the grades of first lieutenant, captain, or major (as the case may be)". The words "by him" are inserted for clarity. The words "in his discretion", "as their names appear", "to the grade concerned", "fully", and "for promotion to such grade" are omitted as surplusage.

In subsections (a) and (b), the words "may follow the procedure described in paragraph (3) of this subsection" are omitted as covered by the language of revised subsection (c).

In subsection (b), the words "under section 8299 of this title" are substituted for the words "by a selection board". The words "to the grade of captain, major, and lieutenant colonel, respectively", "completion of", "of that list", "in his discretion", "from among", "those and only those", and "to that grade" are omitted as surplusage.

In subsections (b) and (c), the word "promotion-list" is inserted for clarity.

In subsection (c), the words "The board shall recommend those officers whom it considers" are substituted for the words "the officers to be selected". The last sentence is substituted for 10: 559c (e) (3) (last sentence). 10: 559c (e) (3) (1st 14 words of 1st sentence) and the words "for promotion to the grade concerned", "select and", "from among those listed", "to that grade", and "of those listed for consideration" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (d). Pub. L. 90–130 struck out subsec. (d) which provided that this section should not apply to the promotion of Air Force nurses or medical specialists to the regular grade of lieutenant colonel.

1960—Subsec. (c). Pub. L. 86–616 inserted words "for the first time" following "those listed for consideration."

1957—Subsec. (d). Pub. L. 85–155 added subsec. (d).

SERVICE CREDIT FOR CERTAIN OFFICERS ON ACTIVE LIST OF REGULAR AIR FORCE ON JULY 20, 1956

Consideration of certain officers who are credited with service under the Armed Forces Regular Officer Augmentation Act of 1956 for promotion, see section 26 of Pub. L. 85–861, set out as a note under section 8299 of this title.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8297, 8301 of this title.

§ 8301. Commissioned officers: promotion to captain, major, or lieutenant colonel; officers with special qualifications.

(a) In addition to the method prescribed in section 8300 of this title, whenever there are vacancies on the Air Force promotion list in the regular grade of captain, major, or lieutenant colonel, and the Secretary of the Air Force considers that there are or will be too few officers in any of those grades with special qualifications, he may direct a selection board to recommend a prescribed number of officers with those qualifications, for promotion to that grade, under the procedures prescribed in sections 8299 and 8300 of this title. However, an officer considered but not recommended under this section shall be treated as though he had not been considered for promotion within the meaning of section 8299 or 8303 of this title.

(b) Repealed. Pub. L. 90–130, § 1(27)(C), Nov. 8, 1967, 81 Stat. 382.

(Aug. 10, 1956, ch. 1041, 70A Stat. 513; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (12), 71 Stat. 388; Nov. 8, 1967, Pub. L. 90–130, § 1(27)(C), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8301 (a)	10: 559c (*l*).	Aug. 7, 1947, ch. 512, § 509 (*l*), 61 Stat. 897.
8301 (b)	No source.	

In subsection (a), the words "method prescribed in section 8300 of this title" are substituted for the words "procedures described in sub-subsection (e) of this section". The words "considers that" are substituted for the words "in the discretion of". The last 12 words of the 1st sentence, and the last sentence, are substituted for 10: 559c (*l*) (2d sentence). The words "respectively", "required for the Air Corps", "Air Corps promotion-list", and 10: 559c (*l*) (last sentence) are omitted as surplusage.

Subsection (b) is inserted for clarity. Although Air Force nurses and women medical specialists are "promotion-list" officers under section 8296 of this title, their promotion is governed by section 8304 of this title.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which provided that this section should not apply to the promotion of Air Force nurses or medical specialists to the regular grade of lieutenant colonel.

1957—Subsec. (b). Pub. L. 85–155 substituted "to the promotion of Air Force nurses or medical specialists to the regular grade of lieutenant colonel" for "to Air Force nurses and women medical specialists".

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8299 of this title.

§ 8302. Commissioned officers; medical, dental, and veterinary officers: promotion to captain, major, or lieutenant colonel; professional examination.

(a) No commissioned officer designated as a medical officer or veterinary officer whose regular grade is below lieutenant colonel may be promoted in the Regular Air Force until he passes an examination of his professional fitness before an examining board composed of three or more medical officers of the Regular Air Force selected by the Secretary of the Air Force. No commissioned officer designated as a dental officer whose regular grade is below lieutenant colonel may be promoted in the Regular Air Force

until he passes an examination of his professional fitness before an examining board composed of one medical officer and two dental officers of the Regular Air Force, selected by the Secretary. The examination shall be prescribed by the Secretary and shall be held at such time before the right to promotion accrues as may be in the best interest of the Air Force.

(b) If an officer designated as a medical, dental, or veterinary officer in the regular grade of first lieutenant or captain is found disqualified for promotion by the examining board, the Secretary shall detail a board of review to consider the findings of the examining board.

(c) A board of review shall be composed in the same manner as an examining board, except that its members must be senior in rank to the officer examined, and must not have served on the examining board that examined him.

(d) If the board of review concurs in the findings of the examining board, the officer shall be honorably discharged with one year's pay. If it does not concur in the findings, the officer shall be considered qualified and shall be promoted.

(e) An officer designated as a medical, dental, or veterinary officer in the regular grade of major who fails his first examination for promotion shall be suspended from promotion and re-examined as soon as practicable after one year from the date of his first examination. While he is so suspended from promotion, his name shall be removed from the recommended list and the years of service with which he is entitled to be credited for promotion purposes shall be reduced, if necessary, as provided in section 8303 (b) of this title.

(f) If on reexamination such a major is found qualified, his name shall be restored to the recommended list and he is eligible for promotion. If he is found disqualified for promotion, he shall be treated in the manner provided for deferred officers under section 8303 (d) of this title.

(g) While an officer is suspended from promotion under subsection (e), his right to promotion passes successively to the officers below him who are in the same grade and on the same promotion list, and who are or may become eligible for promotion.

(h) If the needs of the Air Force require that an officer entitled to promotion upon examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted, subject to examination as soon as practicable. However, if he is thereafter examined and found disqualified for that promotion, and if the proceedings are approved by the Secretary, he shall be treated as if he had been examined before promotion and had failed.

(i) If an officer who is found qualified for promotion under this section dies in line of duty after the occurrence of a vacancy that would entitle him to that promotion because of his seniority and before promotion, the President may issue, or have issued, an appropriate commission in the name of that officer. A commission issued under this subsection shall issue as of the date of the vacancy, and the officer's name shall be carried on the records of the Department of the Air Force as if he had served in the grade in which posthumously commissioned, from the date of the vacancy to the date of his death. No person is entitled to any bonus, gratuity, pay, or allowance because of this subsection. (Aug. 10, 1956, ch. 1041, 70A Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8302 (a)	10: 101; 10: 125; 10: 143a; 10: 555a (less 1st 34 words).	Apr. 23, 1908, ch. 150, § 5, 35 Stat. 67.
8302 (b)	10: 102 (1st 79 words of 1st sentence).	Mar. 3, 1909, ch. 252 (proviso under "Medical Department"), 35 Stat. 737.
8302 (c)	10: 102 (1st sentence, less 1st 79 words).	June 3, 1916, ch. 134, § 24c (less 1st 34 words); added June 4, 1920, ch. 227, § 24 (6th par., less 1st 34 words); restated Aug. 7, 1947, ch. 512, § 507 (d) (1) (less 1st 34 words), 61 Stat. 894.
8302 (d)	10: 102 (less 1st sentence).	
8302 (e)	10: 103 (less 59th through 93d words, and less last 78 words).	
8302 (f)	10: 103 (last 78 words).	
8302 (g)	10: 103 (59th through 93d words).	Oct. 6, 1917, ch. 101, 40 Stat. 397.
8302 (h)	10: 556a (as applicable to professional examination).	Feb. 2, 1901, ch. 192, § 32 (as applicable to professional examination), 31 Stat. 756.
8302 (i)	10: 490; 10: 491.	Mar. 3, 1925, ch. 484, §§ 3, 4, 43 Stat. 1256.

In subsection (a), the words "at least" are substituted for the words "not less than", in 10: 101. The words "before * * * accrues" are substituted for the words "anterior to the accruing of", in 10: 101. The second sentence is substituted for 10: 125. The act of October 6, 1917, ch. 101 (less 1st proviso), 40 Stat. 397, is not contained in 10: 125. It is also omitted from the revised section either as executed or as covered by chapter 835 and sections 8067, 8209, and 8211 of this title; and by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). 10: 555a (less 1st 34 words) is executed in the revised section by references to officers designated as dental and veterinary officers.

In subsection (b), the first 30 words are substituted for the words "but if he shall be found disqualified for promotion for any other reason, a second examination shall not be allowed, but". The words "to consider the findings of the examining board" are inserted for clarity.

In subsections (b) and (f), so much of 10: 102 and 103, respectively, as relate to retirement for physical disability, are omitted as superseded by chapter 61 of this title.

In subsection (c), the first 22 words are substituted for the words "to consist of three officers of the Medical Corps superior".

In subsection (d), the words "If it does not concur in the findings" are substituted for the words "If the action of the examining board is disapproved by the board of review". The words "reported disqualified for promotion" and "from the service" are omitted as surplusage.

In subsection (e), the words "fails his first examination" are substituted for the words "at his first examination * * * has been or shall hereafter be found disqualified". The words "his first examination" are substituted for the words "the completion of the examination that resulted in his suspension". The words "to the grade of lieutenant colonel" and "the expiration of" are omitted as surplusage.

The last sentence of subsection (e) is inserted, and the last sentence of subsection (f) is substituted for 10: 103 (last 61 words). 10: 555a preserved only the requirement of a professional examination for the promotion of officers of the Medical, Dental, and Veterinary Corps, and not the consequences of failure of such an examination, since the Officer Personnel Act of 1947 was intended to provide the exclusive means for the removal of officers for failure of promotion.

In subsection (f), the words "such a major" are substituted for the word "he". The words "is eligible for promotion" are substituted for the words "shall again become eligible thereto". The words "and is eligible for retirement" are inserted for clarity, since the officer might not qualify for retirement under this title. The last sentence is inserted for clarity to cover situations in which an officer is not qualified for retirement. The words "and if he is not found disqualified by reason of

such physical disability" and "for any other reason" are omitted as surplusage.

Subsection (g) is substituted for 10: 103 (59th through 93d words).

In subsection (h), the words "If the needs of the Air Force" are substituted for the words "When the exigencies of the service". The words "the officer may be promoted" are substituted for the words "the President is hereby authorized to promote such officer". The words "and had failed" are inserted for clarity. The words "who would be", "remain", and "in the same manner" are omitted as surplusage.

Subsection (i) is limited to officers designated as medical, dental, or veterinary officers, since they are the only officers required by law to be "examined" for promotion in the sense of the source statute. The words "before promotion" are substituted for the words "before the issue or acceptance of a commission therefor". The words "in which posthumously commissioned" are substituted for the words "shown in such commission". The words "after having been examined" and "with rank", in 10: 490, are omitted as surplusage. The last sentence is substituted for 10: 491.

SUSPENSION OF EXAMINATIONS FOR PROMOTION

Professional examinations for promotion of medical, dental, and veterinary officers were suspended for duration of national emergency proclaimed by Proc. No. 2914, December 16, 1950, by Ex. Ord. No. 10262, June 28, 1951, 16 F.R. 6333.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8913 of this title.

§ 8303. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel.

(a) In this subtitle, "deferred officer" means a promotion-list officer considered for promotion to the grade of captain, major, or lieutenant colonel under section 8299 of this title, but not recommended for promotion.

(b) The years of service with which a deferred officer is entitled to be credited for promotion purposes shall be reduced so that one year after the date on which he would have been promoted had he been recommended by a selection board he will not have more than 7, 14, or 21 years of service, if in the grade of first lieutenant, captain, or major, as the case may be.

(c) A deferred officer shall be considered again by the next selection board considering officers of his grade and promotion list. If recommended by this board, his name shall be placed on the applicable recommended list with the other officers recommended by the board, in the same order among themselves as on the promotion list, but below officers placed on that list by an earlier board. If a deferred officer is promoted upon the recommendation of the next board considering officers of his grade, his first failure does not count as a failure of selection when he is thereafter considered for promotion to another regular grade.

(d) A deferred officer who is not recommended by the next selection board considering officers of his grade and promotion list shall—

(1) if he is eligible, be retired under section 8913 of this title;

(2) if he is not eligible for retirement under section 8913 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date when he would have been retired under section 8913 of this title if he were eligible; or

(3) if he is not eligible for retirement under section 8913 of this title or any other provision of law, be honorably discharged on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh calendar month after the Secretary approves the report of that board, with severance pay computed by multiplying his years of service, but not more than 12, computed under section 8927 (a) of this title, by two months' basic pay of the grade in which he is serving on the date of his discharge.

However, no person is entitled to severance pay under this section in an amount that is more than $15,000.

(e) For the purposes of subsection (d) (3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 514; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(13), 71 Stat 388; July 12, 1960, Pub. L. 86–616, § 6(3), 74 Stat. 391; June 28, 1962, Pub. L. 87–509, § 4(a), 76 Stat. 121; Nov. 8, 1967, Pub. L. 90–130, § 1(27)(D), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8303 (a)	10: 559c (g) (1st sentence).	Aug. 7, 1947, ch. 512, §§ 509 (g), (h) (less 16th through 53d words, and less proviso of last sentence), 514 (e) (less clause (1)), 61 Stat. 896, 906.
8303 (b)	10: 559c (g) (less 1st sentence).	
8303 (c)	10: 559c (h) (less last sentence).	
8303 (d)	10: 559c (h) (last sentence, less 16th through 53d words and less proviso); 10: 941a (e) (less clause (1), and less 46th through 65th words of clause (3)).	
8303 (e)	10: 941a (e) (46th through 65th words of clause (3)).	

In subsection (a), the word "promotion-list" is inserted for clarity. The words "section 8299 of this title" are substituted for the words "by any selection board * * * under the provisions of this section".

In subsection (b), the words "after the date" are substituted for the words "subsequent to the time". The word "promoted" is substituted for the words "appointed in the next higher grade". The words "The years of service with which a deferred officer is entitled to be credited * * * shall be reduced" are substituted for the words "shall suffer a reduction in his years of service, if necessary". The words "he will not have more than 7, 14, or 21" are substituted for the words "he shall not have for promotion purposes more than seven * * * fourteen * * * and twenty-one". The words "by a selection board" are inserted for clarity. 10: 559c (g) (1st 26, and last 40, words of last sentence) is omitted as covered by revised subsection (c).

In subsection (c), the words "in the same order" are substituted for the words "with the same precedence". The first 18 words of the last sentence are substituted for 10: 559c (h) (1st 18 words of 2d sentence). The words "his first failure" are substituted for the words "his failure in the grade from which promoted". The words "to another regular grade" are inserted for clarity. The words "in any grade", "a second time", "designated for", "the names of", and "in any sense" are omitted as surplusage.

In subsection (d), 10: 559c (h) (25 words before proviso of last sentence) is omitted as covered by clauses (1)–(3). Clause (1) is inserted to reflect section 8913 of this title. The words "is not eligible for retirement under section

8913 of this title" are substituted for the words "he has not completed twenty 'years' service' or more". The last 21 words of clause (2) are substituted for 10: 941a (e) (2) (last 22 words). The words "on the date of elimination" and "in effect on that date including any provision of law providing for voluntary retirement on his own application", in 10: 941a (e) (2), are omitted as surplusage. The words "on the date he would have been retired under section 8913 of this title if he were eligible" are substituted for the words "on the date of elimination", in 10: 941a (e) (3), since the date of "elimination" is determined by the date of retirement under section 8913 of this title. The words "under section 8913 of this title or" are inserted for clarity. The words "but not more than 12" are substituted for 10: 941a (e) (3) (proviso). The words "computed under section 8927 (a) of this title" are substituted for the words "(computed at the rate applicable on the date of his elimination)". The words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "equal to that sum of money" and "(permanent or temporary)" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (f). Pub. L. 90–130 struck out subsec. (f) which provided that this section should not apply to Air Force nurses or medical specialists being considered for promotion to the regular grade of lieutenant colonel.

1962—Subsec. (d). Pub. L. 87–509 limited the maximum amount of severance pay to not more than $15,000.

1960—Subsec. (d). Pub. L. 86–616 substituted "such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh calendar month after the Secretary approves the report of that board" for "the date he would have been retired under section 8913 of this title if he were eligible" in cl. (3).

1957—Subsec. (f). Pub. L. 85–155 added subsec. (f).

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8299, 8301, 8302, 8308, 8913 of this title.

§ 8304. Repealed. Pub. L. 85–155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 515, related to promotion of Air Force nurses or women medical specialists to grades of first lieutenant, captain, major, lieutenant colonel, or colonel.

§ 8305. Commissioned officers: promotion to colonel.

(a) Having in view the number of actual and anticipated vacancies in any promotion list in the regular grade of colonel and the number of officers desired in that grade on that promotion list, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of lieutenant colonel, in order of seniority in regular grade, to be considered by those boards. The Secretary may not furnish the name of any officer to the board unless he furnishes to it the names of all officers above that officer on that promotion list who are not on a recommended list. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of colonel. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

(b) Whenever the Secretary considers that there are or will be too few officers with special qualifications, in the grade of colonel on the Air Force promotion list, he may direct that a specified number of the officers to be recommended for promotion to the regular grade of colonel be officers with those qualifications.

(c) The names of officers recommended for promotion to the regular grade of colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to that grade in the same order among themselves as on the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in that grade for that list. A vacancy in that grade may be filled at any time. It is not mandatory that the authorized numbers be maintained in the grade of colonel on any promotion list.

(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of colonel, to the number directed to be recommended, may be prescribed by the Secretary.

(e) No officer may be considered for promotion to the regular grade of colonel more than two years before the date on which it is anticipated that he will be promoted if selected.

(f) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the Regular grade of colonel. (Aug. 10, 1956, ch. 1041, 70A Stat. 516; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (14), 71 Stat. 388; Nov. 8, 1967, Pub. L. 90–130, § 1(27) (E), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8305 (a)	10: 559d (a); 10: 559d (b) (less provisos).	Aug. 7, 1947, ch. 512, § 510, 61 Stat. 897.
8305 (b)	10: 559d (b) (provisos).	June 12, 1948, ch. 449, § 303 (c) (1st sentence), 62 Stat. 371.
8305 (c)	10: 559d (c).	
8305 (d)	10: 559d (d) (1st 63 words of 1st sentence).	
8305 (e)	10: 559d (d) (1st sentence, less 1st 63 words).	
8305 (f)	10: 559d (d) (less 1st sentence).	
8305 (g)	5: 627b (c) (1st sentence).	

In subsection (a), the words "Having in view" are substituted for the words "Based upon", in 10: 559d (b). The words "in the regular grade of lieutenant colonel" are substituted for the words "of that promotion list". The last 13 words of the first sentence, and the second sentence, are substituted for 10: 559d (b) (1st 28 words of 2d sentence) and the words "and the names of additional such officers in the order that their names appear next below his on that promotion list", in 10: 559d (b). The third sentence is substituted for 10: 559d (b) (3d sentence). The fourth sentence is substituted for the words "whose name is not carried on the recommended list for promotion to the grade of colonel", in 10: 559d (b). 10: 559d (a) (last 18 words) is omitted as executed. 10: 559d (a) (less last 18 words) is omitted as surplusage. The words "and until June 30, 1948, in addition thereto may include the names of any officers in permanent grade below that of colonel who served during the current war in any general officer grade temporary appointment", in 10: 559d (b), are omitted as executed. The words "select and", "the names of", "furnished for consideration", "selected and" and 10: 559d (b) (1st 7 words of 3d sentence) are omitted as surplusage.

In subsection (b), the word "considers" is substituted for the words "in the opinion of". The word "with" is substituted for the words "possessing certain". The words "be officers with" are substituted for the words "specified numbers possess certain specified". The words

"required for the Air Corps" and "in his discretion" are omitted as surplusage. 10: 559d (b) (1st proviso) is omitted as inapplicable to the Air Force.

In subsection (c), the last 18 words of the first sentence are substituted for 10: 559d (c) (2d and 3d sentences). The words "A vacancy in that grade may be filled" are substituted for the words "Promotion appointments to fill vacancies in the grade of colonel in the Regular Army may be made". The words "of any promotion list", "selected and", "a permanent recommended list of officers of that promotion list for promotion to that grade", and 10: 559d (c) (1st 12 words of 2d sentence) are omitted as surplusage.

In subsection (d), the words "who are named" are substituted for the words "which the Secretary of the Army names". The words "directed to be recommended" are substituted for the words "which he directs such selection board to select from among those so named". The word "prescribed" is substituted for the words "as desired by".

In subsection (e), the words "for promotion to the regular grade of colonel" are substituted for the words "by any selection board". The word "promoted" is substituted for the words "appointed in that grade". The words "or selected" are omitted as surplusage.

In subsection (f), the words "in the regular grade" are substituted for the words "under permanent appointment in the grade of * * * in the Regular Army". The words "nominated for promotion" are substituted for the words "nominated or appointed". The words "After June 30, 1949" are omitted as executed.

The first 14 words of subsection (g) are substituted for 5: 627b (c) (1st sentence). The last nine words are inserted for clarity. Although Air Force nurses and women medical specialists may be "promotion-list" officers under section 8296 of this title, their promotion is governed by section 8304 of this title.

AMENDMENTS

1967—Subsec. (g). Pub. L. 90–130 struck out subsec. (g) which provided that Air Force nurses and medical specialists could be promoted under this section only to fill vacancies in the number authorized for that grade by the Secretary.

Subsec. (h). Pub. L. 90–130 struck out subsec. (h) which provided that this section should not apply to female officers on the Air Force promotion list who were not designated under section 8067 of this title.

1957—Subsec. (g). Pub. L. 85–155, § 301(14)(A), substituted provisions authorizing promotion of Air Force nurses and medical specialists only to fill vacancies in the number authorized for that grade by the Secretary for provisions which made this section inapplicable to female officers on the Air Force promotion list and to Air Force nurses or women medical specialists.

Subsec. (h). Pub. L. 85–155, § 301(14)(B), added subsec. (h).

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8306. Commissioned officers: promotion to brigadier general.

(a) Having in view the number of actual and anticipated vacancies in the regular grade of brigadier general and the number of officers desired in that grade, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of colonel, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of brigadier general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in the categories to which officers may be designated under section 8067 of this title. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

(b) The names of officers recommended for promotion to the regular grade of brigadier general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

(c) If an officer is recommended for promotion to the regular grade of brigadier general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of brigadier general, to the number directed to be recommended, may be prescribed by the Secretary.

(e) No officer may be considered for promotion to the regular grade of brigadier general more than one year before the date on which it is anticipated that he will be promoted if recommended.

(f) An officer must complete at least one year of service in the regular grade of colonel before being nominated for promotion to the regular grade of brigadier general. (Aug. 10, 1956, ch. 1041, 70A Stat. 516.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8306 (a)	10: 559e (a); 10: 559e (b); 10: 559e (c) (3d sentence, and 1st 26 words of last sentence).	Aug. 7, 1947, ch. 512, § 511 61 Stat. 898.
8306 (b)	10: 559e (c) (less 3d and last sentences).	
8306 (c)	10: 559e (c) (last sentence, less 1st 26 words).	
8306 (d)	10: 559e (d) (1st 60 words of 1st sentence).	
8306 (e)	10: 559e (d) (1st sentence, less 1st 60 words).	
8306 (f)	10: 559e (d) (less 1st sentence).	

In subsection (a), the words "Having in view" are substituted for the words "Based upon", in 10: 559e (b). The last 13 words of the first sentence are substituted for 10: 559e (b) (1st 25 words of 3d sentence) and the words "the names of additional such officers in the order that their names appear next below theirs on the applicable promotion lists", in 10: 559e (b). The second sentence is substituted for 10: 559e (b) (1st 18 words of 4th sentence) and 10: 559e (c) (1st 26 words of last sentence). The third sentence is substituted for the words "whose names are not carried on the recommended list for promotion to the grade of brigadier general", in 10: 559e (b). 10: 559e (b) (last 37 words of 3d sentence) is omitted as executed. The words "select and", "in order to insure that the Army will have adequate numbers of officers in the grade of brigadier general with experience qualifying them for service in or with the several branches, arms, and services", "in his discretion", "selected and", and "arms or services", in 10: 559e (b), are omitted as surplusage. The words "after August 7, 1947", in 10: 559e (a), and 10: 559e (a) (last 19 words) are omitted as executed. 10: 559e (a) (5th through 30th words) is omitted as covered by the language of the revised section. 10: 559e (a) (less 1st 30 and last 19 words) is omitted, since it relates to the appointment of chiefs and assistant chiefs of services. The Air Force does not have these offices.

In subsection (b), the words "in the order" are substituted for the words "arranged among themselves according to precedence". The words "selected and" and 10:

559e (c) (1st 14 words of 2d sentence) are omitted as surplusage.

In subsection (c), the words "selected and", "by any selection board", and "in that grade" are omitted as surplusage. The words "and by and with the advice and consent of the Senate" are omitted as covered by section 8284 of this title.

In subsection (d), the words "who are named" are substituted for the words "which the Secretary of the Army names". The words "directed to be recommended" are substituted for the words "which he directs such selection board to select from among those so named". The word "prescribed" is substituted for the words "as desired by".

In subsection (e), the words "for promotion to the regular grade of brigadier general" are substituted for the words "by any selection board". The word "promoted" is substituted for the words "appointed in that grade". The words "or selected" are omitted as surplusage.

In subsection (f), the words "in the regular grade" are substituted for the words "under permanent appointment in the grade of * * * in the Regular Army". The words "nominated for promotion" are substituted for the words "nominated or appointed". The words "After June 30, 1949" are omitted as executed.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8307. Commissioned officers: promotion to major general.

(a) Having in view the number of actual and anticipated vacancies in the regular grade of major general and the number of officers desired in that grade, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of brigadier general, in order of seniority in regular grade, to be considered by those boards. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of major general, but he need not direct the recommendation of a number sufficient to maintain the authorized number for that grade. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The Secretary may further direct that a specified number of those recommended be officers with experience qualifying them for service in the categories to which officers may be designated under section 8067 of this title. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

(b) The names of officers recommended for promotion to the regular grade of major general shall be entered at the foot of, and carried on, the permanent recommended list for promotion to that grade, in the order to be determined by the Secretary.

(c) If an officer is recommended for promotion to the regular grade of major general and is not removed from the list by the President, he may be nominated and appointed as soon as a vacancy exists in the authorized number for that grade.

(d) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of major general, to the number directed to be recommended, may be prescribed by the Secretary.

(e) No officer may be considered for promotion to the regular grade of major general more than one year before the date on which it is anticipated that he will be promoted if recommended.

(f) An officer must complete at least one year of service in the regular grade of brigadier general before being nominated for promotion to the regular grade of major general. (Aug. 10, 1956, ch. 1041, 70A Stat. 517.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8307 (a)	10: 559f (a); 10: 559f (b); 10: 559f (c) (3d sentence and 1st 26 words of last sentence).	Aug. 7, 1947, ch. 512, § 512, 61 Stat. 900.
8307 (b)	10: 559f (c) (less 3d and last sentences).	
8307 (c)	10: 559f (c) (last sentence, less 1st 26 words).	
8307 (d)	10: 559f (d) (1st sentence, less last 34 words).	
8307 (e)	10: 559f (d) (last 34 words of 1st sentence).	
8307 (f)	10: 559f (d) (less 1st sentence).	

In subsection (a), the words "Having in view" are substituted for the words "Based upon", in 10: 559f (b). The last 13 words of the first sentence are substituted for 10: 559f (b) (first 22 words of 3d sentence) and the words "the names of additional such officers in the order that their names appear next below his on the general officers' seniority list", in 10: 559f (b). The second sentence is substituted for 10: 559f (b) (1st 18 words of 4th sentence) and 10: 559f (c) (1st 26 words of last sentence). The third sentence is substituted for the words "whose names are not carried on the recommended list for promotion to the grade of major general", in 10: 559f (b). 10: 559f (b) (last 37 words of 3d sentence) is omitted as executed. The words "select and", "in order to insure that the Army will have adequate numbers of officers in the grade of major general with experience qualifying them for service in or with the several branches, arms, and services", "in his discretion", "selected and", and "arms or services", in 10: 559f (b), are omitted as surplusage. The words "after August 7, 1947", in 10: 559f (a), and 10: 559f (a) (last 19 words) are omitted as executed. 10: 559f (a) (5th through 30th words) is omitted as covered by the language of the revised section. 10: 559f (a) (less 1st 30 and last 19 words) is omitted, since it relates to the appointment of chiefs and assistant chiefs of services. The Air Force does not have these offices.

In subsection (b), the words "in the order" are substituted for the words "arranged among themselves according to precedence". The words "selected and" and 10: 559f (c) (1st 14 words of 2d sentence) are omitted as surplusage.

In subsection (c), the words "selected and", "by any selection board", and "in that grade" are omitted as surplusage. The words "and by and with the advice and consent of the Senate" are omitted as covered by section 8284 of this title.

In subsection (d), the words "who are named" are substituted for the words "which the Secretary of the Army names". The words "directed to be recommended" are substituted for the words "which he directs such selection board to select from among those so named". The word "prescribed" is substituted for the words "as desired by".

In subsection (e), the words "for promotion to the regular grade of major general" are substituted for the words "by any selection board". The word "promoted" is substituted for the words "appointed in that grade". The words "or selected" are omitted as surplusage.

In subsection (f), the words "in the regular grade" are substituted for the words "under permanent appointment in the grade of * * * in the Regular Army". The words "nominated for promotion" are substituted for the words "nominated or appointed". The words "After June 30, 1949" are omitted as executed.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8308. Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate.

The President may remove from a recommended list for promotion to any grade the name of any promotion-list officer or brigadier general of the Regular Air Force who in his opinion is not qualified for promotion. If an officer's name is so removed, or if the Senate does not consent to his appointment, he continues to be eligible as if he had not been considered for promotion and may be recommended by the next selection board considering officers of his grade. If he is promoted on the recommendation of that board, he has the same date of rank and place on the promotion list that he would have had if he had been promoted as a result of his original selection. If the second board considers but does not recommend an officer who would be subject to elimination for second failure of selection for promotion to the grade concerned, or if he again fails of promotion because his name is removed from the recommended list by the President or because the Senate does not consent to his appointment, he shall be eliminated from the active list under section 8303 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 518.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8308	10:559a (a) (6), (7).	Aug. 7, 1947, ch. 512, § 507 (a) (6), (7), 61 Stat. 893.

The words "any promotion-list officer or brigadier general" are substituted for the words "officer recommended * * * by any selection board". The words "so removed" are substituted for the words "removed from the recommended list for any grade by the President". The words "does not consent to the appointment" are substituted for the words "the appointment does not have its consent". The words "by the next selection board considering officers of his grade" are substituted for the words "and the next succeeding selection board may select and recommend the officer concerned for promotion". The words "on the recommendation of that board" are inserted for clarity. The words "If * * * or if he again fails of promotion" are substituted for the words "however, should any officer, having once been selected for promotion to any grade under section 559c of this title, fail of promotion to such grade either". The first 28 words of the last sentence are substituted for the words "by being considered but not selected by the next succeeding selection board". The word "because" is substituted for the words "by virtue of having". The words "because the Senate does not consent to his appointment" are substituted for the words "on account of advice by the Senate that the appointment does not have its consent". The words "after nomination by the President for any grade, cannot be appointed because of advice", "that grade by the selection board which had recommended him", "and thereupon his name shall again be placed upon the recommended list", "fail of promotion to such grade either (a) by virtue of having his name removed from the recommended list by the President, or (b) on account of advice by the Senate that the appointment does not have its consent, again fail of promotion to the next higher grade", and "he shall be deemed to have twice failed of selection" are omitted as surplusage. 10: 559a (a) (7) is omitted as superseded by section 1372 of this title.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8309. Commissioned officers: physical examination for promotion.

(a) The President may prescribe a system of physical examination for all commissioned officers of the Regular Air Force in grades below brigadier general to determine their fitness for promotion in the Regular Air Force. Each examination shall be given before the right to promotion accrues.

(b) If the needs of the Air Force require that an officer entitled to promotion upon physical examination under subsection (a) be absent from a place where an examining board can be convened, the officer may be promoted subject to examination as soon as practicable. However, if he is thereafter examined and found physically disqualified for that promotion, and if the proceedings are approved by the Secretary of the Air Force, he shall be treated as if he had been examined before promotion and had failed.

(c) If a commissioned officer fails to pass the physical examination and is reported unfit for promotion, the officer next below him on a recommended list for promotion who has passed the examination and is otherwise qualified shall be promoted. (Aug. 10, 1956, ch. 1041, 70A Stat. 518.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8309 (a)	10: 556 (less last sentence); 10: 555a (1st 34 words).	Oct. 1, 1890, ch. 1241, § 3, 26 Stat. 562; Oct. 12, 1949, ch. 681, § 531 (b) (10), 63 Stat. 838.
8309 (b)	10: 556a (less applicability to professional examination).	Feb. 2, 1901, ch. 192, § 32 (less applicability to professional examination), 31 Stat. 756.
8309 (c)	10: 556 (last sentence).	June 3, 1916, ch. 134, § 24c (1st 34 words); added June 4, 1920, ch. 227, subch. I, § 24 (1st 34 words of 6th par.); restated Aug. 7, 1947, ch. 512, § 507 (d) (1) (1st 34 words), 61 Stat. 894.

In subsection (a), the words "commissioned" and "Regular" are inserted since historically the source statute applied only to commissioned officers of the regular component. The words "in grades below" are substituted for the words "which examination shall be required for promotion to all grades below". The words "except as provided in section 556a of this title" are omitted as covered by revised subsection (b). The words "given before * * * accrues" are substituted for the words "conducted * * * at such time interior to the accruing of". The words "as may be in the best interests of the service" are omitted as surplusage. The first and last provisos of section 3 of the act of October 1, 1890, ch. 1241, 26 Stat. 562, are not contained in 10: 556. They are also omitted from the revised section as executed. So far as that act originally applied to professional examination, it is superseded by section 8302 of this title. 10: 555a (1st 34 words) is omitted as covered by the language of the revised subsection.

In subsection (b), the words "If the needs of the Air Force" are substituted for the words "When the exigencies of the service". The words "officer may be promoted" are substituted for the words "the President is hereby authorized to promote such officer". The words "and had failed" are inserted for clarity. The words "who should be", "remain", and "in the same manner" are omitted as surplusage.

In subsection (c), the words "a recommended list for promotion" are substituted for the words "the list". The words "and is otherwise qualified" are inserted to limit the applicability of the subsection to qualified of-

ficers. The words "be promoted" are substituted for the words "receive the promotion".

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8310. Warrant officers: original appointment; qualifications.

Original appointments as warrant officers in the Regular Air Force shall be made from persons who have served on active duty at least one year in the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 518.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8310	10: 591; Uncodified: June 3, 1916, ch. 134, § 4a (less 3d and last sentences); added June 4, 1920, ch. 227, subch. I, § 4 (3d par., less 3d and last sentences), 41 Stat. 761.	June 3, 1916, ch. 134, § 4a (less 3d and last sentences); added June 4, 1920, ch. 227, subch. I, § 4 (3d par., less 3d and last sentences), 41 Stat. 761. Aug. 21, 1941, ch. 384, § 2; restated May 29, 1954, ch 249, § 19 (c), 68 Stat. 166.

The first sentence of section 4a of the act of June 3, 1916, cited above, is omitted as superseded by section 8213 of this title. The second sentence, less first nine words, of section 4a of that act, is omitted as superseded by 10: 591.

§ 8312. Officers: acceptance of promotion.

(a) An officer who is promoted in the Regular Air Force is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous. (Aug. 10, 1956, ch. 1041, 70A Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8312 (a)	10: 558 (less last sentence, and less applicability to reserve components and temporary appointments).	Oct. 14, 1942, ch. 604 (less applicability to reserve components and temporary appointments), 56 Stat. 787.
8312 (b)	10: 558 (last sentence, less applicability to reserve components and temporary appointments).	

In subsection (a), the words "is considered" are substituted for the words "shall be deemed". The words "is entitled" are substituted for the words "and shall receive". The words "to them" are substituted for the words "to receive the pay and allowances of the higher grade". The words "that date" are substituted for the words "an earlier date". The words "after December 7, 1941" are omitted as executed. The words "to a higher grade at any time", "for all purposes", and "to higher grade" are omitted as surplusage.

In subsection (b), the words "An officer need not take" are substituted for 10: 558 (1st 29 words of last sentence). The words "since last taking it" are substituted for the words "after the taking of such an oath". The words "to a higher grade" are omitted as surplusage.

CROSS REFERENCES

Suspension of section during war or emergency, see section 8313 of this title.

§ 8313. Suspension of laws for promotion or mandatory retirement or separation during war or emergency.

In time of war, or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of commissioned officers of the Regular Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8313	10: 559a (b); 10: 941a (f).	Aug. 7, 1947, ch. 512, §§ 507 (b), 514 (f), 61 Stat. 893, 906.

The word "may" is substituted for the words "is authorized, in his discretion", in 10: 559a (b) and 941a (f). The words "any provision of law" are substituted for the words "all or any part or parts of the several provisions of law", in 10: 559a (b) and 941a (f). The words "relating to" are substituted for the words "pertaining to", in 10: 559a (b), and "prescribing", in 10: 941a (f). The word "commissioned" is inserted, since the source statute was limited in applicability to those officers.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(3) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 8314. Commissioned officers: promotion not to be delayed by another appointment.

The promotion to a higher regular grade of a commissioned officer of the Air Force who is on a recommended list awaiting promotion may not be withheld or delayed because of the original appointment of any other person to a commissioned grade in the Regular Air Force. This section does not apply to appointments of persons with a view to designation as medical or dental officers or Air Force nurses or medical specialists. (Added Pub. L. 85-861, § 1 (177) (A), Sept. 2, 1958, 72 Stat. 1519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8314	10 App.: 1850f 10 App.: 1850j (as applicable to 10 App.: 1850f).	July 20, 1956, ch. 646, §§ 206, 211 (as applicable to § 206), 70 Stat. 586, 587.

The word "commissioned" is inserted, since the source statute applies only to commissioned officers. The word "original" is inserted since the source statute does not apply to promotions. The words "on a recommended list awaiting promotion" are substituted for the words "otherwise eligible for promotion". The words "under sections 1850a—1850j of this title", in 10 App.: 1850f, are omitted as surplusage.

Chapter 837.—APPOINTMENTS AS RESERVE OFFICERS

Sec.
8351. Officers: Air National Guard of United States.
8352. Officers; Air Force Reserve: transfer from Air National Guard of United States.
8353. Commissioned officers: appointment; service credit.
8354. Commissioned officers: appointment of warrant officers and enlisted members of Air National Guard of United States; status.
8356. Commissioned officers; Air Force Reserve; aviation cadets: appointment; qualifications, grade.

Sec.
8358. Commissioned officers: original appointment; service credit.
8359. Commissioned officers: original appointment; determination of grade.
8360. Commissioned officers: promotion service.
8361. Commissioned officers: seniority for promotion purposes.
8362. Commissioned officers: selection boards.
8363. Commissioned officers: selection boards, general procedure.
8365. Commissioned officers: promotion to first lieutenant.
8366. Commissioned officers: promotion to captain, major, or lieutenant colonel.
8367. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure.
8368. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel.
8371. Commissioned officers: Air Force Reserve; promotion to colonel.
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8373. Commissioned officers: Air Force Reserve; promotion to brigadier general and major general.
8374. Commissioned officers: promotion effective as of date of Federal recognition.
8375. Commissioned officers: brigadier general or major general; procedure on reassignment.
8376. Commissioned officers: promotion when serving in temporary grade higher than reserve grade.
8377. Commissioned officers: effect of removal from recommended list by President.
8378. Commissioned officers: promotion of officers removed from active status.
8379. Commissioned officers: appointment in Air National Guard; function of governor.
8380. Commissioned officers: status while serving on active duty after promotion.
8381. Commissioned officers: adjutants general and assistant adjutants general.
8392. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.
8393. Commissioned officers: sea or foreign service not to be required for promotion.
8394. Officers: acceptance of promotion.
8395. During war.

AMENDMENTS

1967— Pub. L. 90–130, § 1(28)(C), Nov. 8, 1967, 81 Stat. 382, eliminated item 8370 which read: "Commissioned officers: promotion of female officers, nurses, and medical specialists."

1964—Pub. L. 88–647, title III, § 301(22), Oct. 13, 1964, 78 Stat. 1073, deleted item 8355.

1958—Pub. L. 85–861, § 1(179), Sept. 2, 1958, 72 Stat. 1531, struck out "Air Force Reserve" following "Commissioned officers" and inserted "status" following "United States" in item 8354, and added items 8353, 8358—8363, 8365–8368, 8370—8381, 8392 and 8393.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007 of this title.

§ 8351. Officers: Air National Guard of United States.

(a) Upon being federally recognized, an officer of the Air National Guard shall be appointed as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard. However, an officer of the Air Force Reserve who is federally recognized as an officer of the Air National Guard becomes an officer of the Air National Guard of the United States and ceases to be an officer of the Air Force Reserve. The acceptance of an appointment as a Reserve for service as a member of the Air National Guard of the United States by an officer of the Air National Guard does not vacate his office in the Air National Guard.

(b) When an officer of the Air National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Air National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Air National Guard of the United States is ordered to active duty, any officer of the Air National Guard who is not a Reserve of the Air Force may be appointed by the President as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard. (Aug. 10, 1956, ch. 1041, 70A Stat. 519.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8351 (a)	50: 1113 (less (a)).	July 9, 1952, ch. 608, §§ 703 (less (a)), 704 (2d sentence), 705 (a) (last 39 words), 713 (less (a)), 66 Stat. 502–504.
	50: 1115 (a) (last 39 words).	
8351 (b)	50: 1114 (2d sentence).	
8351 (c)	50: 1123 (less (a)).	

In subsection (a), the words "as a Reserve" are substituted for the words "as Reserve officers of the appropriate Armed Force of the United States" and "as a Reserve officer of the Armed Force of the United States concerned" in 50: 1113 (b). The words "federally recognized appointments" and "in the same grade and branch", in 50: 1113 (b), are omitted as surplusage. The words "those officers who do not hold appointments as reserve officers of the appropriate Armed Force of the United States", in 50: 1113 (b), are omitted as covered by the second sentence of the revised subsection.

In subsection (c), the words "active duty" are substituted for the words "active military service of the United States". The words "and branch" are omitted as surplusage. The words "of the Air National Guard of the United States" are inserted for clarity.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8352. Officers; Air Force Reserve: transfer from Air National Guard of United States.

(a) Under such regulations as the Secretary of the Air Force may prescribe, and with the consent of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned, an officer of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Air National Guard of the United States whose Federal recognition as a member of the Air National Guard is withdrawn becomes a member of the Air Force Reserve. An officer who so becomes a member of the Air Force Reserve ceases to be a member of the Air National Guard of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 520; Sept. 7, 1962, Pub. L. 87–651, title I, § 126, 76 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8352 (a)	50: 1116 (less last 15 words of 1st sentence, and less applicability to enlistments).	July 9, 1952, ch. 608, §§ 706 (less last 15 words of 1st sentence, and less applicability to enlistments), 707 (less applicability to enlistments), 66 Stat. 503.
8352 (b)	50: 1117 (less applicability to enlistments).	

In subsection (a), the words "at any time", "of any person", and "from the National Guard of the United States or from the Air National Guard of the United States" are omitted as surplusage. The words "highest regular or reserve grade ever held by him in the Air Force" are substituted for the words "highest permanent grade previously held in * * * the Air Force or any component thereof", since "permanent" grades are held only in a component and there are no "nonpermanent" grades held in a component.

In subsection (b), the words "appointment as a Reserve" are substituted for the words "appointment or * * * as a Reserve officer or". The words "whose Federal recognition as a member * * * is withdrawn" are substituted for the words "ceases to hold a status as a federally recognized member".

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-651 eliminated sentence which provided that upon transfer, an officer is eligible for promotion to the highest regular or reserve grade ever held by him in the Air Force, if his service has been honorable.

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Reserve components: members; limitations on separation inapplicable to transfers under this section, see section 1163 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280, 1163 of this title; title 32 section 323.

§ 8353. Commissioned officers: appointment; service credit.

(a) For the purposes of chapters 837 and 863 of this title, a person who is appointed as a reserve commissioned officer of the Air Force, may be credited, upon his appointment, with service in an active status that reflects his combined years of experience and education and such other qualifications as the Secretary of the Air Force may by regulation prescribe.

(b) A person covered by subsection (a) who is appointed with a view to assignment or designation in one of the following categories shall be credited, upon his appointment, and for the purposes of subsection (a), with at least the following service in an active status:

(1) Medical officer—four years.

(2) Dental officer—three years.

(3) Veterinary officer—three years.

(4) Chaplain—three years.

(5) Judge Advocate—three years.

(c) A person covered by subsection (a) who is appointed with a view to assignment or designation as a medical service officer, and who holds a degree of doctor of philosophy, or a comparable degree, in a science that the Secretary determines is allied to medicine may be credited upon his appointment, and for the purposes of subsection (a), with at least three years of service in an active status.

(d) The Secretary shall report to the Committees on Armed Services of the Senate and House of Representatives by March 1 of each year on the number, categories, and grades of the reserve officers (other than medical or dental officers) originally appointed in the reserve grade of captain or above during the preceding calendar year. (Added Pub. L. 85-861, § 1(178)(A), Sept. 2, 1958, 72 Stat. 1520, and amended Pub. L. 86-559, § 1(49), June 30, 1960, 74 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8353 (a)	50: 1191 (less last sentence).	Sept. 3, 1954, ch. 1257, § 201, 68 Stat. 1150; June 30, 1955, ch. 247, § 1 (a), 69 Stat. 218.
8353 (b)	50: 1191 (last sentence, less last 67 words).	
8353 (c)	50: 1191 (last 67 words of last sentence).	

In subsection (a), the words "For the purposes of chapters 837 and 863 of this title, a person who is appointed as a reserve commissioned officer of the Air Force" are substituted for 50: 1191 (1st 28 words of 1st sentence).

In subsection (b), the words "A person covered by subsection (a)" are substituted for the words "Any such person". The words "and for the purposes of subsection (a)" are substituted for the words "for the purpose of this chapter only". The words "for the purpose of or" are omitted as surplusage.

In subsection (c), the first 19 words are substituted for the words "and a person * * * if appointed for assignment as an officer * * * in a comparable assignment in another Armed Force". The words "may be" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-559, § 1(49)(A), eliminated words "and is not already a commissioned officer of an armed force" which followed "a reserve commissioned officer of the Air Force,".

Subsec. (d). Pub. L. 86-559, § 1(49)(B), added subsec. (d).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8358, 8359, 8366, 8853 of this title.

§ 8354. Commissioned officers: appointment of warrant officers and enlisted members of Air National Guard of United States; status.

(a) Notwithstanding any other provision of law, a warrant officer or enlisted member of the Air National Guard of the United States may, without affecting that status or vacating his warrant or enlisted grade in the Air National Guard, be appointed as a reserve officer of the Air Force in the grade of first lieutenant or second lieutenant.

(b) A member of the Air National Guard of the United States who is appointed in a commissioned grade under this section is not in an active status as a commissioned officer unless he is on active duty as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 520; Sept. 2, 1958, Pub. L. 85-861, § 1 (178) (B), 72 Stat. 1520.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8354	50: 1118.	July 9, 1952, ch. 608, § 708, 66 Stat. 503.

The words "commissioned" and "and ratings" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85–861, § 1(178)(B)(i), eliminated "Air Force Reserve" which followed "Commissioned officers", and added "; status" following "United States" in the catchline.

Subsec. (a). Pub. L. 85–861, § 1(178)(B)(ii), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 85–861, §1(178)(B)(iii), added subsec. (b).

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 280 of this title.

§ 8355. Repealed. Pub. L. 88–647, title III, § 301(21), Oct. 13, 1964, 78 Stat. 1073.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 520; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(22), 72 Stat. 1565, related to the appointment of graduates of the junior or senior division of the Air Force Reserve Officers' Training Corps as reserve commissioned officers.

§ 8356. Commissioned officers; Air Force Reserve; aviation cadets: appointment; qualifications, grade.

(a) An aviation cadet who successfully completes the prescribed course of training shall be appointed in the grade of second lieutenant as a Reserve of the Air Force for service in the Air Force Reserve, and shall be promoted to the reserve grade of first lieutenant upon completing three years of active duty under section 8257 (c) (1) of this title.

(b) A person who completes the course of training as an aviation cadet or aviation student, and who has served in the Army or the Air Force in time of war as a commissioned or flight officer, may be originally appointed in any commissioned grade as a Reserve for service in the Air Force Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8856 (a)	10: 299 (less 1st, 2d, and last sentences).	June 3, 1941, ch. 165, § 3 (less 1st, 2d, and last sentences), 55 Stat. 239.
8356 (b)	10: 299e.	July 8, 1942, ch. 493, § 5, 56 Stat. 649.

In subsection (a), the words "who successfully completes" are substituted for the words "upon the successful completion of". The word "appointed" is substituted for the word "commissioned". The words "each such second lieutenant" are omitted as surplusage. The words "under section 8257 (c) (1) of this title" are substituted for the word "such", since that word related to agreements for active duty under 10: 299 (2d sentence), restated in section 8257 (c) (1) of this title.

In subsection (b), the word "originally" is inserted for clarity. The words "under such regulations as the Secretary of the Army may prescribe" are omitted, since section 591 of this title authorizes the Secretary to prescribe qualifications for the appointment of reserve officers. The words "in any commissioned grade as a Reserve for service" are substituted for the words "an officer". The words "prescribed" and "and instruction" are omitted as surplusage.

§ 8358. Commissioned officers: original appointment; service credit.

For the purpose of determining seniority in his reserve grade and eligibility for promotion, a person appointed in a grade below colonel under section 8359 of this title shall be credited with the number of years of service, computed under section 8360 (e) of this title, in that grade that is equal to the difference between the number of years of service credited to him under section 8353 of this title and the minimum number of years of service prescribed by section 8359 of this title for the grade in which he is appointed. (Added Pub. L. 85–861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1520.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8358	50: 1335 (b).	Sept. 3, 1954, ch. 1257, § 505 (b), 68 Stat. 1173.

The words "as a Reserve officer" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8360 of this title.

§ 8359. Commissioned officers: original appointment; determination of grade.

Based on the service credited under section 8353 of this title, the commissioned grade in which a person credited with service under that section is originally appointed as a reserve officer of the Air Force is:

(1) For persons with less than three years of service—second lieutenant.

(2) For persons with at least three, but less than seven, years of service—first lieutenant.

(3) For persons with at least seven, but less than 14, years of service—captain.

(4) For persons with at least 14, but less than 21, years of service—major.

(5) For persons with at least 21 years of service—lieutenant colonel.

(6) For persons with at least 23 years of service—lieutenant colonel or under regulations prescribed by the Secretary of the Air Force—colonel. (Added Pub. L. 85–861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8359	50: 1335 (a).	Sept. 3, 1954, ch. 1257, § 505 (a), 68 Stat. 1173.

Clause (6) is substituted for 50: 1335 (a) (last 23 words).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8358 of this title.

§ 8360. Commissioned officers: promotion service.

(a) To be eligible under this chapter for (1) consideration for promotion, (2) examination for Federal recognition, or (3) promotion, a reserve commissioned officer must be in an active status.

(b) To be in an active status, a reserve commissioned officer must have credited to him, during each applicable period prescribed in subsection (c) or (d), the number of points that the Secretary of the Air Force prescribed for that period under section 1002 of this title before that period began. This does not apply to an adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia.

(c) For a reserve commissioned officer who was a Reserve in an active status in the Air Force on July 1, 1949, and who has continued in an active status since that date, points shall be computed for a period of 12 consecutive months beginning on July 1 of each year.

(d) For a reserve commissioned officer who was originally appointed as a reserve officer of the Air Force after July 1, 1949, or who returned to an active status after that date, points shall be computed for periods of 12 consecutive months beginning on the date of that appointment or of his most recent return to an active status, and on each successive anniversary of that date.

(e) For the purposes of sections 8358, 8361, 8363 (a), 8365, 8366 (a), 8368 (b), 8375 (b), 8377 (a), 8380 (c), 8381 (b), and 8819 of this title, an officer's years of service are computed by adding—

(1) all service while in an active status in his current reserve grade; and

(2) all service in an active status after June 25, 1950, and before July 1, 1955—

(A) while eligible for promotion in reserve grade on the basis of service in a higher temporary grade; or

(B) in regular or reserve grade, in any armed force, that was equal to or higher than his current reserve grade, including service in a federally recognized commissioned status in the Army National Guard or the Air National Guard.

No service may be counted more than once. (Added Pub. L. 85-861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8360 (a)	50: 1331 (a).	Sept. 3, 1954, ch. 1257, §§ 202 (a), 501 (a), (b) (1), (4), 502 (b), (c), 68 Stat. 1150, 1171, 1172; June 30, 1955, ch. 247, § 4 (a), 69 Stat. 219.
	50: 1192 (a).	
8360 (b)	50: 1331 (b) (4).	
	50: 1332 (b).	
8360 (c)	50: 1332 (c) (1).	
8360 (d)	50: 1332 (c) (2).	
8360 (e)	50: 1331 (b) (1).	

In subsection (a), 50: 1331 (a) is omitted as covered by the context of this revised title.

In subsection (b), the words "have credited to him" are substituted for the word "attain", in 50: 1332 (b). The words "prescribed in subsection (c) or (d)" are substituted for the words "of twelve consecutive months applicable to him", in 50: 1332 (b). 50: 1331 (b) (4) is omitted as executed throughout this revised title.

In subsection (c), the words "continued in" are substituted for the words "has not been removed from". 50: 1332 (c) (1) (last 17 words) is omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8358, 8361, 8363, 8365, 8368, 8375, 8377, 8381, 8819 of this title.

§ 8361. Commissioned officers: seniority for promotion purposes.

(a) For promotion purposes, reserve commissioned officers in any reserve grade are senior to those in any lower reserve grade.

(b) Among reserve commissioned officers in the same reserve grade, seniority for promotion purposes is based on length of service in that grade computed under section 8360 (e) of this title.

(c) When seniority determined under subsection (b) is the same, seniority for promotion purposes is based on length of service computed under section 8366 (e) of this title.

(d) When seniority determined under subsection (c) is the same, the Secretary of the Air Force shall fix the seniority.

(e) For promotion purposes, the years of service computed under section 8360(e) of this title of a reserve commissioned officer who is returned to an active status are reduced, so far as necessary, so that one year after the date on which he is returned to that status he will not have more than four years of that service if he is in the reserve grade of first lieutenant, or seven years of that service if he is in reserve grade of captain or major. Notwithstanding any other provision of this title, such a reserve commissioned officer may not be considered for promotion until at least one year after the date on which he is returned to an active status. (Added Pub. L. 85-861, § 1(178)(c), Sept. 2, 1958, 72 Stat. 1522, and amended Pub. L. 86-559, § 1(50), June 30, 1960, 74 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8361 (a)	50: 1334 (a) (less (2)).	Sept. 3, 1954, ch. 1257, § 504, 68 Stat. 1173; June 30, 1955, ch. 247, § 4 (c), 69 Stat. 219.
8361 (b)	50: 1334 (a) (2) (A).	
8361 (c)	50: 1334 (a) (2) (B).	
8361 (d)	50: 1334 (a) (2) (C).	
8361 (e)	50: 1334 (b).	

In subsection (e), the words "are reduced" are substituted for the words "suffer * * * and a reduction in his". The words "he will not have" are substituted for the words "the years of * * * with which he is entitled to be credited for promotion purposes shall not be". The words "loss of precedence" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-559, § 1(50)(A), substituted "reserve grade" for "grade" in two instances.

Subsec. (e). Pub. L. 86-559, § 1(50)(B), prohibited such a reserve officer from being considered for promotion until at least one year after the date on which he is returned to an active status.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8360 of this title.

§ 8362. Commissioned officers: selection boards.

(a) Under such regulations and in such number as he may prescribe, the Secretary of the Air Force, or such authority as he directs, shall from time to time appoint and convene selection boards to consider reserve commissioned officers for promotion under this chapter.

(b) Each board shall be composed of at least five members who are senior in regular or reserve grade to, and who outrank, any officer considered by that board. Five members of a board constitute a quorum. So far as practicable, at least one-half of the members of the board must be reserve officers.

(c) A board serves for as long as the Secretary of the Air Force prescribes but not longer than one year. A member may not serve on two consecutive boards for promotions to the same grade, if the second board considers any officers considered but not recommended for promotion by the first.

(d) Each member of a board must swear that he will perform his duties without prejudice or partiality, having in view the special fitness of officers and the efficiency of the Air Force.

(e) A recommendation for promotion must be made by the majority of the total membership of the board. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.

(f) An officer eligible for consideration for promotion by a board under this chapter is entitled to send a letter, through official channels, calling attention to any matter of record in the armed forces concerning himself that he considers important to his case. The letter may not criticize any officer or reflect on his character, conduct, or motives. A letter sent under this subsection may not be considered by a selection board unless it is received by the time the board convenes. (Added Pub. L. 85-861, § 1 (178)(C), Sept. 2, 1958, 72 Stat. 1522, and amended Pub. L. 86-559, § 1(51), June 30, 1960, 74 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8362 (a)	50: 1193 (a). 50: 1338 (a).	Sept. 3, 1954, ch. 1257, §§ 203 508 (a), 68 Stat. 1150, 1174.
8362 (b)	50: 1193 (b). 50: 1193 (d) (1st sentence).	
8362 (c)	50: 1193 (c).	
8362 (d)	50: 1193 (d) (less 1st and last sentences).	
8362 (e)	50: 1193 (d) (last sentence).	
8362 (f)	50: 1193 (e).	

Subsection (a) is substituted for 50: 1193 (a) and 1338 (a). The word "competent", in 50: 1193 (a), is omitted as surplusage.

In subsection (b), the words "are senior in regular or reserve grade to, and who outrank," are substituted for the words "shall be senior in permanent grade and temporary rank to", in 50: 1193 (b).

In subsection (c), the words "board upon which he served" are omitted as surplusage.

In subsection (d), the words "his duties" are substituted for the words "the duties imposed on him as a member of such board". The words "officer who is appointed" are omitted as surplusage. The words "or affirm" are omitted as covered by the word "oath" as defined in section 1 of title 1.

In subsection (f), the words "is entitled to send" are substituted for the words "shall have the right to forward". The word "letter" is substituted for the words "written communication". The last sentence is substituted for 50: 1193 (e) (last 15 words of 1st sentence). The words "to his consideration" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (e). Pub. L. 86-559 authorized a board that is to recommend officers for promotion whom it considers to be the best qualified to recommend only those officers whom it also considers to be fully qualified.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8363. Commissioned officers: selection boards; general procedure.

(a) An officer in a reserve grade above second lieutenant may not be considered for promotion, or examined for Federal recognition in the next higher grade, until he completes the following number of years of service, computed under section 8360 (e) of this title, in his current reserve grade:

(1) First lieutenant—two years.
(2) Captain—four years.
(3) Major—four years.
(4) Lieutenant colonel—three years.
(5) Colonel—one year.
(6) Brigadier general—one year.

This subsection does not apply to an adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia who holds his reserve grade solely because of his position as adjutant general or assistant adjutant general.

(b) An officer may not be considered by a selection board for promotion under this chapter more than two years, if in a reserve grade below colonel, or more than one year, if in a reserve grade above lieutenant colonel, before the date on which it is anticipated that he will be promoted if recommended by the selection board.

(c) Except for officers being considered under section 8366, 8372, or 8373 of this title, and except for deferred officers who may not be considered at that time, an officer may not be considered by a selection board for promotion unless the board considers all officers who are senior to him in his reserve grade and who are not on a recommended list.

(d) The names of officers recommended by a selection board for promotion shall be placed on a recommended list of their grade below the names of those recommended by earlier selection boards and in the same order among themselves as existed when they were considered by the selection board. A name so placed on a list shall be carried thereon until the

officer is promoted to the grade for which he is recommended or until his name is removed under another provision of this chapter.

(e) Except as provided in section 8366(c), 8372, 8374, or 8379 of this title or subsection (f) or (g) of this section, a reserve officer whose name is on a recommended list may not be promoted ahead of any officer whose name precedes his on that recommended list.

(f) A promotion under this chapter may be made effective before, on, or after the date on which it is made. Unless expressly provided otherwise in this chapter, the officer concerned is entitled to the pay, allowances, and any other benefits authorized by law for the grade to which he is promoted from the effective date of the promotion.

(g) The promotion of a reserve commissioned officer who is under investigation or against whom proceedings of a court-martial or a board of officers are pending may be delayed until the investigation or proceedings are completed. However, a promotion may not be delayed under this subsection for more than one year after the date he is selected for promotion unless the Secretary of the Air Force determines that a further delay is necessary in the public interest. (Added Pub. L. 85–861, § 1(178)(c), Sept. 2, 1958, 72 Stat. 1522, and amended Pub. L. 86–559, § 1(52), June 30, 1960, 74 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8363 (a)	50: 1331 (b) (2). 50: 1336 (a).	Sept. 3, 1954, ch. 1257, §§ 501 (b) (2), 502 (d), 506 (a), 507, 508 (less (a)), 68 Stat. 1171, 1173, 1174; June 30, 1955, ch. 247, § 4 (b), (d), (e), 69 Stat. 219.
8363 (b)	50: 1337.	
8363 (c)	50: 1338 (b).	
8363 (d)	50: 1338 (c) (less last sentence).	
8363 (e)	50: 1338 (c) (last sentence).	
8363 (f)	50: 1332 (d).	

In subsection (a), 50: 1331 (b) (2) and the words "by a Federal recognition board", in 50: 1336 (a), are omitted as surplusage.

In subsection (c), the words "for officers being considered" are substituted for the words "when it is considering officers". The words "an * * * may not be considered * * * unless" are substituted for the words "whenever * * * is being considered * * * the board shall consider". The words "in his reserve grade" are inserted for clarity.

In subsection (d), the words "of their grade" are inserted for clarity. The last sentence is substituted for 50: 1338 (c) (last 27 words of 1st sentence).

In subsection (f), the words "under this chapter" are substituted for the words "To carry out the provisions of this subchapter". The words "the grade to which he is promoted" are substituted for the words "the higher grade". The words "the effective date of the promotion" are substituted for the words "such effective date".

AMENDMENTS

1960—Subsec. (c). Pub. L. 86–559, § 1(52)(A), substituted "section 8366, 8372, or 8373" for "section 8372."

Subsec. (e). Pub. L. 86–559, § 1(52)(B), substituted "or 8379 of this title or subsection (f) or (g)" for "8379, or 8380 of this title or subsection (f)."

Subsec. (g). Pub. L. 86–559, § 1(52)(C), added subsec. (g).

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8360, 8376 of this title; title 32 section 307.

§ 8365. Commissioned officers: promotion to first lieutenant.

(a) An officer of the Air Force Reserve in an active status in the reserve grade of second lieutenant shall, if he is found qualified for promotion, be promoted to the reserve grade of first lieutenant effective on the date on which he completes three years of service, computed under section 8360 (e) of this title, in the reserve grade of second lieutenant.

(b) Whenever the Secretary of the Air Force determines that there are vacancies in the reserve grade of first lieutenant, officers in the reserve grade of second lieutenant who have not completed three years of service, computed under section 8360 (e) of this title, in that grade, may be promoted to the reserve grade of first lieutenant under regulations to be prescribed by the Secretary.

(c) An officer of the Air National Guard of the United States in the reserve grade of second lieutenant who is appointed in the grade of first lieutenant by the governor or other appropriate authority of the jurisdiction concerned to fill a vacancy in the Air National Guard shall be extended Federal recognition in the grade of first lieutenant, without the examination prescribed in section 307 of title 32, and shall be promoted to that reserve grade, effective on the date on which he completes three years of service, computed under section 8360 (e) of this title, in the reserve grade of second lieutenant. (Added Pub. L. 85–861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8365 (a)	50: 1339 (a).	Sept. 3, 1954, ch. 1257 §§ 509 (less (b)), 520 (less (b)), 68 Stat. 1174, 1179; June 30. 1955, ch. 247, § 4 (f), 69 Stat, 219.
8365 (b)	50: 1339 (c).	
8365 (c)	50: 1350 (less (b)).	

In subsection (a), the words "Except as provided in subsections (b) and (c) of this section" are omitted as unnecessary since the subsections referred to are not in fact exceptions to 50: 1339 (a).

In subsection (c), the word "authorized" is omitted as surplusage. The words "or promoted to" are omitted as covered by the words "appointed in".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8360 of this title; title 32 section 307.

§ 8366. Commissioned officers: promotion to captain, major, or lieutenant colonel.

(a) Without regard to vacancies, each officer whose reserve grade is first lieutenant, captain, or major shall be considered for promotion to the next higher reserve grade, far enough in advance of the date on which he will complete the years of service prescribed in columns 2 and 3 of the following table that, if recommended, he may be promoted effective on the date on which he will complete that service.

Column 1 Current reserve grade	Column 2 Service computed under sec. 8360 (e) of this title	Column 3 Service computed under subsec. (e)
First lieutenant	4	7
Captain	7	14
Major	7	21

(b) Having in view the number of actual and anticipated vacancies in the Air Force Reserve in the reserve grade of captain, major, or lieutenant colonel, the Secretary of the Air Force may direct a selection board to consider and recommend officers for promotion to those grades. The names of the officers to be considered shall include—

(1) the name of the senior officer of the Air Force Reserve in the reserve grade of first lieutenant, captain, or major, as the case may be, whose name is not on a recommended list;

(2) the names of such additional officers of the Air Force Reserve in those reserve grades, in order of seniority, as the Secretary may prescribe; and

(3) the names of those officers of the Air National Guard of the United States who must be considered at that time under subsection (a).

(c) Each officer of the Air National Guard of the United States who is recommended by a selection board for promotion to the reserve grade of captain, major, or lieutenant colonel, and who, before the date on which he would be promoted under subsection (d), is appointed in the next higher grade to fill a vacancy in the Air National Guard, shall be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32, and shall be promoted to that reserve grade effective on the date on which he is appointed in that grade in the Air National Guard. If he is not so appointed in the next higher grade in the Air National Guard, he shall, effective as of the date on which he must be promoted under subsection (d), have his Federal recognition terminated, be transferred to the Air Force Reserve, and be promoted.

(d) An officer whose reserve grade is first lieutenant, captain, or major and whose name is on a recommended list may be promoted at any time to fill a vacancy, and shall be promoted, without regard to the existence of a vacancy, on the date on which he completes the service prescribed in subsection (a).

(e) For the purpose of column 3 of subsection (a), an officer's years of service are computed by adding—

(1) all service as a commissioned officer of any armed force;

(2) all service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States; and

(3) all service credited to him under section 8353 of this title.

No service may be counted more than once. (Added Pub. L. 85–861, § 1(178)(c), Sept. 2, 1958, 72 Stat. 1523, and amended Pub. L. 86–559, § 1(53), June 30, 1960, 74 Stat. 276; Pub. L. 90–130, § 1(28)(A), Nov. 8, 1967, 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8366 (a)	50: 1340 (a).	Sept. 3, 1954, ch. 1257, §§ 501 (b) (5) (as applicable to promotion), 510, 511 (a), 521, 68 Stat. 1172, 1174, 1175, 1179; June 30, 1955, ch. 247, § 4 (g), 69 Stat. 220.
8366 (b)	50: 1340 (b).	
8366 (c)	50: 1351.	
8366 (d)	50: 1341 (a).	
8366 (e)	50: 1331 (b) (5) (as applicable to promotion).	
8366 (f)	50: 1340 (c).	

In subsection (a), the words "Without regard to vacancies" are substituted for the words "Irrespective of the existence of a vacancy". The words "for promotion by the selection board" are omitted as surplusage.

In subsection (b), the words "Having in view" are substituted for the words "Based upon".

In subsection (c), the words "or promoted to" are omitted as covered by the words "appointed in". The word "authorized" is omitted as surplusage. The words "of a State, a Territory or the District of Columbia" are omitted as surplusage.

In subsection (f), the words "who is not designated under section 8067 of this title or appointed in the Air Force with a view to designation under that section" are substituted for the words "appointed under section 310 of the Women's Armed Services Integration Act of 1948", since that section was repealed by section 803 of the Armed Forces Reserve Act of 1952 (66 Stat. 506). The quoted words were intended to refer to those female reserve officers who were appointed with a view to performing general duties and were not intended to refer to those appointed with a view to performing professional duties, such as medical, dental, nursing, and legal duties.

AMENDMENTS

1967—Subsec. (f). Pub. L. 90–130 struck out subsec. (f) which provided that this section should not apply to the promotion to a grade above major of any Air Force nurse or medical specialist or any female reserve officer not designated under section 8067(a)—(d) or (g)—(i) of this title or appointed in the Air Force with a view to designation under that section.

1960—Subsec. (e). Pub. L. 86–559, § 1(53)(A), included within cl. (2) service as a commissioned officer in the National Guard after June 14, 1933, if the officer's service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States.

Subsec. (f). Pub. L. 86–559, § 1(53)(B), substituted "major of any Air Force nurse or medical specialist or any female reserve officer who is not designated under section 8067 (a)—(d) or (g)—(i) of this title" for "captain of female reserve officers who are designated as Air Force nurses or medical specialists, or to the promotion to a grade above major of any female reserve officer who is not designated under section 8067 of this title."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8360, 8361, 8363, 8367, 8368 of this title; title 32 section 307.

§ 8367. Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure.

(a) When officers in the reserve grade of first lieutenant, captain, or major are to be considered,

under section 8366 of this title, by a selection board for promotion to the next higher grade to fill existing or anticipated vacancies, the Secretary of the Air Force may direct the board to—

(1) consider officers whose names are referred to it in the order of their seniority;

(2) recommend those who are fully qualified for promotion;

(3) pass over those not so qualified; and

(4) continue this procedure until the number of officers specified by him is recommended.

(b) When an officer in the reserve grade of first lieutenant, captain, or major must be considered under section 8366 (a) of this title for promotion because of length of service, the Secretary may—

(1) furnish to the board a list of officers to be considered for promotion to the grade concerned; and

(2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

(c) In place of the procedure prescribed in subsection (a) or (b), the Secretary may furnish to the board a list of officers to be considered and may direct the board to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number recommended by the selection board must be at least 80 percent of those listed for consideration for the first time. (Added Pub. L. 85–861, § 1(178)(c), Sept. 2, 1958, 72 Stat. 1525, and amended Pub. L. 86–559, § 1(54), June 30, 1960, 74 Stat. 276.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8367 (a)----	50: 1342 (b).	Sept. 3, 1954, ch. 1257, § 512, 68 Stat. 1175.
8367 (b)---	50: 1342 (a).	
8367 (c)----	50: 1342 (c), (d).	

In subsection (a), the words "in the reserve grade of first lieutenant, captain, or major * * * under section 8366 of this title" and "to the next higher grade" are inserted for clarity. The words "is recommended" are substituted for the words "is obtained". The words "considered", "for promotion", in clause (3), and "to be recommended" are omitted as surplusage.

In subsection (b), the words "under section 8366 (a) of this title for promotion because of length of service" are substituted for the words "by a selection board for promotion because he will complete the prescribed number of years of promotion service in grade and total years of service".

In subsection (c), the words "specified by him" are substituted for the word "specific". 50: 1342 (c) (1st 18 words of last sentence) is omitted as surplusage. 50: 1342 (d) is omitted as covered by section 8366 (f) of this title.

AMENDMENTS

1960—Subsec. (c). Pub. L. 86–559 inserted words "for the first time" following "listed for consideration."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8372 of this title.

§ 8368. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel.

(a) In this chapter, "deferred officer" means any of the following officers who has been considered, for the first time under this chapter, by a selection board for promotion to the next grade higher than his current reserve grade but not recommended for that promotion, who has been examined for the first time for Federal recognition in the next grade higher than his current reserve grade, but found not qualified for that recognition, or who has been recommended or found qualified and declined that promotion:

(1) An officer in the reserve grade of first lieutenant or captain.

(2) An officer in the reserve grade of major.

(b) The years of service computed under sections 8360 (e) and 8366 (e) of this title, with which a deferred officer is credited shall be reduced, if necessary, so that one year after the date on which he would have been promoted if he had been recommended by a selection board he will not have more than four years of service computed under section 8360 (e) of this title if he is in the reserve grade of first lieutenant, or seven years of that service if he is in the reserve grade of captain or major. For the purpose of this subsection, the date on which a deferred officer would have been promoted had he been recommended is the earlier of the following dates—

(1) the earliest date of appointment in the next higher reserve grade of any officer who, before the deferred officer's loss of seniority, was junior to him; or

(2) the date on which he would have completed the amount of service prescribed in columns 2 and 3 of section 8366 (a) of this title, if his years of service had not been reduced under this section.

(c) Unless he is sooner recommended for promotion under section 8372 of this title or examined for Federal recognition in the next higher grade—

(1) an officer who is deferred because he was considered but not recommended by a selection board shall be considered for promotion by the next selection board considering officers of his grade and category under section 8366 of this title; and

(2) an officer who is deferred because he was found not qualified for Federal recognition shall be considered for promotion by the next appropriate selection board convened under section 8366 of this title when the officer next junior to him is also considered, but not before one year after the date on which he was found not qualified for Federal recognition.

(d) An officer who is deferred because he was considered but not recommended by a selection board may, if he is appointed to the next higher grade in the Air National Guard, be examined for Federal recognition in that grade at any time before the date on which he must be considered for promotion under subsection (c) (1).

(e) An officer who is deferred because he was found not qualified for Federal recognition in the

next higher grade may be again examined for Federal recognition in that grade at any time before the date on which he must be considered for promotion under subsection (c) (2), but not before one year after the date on which he was first found not qualified for Federal recognition in that grade.

(f) A deferred officer who is again considered for promotion under subsection (c) (1) and is not recommended for promotion, or is recommended and declines the promotion, may not thereafter be considered for promotion or examined for Federal recognition, and shall be treated as provided in section 8846(a) of this title and section 323(e) of title 32.

(g) A deferred officer who is again considered for promotion or examined for Federal recognition in the next higher grade under subsection (c) (2), (d), or (e), and is not recommended for promotion or found qualified for Federal recognition, or is recommended or found qualified and declines the promotion, may not thereafter be considered for promotion or examined for Federal recognition, and shall be treated as provided in section 8846(b) of this title and section 323(e) of title 32. (Added Pub. L. 85-861, § 1(178) (C), Sept. 2, 1958, 72 Stat. 1525, and amended Pub. L. 86-559, § 1(55), June 30, 1960. 74 Stat. 276; Pub. L. 90-130, § 1(28) (B), Nov. 8, 1967, 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8368 (a)	50: 1331 (b) (3).	Sept. 3, 1954, ch. 1257, §§ 501 (b) (3), 522 (a)—(d), (e) (1) (1st 44 words), (2) (1st 64 words), 68 Stat. 1171, 1180, 1181.
8368 (b)	50: 1352 (a).	
8368 (c)	50: 1352 (b), (c).	
8368 (d)	50: 1352 (d) (1).	
8368 (e)	50: 1352 (d) (2).	
8368 (f)	50: 1352 (e) (1) (1st 44 words).	
8368 (g)	50: 1352 (e) (2) (1st 64 words).	

In subsection (a), the words "than his current reserve grade" are inserted for clarity. In clauses (2) and (3), the word "female" is inserted before the words "Air Force nurse or medical specialist", since the source text applied only to women. (See opinion of The Judge Advocate General of the Air Force dated February 1, 1956 (4th par. on page 3).) In clause (3), the words "or a female officer who is not designated under section 8067 of this title or appointed in the Air Force with a view to designation under that section" are substituted for the words "female Reserve officers appointed under section 310 of the Women's Armed Services Integration Act of 1948", since that section was repealed by section 803 of the Armed Forces Reserve Act of 1952 (66 Stat. 506). The quoted words were intended to refer to those female officers who were appointed with a view to performing general duties and were not intended to refer to those appointed with a view to performing professional duties.

In subsection (b), 50: 1352 (a) (1) (A) is omitted, since officers who are recommended by a previous promotion board must be promoted, under section 8363 of this title, before officers recommended by a later board. Clause (2) is substituted for 50: 1352 (a) (2) (B).

In subsection (d), the words "or promoted to" are omitted as covered by the words "appointed to".

In subsection (f), the words "by that selection board" are omitted as surplusage.

AMENDMENTS

1967—Subsec. (a) (2). Pub. L. 90-130 struck out ," other than an Air Force nurse or medical specialist or a female officer who is not designated under section 8067(a)—(d) or (g)—(i) of this title or appointed in the Air Force with a view to designation under that section" following" grade of major".

1960—Subsec. (a). Pub. L. 86-559, § 1(55)(A), included within the definition of "deferred officer" any officer who has been recommended or found qualified and declined that promotion, and Air Force nurses and medical specialists in the grade of captain.

Subsec. (f). Pub. L. 86-559, § 1(55) (B), included deferred officers who are recommended and decline the promotion.

Subsec. (g). Pub. L. 86-559, § 1(55) (C), included officers who are recommended or found qualified and decline the promotion.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8360, 8846 of this title; title 32 section 323.

§ 8370. Repealed. Pub. L. 90-130, § 1(28)(C), Nov. 8, 1967, 81 Stat. 382.

Section, Pub. L. 85-861, § 1(178) (C), Sept. 2, 1958, 72 Stat. 1526; Pub. L. 86-559, § 1(56), June 30, 1960, 74 Stat. 276, placed restrictions on promotion consideration of Air Force nurses, medical specialists, and female officers being considered for promotion to the Reserve grades of lieutenant colonel and colonel.

§ 8371. Commissioned officers: Air Force Reserve; promotion to colonel.

(a) Having in view the number of actual and anticipated vacancies in the Air Force Reserve in the reserve grade of colonel, the Secretary of the Air Force shall furnish to selection boards lists of officers to be considered by those boards and shall direct the board to recommend a number prescribed by him for promotion to that grade.

(b) The lists of officers to be considered under subsection (a) must include the name of the senior officer of the Air Force Reserve in the reserve grade of lieutenant colonel whose name is not on a recommended list, and the names of such additional officers of the Air Force Reserve in that reserve grade, in order of seniority, as the Secretary may prescribe.

(c) The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

(d) An officer recommended for promotion under this section may be promoted only to fill a vacancy. (Added Pub. L. 85-861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1527.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8371 (a)	50: 1346 (1st sentence).	Sept. 3, 1954, ch. 1257, § 516, 68 Stat. 1177.
8371 (b)	50: 1346 (2d sentence).	
8371 (c)	50: 1346 (3d sentence).	
8371 (d)	50: 1346 (less 1st 3 sentences).	

In subsection (a), the words "lists of" are substituted for the words "names of" to conform to revised subsection (b).

In subsection (b), the words "in that reserve grade" are inserted for clarity. The words "for promotion" are omitted as surplusage.

In subsection (c), the words "of those named for consideration" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8372 of this title.

§ 8372. Commissioned officers: Air Force Reserve; promotion; officers with special qualifications.

(a) In addition to the method prescribed in sections 8367 and 8371 of this title, whenever there are vacancies in the Air Force Reserve in the reserve grade of captain, major, lieutenant colonel, or colonel, and the Secretary of the Air Force considers that there are or will be an inadequate number of officers in any one of those grades with special qualifications, he may direct a selection board to recommend a prescribed number of officers of the Air Force Reserve with those qualifications for promotion to that reserve grade. Selection for promotion to grades below colonel under this subsection shall be made under the procedures prescribed in section 8367 (a) or 8367 (c) of this title. Selection for promotion to the grade of colonel under this subsection shall be made under the procedures prescribed in the first two sentences of section 8367 (c) of this title.

(b) Whenever the Secretary considers that the number of officers in the reserve grade of captain, major, lieutenant colonel, or colonel in—

(1) any unit of the Air Force Reserve that is in the Ready Reserve and is not on active duty or is on active duty for training; or

(2) the Air Force Reserve, in positions to be filled by officers with a mobilization assignment in the Ready Reserve;

is or may become unbalanced, he may direct that a number specified by him be selected from officers of the Air Force Reserve who are in the Ready Reserve, who are not on active duty or are on active duty for training, but who are determined to be specially qualified for, and available to fill, those vacancies. Selection for promotion under this subsection shall be made under the procedures prescribed in the first two sentences of section 8367(c) of this title, but no officer may be selected for promotion under this subsection unless he is fully qualified for promotion to the grade concerned.

(c) An officer recommended for promotion under this section may be promoted only to fill a vacancy for which he was recommended.

(d) Officers on a recommended list may be promoted under this section, in the order in which the officers' names appear on the recommended list, if they meet the requirements of subsection (b).

(e) If an officer enters upon active duty before being promoted to fill a vacancy for which he was recommended under subsection (b), his name shall be removed from the recommended list.

(f) If an officer is considered but not recommended for promotion under this section, or if his name is removed from a recommended list under subsection (e), he is not a deferred officer and he shall be treated as if he had not been considered for promotion under this section. (Added Pub. L. 85-861, § 1(178)(C), Sept. 2, 1958, 72 Stat. 1527, and amended Pub. L. 86-559, § 1(57), June 30, 1960, 74 Stat. 276.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8372 (a)	50: 1343 (a).	Sept. 3, 1954, ch. 1257, § 513, 68 Stat. 1176.
8372 (b)	50: 1343 (b).	
8372 (c)	50: 1343 (c).	
8372 (d)	50: 1343 (d).	
8372 (e)	50: 1343 (e) (less last 17 words).	
8372 (f)	50: 1343 (e) (last 17 words). 50: 1343 (f).	

In subsection (a), the words "In addition to the method prescribed in sections 8367 and 8371 of this title" are inserted to reflect those revised sections.

In subsection (b), the words "the Secretary considers" are substituted for the words "in the opinion of the Secretary".

Subsection (f) is substituted for 50: 1343 (e) (last 17 words) and 50: 1343 (f).

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-559 substituted "that is in the Ready Reserve" for "that is organized to serve as a unit" in cl. (1), "mobilization assignment in the Ready Reserve" for "mobilization assignment or designation in cl. (2), and "he may direct that a number specified by him be selected from officers of the Air Force Reserve who are in the Ready Reserve, who are not on active duty or are on active duty for training, but who are determined to be specially qualified for, and available to fill, those vacancies" for "and that there are vacancies in that grade, he may direct that, of the officers to be selected for that grade, a number specified by him be selected from officers of the Air Force Reserve who are not on active duty or are on active duty for training but who are specially qualified for, and are geographically available to fill those vacancies, and inserted provisions prohibiting the selection of officers for promotion unless they are fully qualified for promotion to the grade concerned.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8363, 8368 of this title.

§ 8373. Commissioned officers: Air Force Reserve; promotion to brigadier general and major general.

(a) Officers of the Air Force Reserve may be promoted to the reserve grades of brigadier general and major general to fill vacancies in those grades.

(b) The Secretary of the Air Force may furnish the names of any officers of the Air Force Reserve who are assigned to the duties of a general officer of the next higher reserve grade, and who meet standards to be prescribed by the Secretary, to a selection board for consideration for promotion to that grade.

(c) Of those officers considered under subsection (b), the selection board shall recommend the best qualified of those whom it determines to meet the standards prescribed by the Secretary and to be fully qualified for promotion.

(d) The name of any officer on a recommended list on June 30, 1964, for promotion to the reserve grade of brigadier general or major general under authority of the provisions of section 8373 of this title, which terminated July 1, 1964, may be placed on the appropriate recommended list maintained under subsection (c) effective July 1, 1964, without the necessity of further selection board action, provided such officer is currently qualified for such promotion. The promotion of any such officer shall be

effective for date of rank purposes as of July 1, 1964. (Added Pub. L. 89–172, § 1, Sept. 8, 1965, 79 Stat. 662.)

CODIFICATION

A prior section 8373, added Pub. L. 85–861, § 1(178) (C), Sept. 2, 1958, 72 Stat. 1528, and amended Pub. L. 86–559, § 1(58), June 30, 1960, 74 Stat. 277, containing similar subject matter, expired by its own terms on June 30, 1964.

EFFECTIVE DATE

Section 2 of Pub. L. 89–172 provided that: "This Act [adding this section] is effective July 1, 1964."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8273, 8363, 8375 of this title.

§ 8374. Commissioned officers: promotion effective as of date of Federal recognition.

A reserve commissioned officer shall be promoted effective as of the date on which he is extended Federal recognition in the next higher grade in the Air National Guard. (Added Pub. L. 85–861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1528.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8374	50: 1349 (c).	Sept. 3, 1954, ch. 1257, § 519 (c), 68 Stat. 1179.

The words "upon which" are omitted as surplusage.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8363 of this title.

§ 8375. Commissioned officers: brigadier general or major general; procedure or reassignment.[1]

(a) Within 30 days after an officer who was promoted to the reserve grade of brigadier general or major general under section 8373 or 8376 of this title ceases to occupy the position he was promoted to fill, he shall, unless he is assigned to a comparable position of the same or a higher grade, be treated as prescribed in clause (1), (2), or (3), as determined by the Secretary of the Air Force:

(1) Be transferred in grade to the inactive status list if he is qualified, or if he is qualified and applies therefor, be transferred to the Retired Reserve.

(2) Be discharged from his reserve appointment and, if he is qualified and applies therefor, be appointed in the reserve grade held by him before his appointment in a reserve general officer grade.

(3) If not transferred under clause (1) or appointed under clause (2), be discharged from his reserve appointment.

(b) An officer who is appointed under subsection (a) (2) shall be credited with an amount of service, computed under section 8360 (e) of this title, in the grade in which appointed that is equal to the amount of service computed under that section with which he was credited in that grade and in any higher grade. (Added Pub. L. 85–861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1528, and amended Pub. L. 86–559, § 1(59), June 30, 1960, 74 Stat. 277.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8375 (a)	50: 1347 (c) (less last 36 words of clause (2)).	Sept. 3, 1954, ch. 1257, § 517 (c), 68 Stat. 1178.
8375 (b)	50: 1347 (c) (last 36 words of clause (2)).	

In subsection (a), the words "under this section, or any other provision of law" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–559 substituted "under section 8373 or 8376 of this title" for "to fill a vacancy."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8360, 8376 of this title.

§ 8376. Commissioned officers: promotion when serving in temporary grade higher than reserve grade.

(a) A reserve officer who is serving on active duty (other than for training) in a temporary grade which is higher than his reserve grade shall, upon his application, be promoted to the next higher reserve grade when he completes the amount of service in his current reserve grade prescribed by section 8363(a) of this title.

(b) If an officer of the Air National Guard of the United States is eligible and applies for promotion under this section, the governor or other appropriate authority of the jurisdiction concerned may promote him to fill a vacancy specially created, if necessary, in the Air National Guard of the jurisdiction concerned. If he is so promoted, he shall, effective on the date of promotion, be extended Federal recognition in the grade to which promoted, without the examination prescribed in section 307 of title 32. If he is not so promoted in the Air National Guard within 90 days after he applies, his Federal recognition in his reserve grade shall be terminated and he shall be transferred to the Air Force Reserve and promoted therein.

(c) A reserve officer who is serving on active duty (other than for training) in a temporary grade that is higher than his reserve grade retains that temporary grade if he is released from active duty before completing the amount of service prescribed in section 8363(a) of this title or before applying for promotion under subsection (a). When he completes that amount of service and applies, or if, having completed that amount of service before being released from active duty, he applies, an officer covered by this subsection shall be promoted to the next higher reserve grade, without regard to vacancies. An officer of the Air National Guard covered by this subsection who is promoted to a grade in the Air National Guard which is equal to his temporary grade, shall be extended Federal recognition

[1] So in original.

in that grade, without the examination prescribed in section 307 of title 32. If necessary, he shall be carried as an additional number therein until a vacancy occurs, but not for more than two years. If a vacancy does not occur within two years, his Federal recognition shall be terminated and he shall be transferred to the Air Force Reserve. This subsection does not apply to promotion to the reserve grade of brigadier general or major general.

(d) An officer who is released from active duty after being promoted to a reserve general officer grade under this section becomes subject to section 8375 of this title. (Added Pub. L. 85-861, § 1(178)(C), Sept. 2, 1958, 72 Stat. 1528, and amended Pub. L. 86-559, § 1 (60), June 30, 1960, 74 Stat. 277.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8376 (a)	50: 1344 (a) (1st sentence).	Sept. 3, 1954, ch. 1257, § 514, 68 Stat. 1176.
8376 (b)	50: 1344 (a) (less 1st sentence).	
8376 (c)	50: 1344 (less (a)).	

In subsection (b), the words "is eligible and" are inserted for clarity. The words "in the Air National Guard of the jurisdiction concerned" are substituted for the words "in the State or Territory, or in the District of Columbia", to conform to the last sentence of the revised subsection. The words "he applies" are substituted for the words "his application therefor". The word "therein" is inserted for clarity.

In subsection (c), the words "who was promoted to that temporary grade under any procedure" are omitted as surplusage. The words "When he completes that amount of service" are substituted for the words "After completing that prescribed promotion service in grade". The words "grade * * * which is equal to his temporary grade" are substituted for the words "the same grade in". 50: 1344 (d) is omitted as surplusage, since the revised section is prospective and does not authorize retroactive promotions.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-559 § 1(60)(A), eliminated words ", and who was promoted to that temporary grade under a general selection board procedure," which followed "higher than his reserve grade."

Subsec. (c). Pub. L. 86-559, § 1(60) (B), (C), permitted a reserve officer who is serving on active duty (other than for training) in a temporary grade that is higher than his reserve grade to retain his temporary grade if he is released from active duty before applying for promotion under subsec. (a), authorized the promotion to the next higher reserve grade of such an officer upon his application, and made subsec. (c) inapplicable to promotion to the reserve grade of brigadier general or major general.

Subsec. (d). Pub. L. 86-559, § 1(60)(D), added subsec. (d).

RESERVE PROMOTION OF CERTAIN FEMALE OFFICERS TO GRADE EQUAL TO TEMPORARY GRADE HELD AFTER JUNE 30, 1955

Section 6 of Pub. L. 86-559 provided that: "A reserve officer who is designated as an Air Force nurse or medical specialist, or a female reserve offcer of the Air Force (other than an officer designated under section 8067 of title 10, United States Code), who, after June 30, 1955, and before the enactment of this Act [June 30, 1960], received a temporary appointment under section 8442 of that title, in a grade higher than his reserve grade may, if he applies within one year after the enactment of this Act [June 30, 1960], be promoted to a reserve grade equal to that temporary grade if he is otherwise eligible for promotion to that grade under section 8363(a) of that title."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8375 of this title.

§ 8377. Commissioned officers: effect of removal from recommended list by President.

(a) If a reserve commissioned officer who is recommended for promotion to a reserve grade is not promoted because the President declines to appoint him, or because the Senate does not consent to his appointment after he has been nominated for appointment in a reserve general officer grade, he continues to be eligible as if he had not been considered for promotion and shall be considered by the next appropriate selection board considering officers of his grade. If he is recommended by the next selection board, his name shall be placed on the recommended list. If he is promoted on the recommendation of that board, he shall be credited with the same amount of service, computed under section 8360 (e) of this title, in the grade to which promoted, that he would have had if he had been promoted as a result of his original selection.

(b) An officer in the reserve grade of first lieutenant, captain, or major who is not promoted because the President declines to appoint him in the next higher grade, and who is not thereafter promoted because—

(1) he is considered by a selection board but is not recommended for promotion; or

(2) the President again declines to appoint him in the next higher grade;

shall be treated in the manner provided for deferred officers in section 8846 of this title. (Added Pub. L. 85-861, § 1(178)(C), Sept. 2, 1958, 72 Stat. 1529, and amended Pub. L. 86-559, § 1(61), June 30, 1960, 74 Stat. 277.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8377 (a)	50: 1348 (a).	Sept. 3, 1954, ch. 1257, § 518, 68 Stat. 1178.
8377 (b)	50: 1348 (less (a)).	

In subsection (a), the words "does not" are substituted for the words "refuses to". The words "on the recommendation of that board" are inserted for clarity. The words "in the grade to which promoted" are substituted for the words "in the higher grade". The words "for consideration for promotion" and "for that grade by the selection board which recommended him" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-559 substituted "be treated in the manner provided for deferred officers in section 8846 of this title" for ",except as provided in sections 1005 and 1006 of this title, be transferred to the Retired Reserve, if he is qualified and applies therefor, or be discharged from his reserve appointment."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8360 of this title.

§ 8378. Commissioned officers: promotion of officers removed from active status.

(a) A reserve commissioned officer who has been recommended by a selection board for promotion to, or found qualified for Federal recognition in, the next higher reserve grade, and who at the time he would otherwise be promoted is not eligible because he has been removed from an active status, may not, if returned to an active status, be placed on the recommended list unless he is again recommended by a selection board or is again found qualified for Federal recognition in the next higher reserve grade.

(b) A reserve commissioned officer covered by subsection (a) shall, if returned to an active status, be treated as if he had not been considered by that selection board or examined by the Federal recognition board that found him qualified for that Federal recognition before his return to an active status. (Added Pub. L. 85–861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1530.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8378 (a)	50: 1198 (less last 39 words).	Sept. 3, 1954, ch. 1257, § 208, 68 Stat. 1152.
8378 (b)	50: 1198 (last 39 words).	

In subsection (b), the words "shall * * * be treated as if he had not" are substituted for the words "and shall not be deemed to have been". The words "that found him qualified for that Federal recognition before his return to an active status" are substituted for the words "which last * * * examined him prior to the time he is returned to an active status".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8379. Commissioned officers: appointment in Air National Guard; function of governor.

Notwithstanding any other provision of this chapter, the appointment of commissioned officers of the Air National Guard is a function of the governor or other appropriate authority of the jurisdiction concerned. (Added Pub. L. 85–861, § (178) (C), Sept. 2, 1958, 72 Stat. 1530.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8379	50: 1349 (a).	Sept. 3, 1954, ch. 1257, § 519 (a), 68 Stat. 1179.

The words "and promotion" are omitted as covered by the word "appointment".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8363 of this title.

§ 8380. Commissioned officers: status while serving on active duty after promotion.

(a) A reserve commissioned officer on active duty (other than for training) who is promoted to a reserve grade that is higher than the grade in which he is serving may not serve on active duty in the reserve grade to which he is promoted and is not entitled to the rank, pay, or allowances of that higher grade unless he is ordered to serve on active duty in that higher grade or is temporarily promoted to that higher grade.

(b) A reserve commissioned officer on active duty (other than for training) who is promoted to a reserve grade that is higher than the grade in which he is serving continues to serve on active duty in the grade in which he was serving immediately before that promotion, and he may be appointed in a temporary grade that is equal to the grade in which he was so serving before that promotion. Unless he expressly declines it, an officer who is appointed in a temporary grade under this subsection is considered to have accepted the appointment on the date of the orders announcing it, and he need not take a new oath of office upon being so appointed. However, he may decline the temporary appointment within six months after the date of the orders announcing it. If he has completed the period of active duty (other than for training) that he is required by law or regulation to perform as a member of a reserve component and declines the temporary appointment, he shall be released from active duty. If he has not completed that period of active duty, he shall be retained on active duty in the grade in which he was serving before the promotion and may not be released from active duty on his application until he completes the period of active duty he is so required by law or regulation to perform. (Added Pub. L. 85–861, § 1(178) (C), Sept. 2, 1958, 72 Stat. 1530, and amended Pub. L. 86–559, § 1 (62), June 30, 1960, 74 Stat. 277.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8380 (a)	50: 1341 (d).	Sept. 3, 1954, ch. 1257, § 511 (less (a)); restated June 30, 1955, ch. 247, § 4 (h), 69 Stat. 220.
8 80 (b)	50: 1341 (b).	
8380 (c)	50: 1341 (c).	

In subsection (a), the words "while on that period of active duty" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–559, § 1(62) (A), (B), substituted "A" for "Except as provided in subsection (c), a", and "If he has completed the period of active duty (other than for training) that he is required by law or regulation to perform as a member of a reserve component and declines the temporary appointment, he shall be released from active duty. If he has not completed that period of active duty, he shall be retained on active duty in the grade in which he was serving before the promotion and may not be released from active duty on his application until he completes the period of active duty he is so required by law or regulation to perform" for "If he so declines the appointment, he shall be released from active duty."

Subsec. (c). Pub. L. 86–559, § 1(62)(C), repealed subsec. (c) which prohibited the promotion of a reserve

commissioned officer on active duty (other than for training) who has not completed the period of active duty that he is required to perform until he completes that period of active duty or until he is temporarily promoted to a higher grade.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8360 of this title.

§ 8381. Commissioned officers: adjutants general and assistant adjutants general.

(a) Within 30 days after a reserve officer who is federally recognized in the Air National Guard solely because of his appointment as adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia ceases to occupy that position—

(1) his Federal recognition shall be withdrawn; and

(2) he shall—

(A) be transferred in grade to the Retired Reserve, if he is qualified and applies therefor;

(B) be discharged from his reserve appointment and appointed in the reserve grade held by him as a reserve officer of the Air Force immediately before his appointment as adjutant general or assistant adjutant general, if he is qualified and applies for that appointment; or

(C) be discharged from his reserve appointment.

(b) An officer who is appointed under subsection (a) (2) (B) shall be credited with an amount of service, computed under section 8360 (e) of this title, in the grade in which he is appointed that is equal to the amount of that service with which he was credited in that grade and in any higher grade. (Added Pub. L. 85-861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8381 (a)	50: 1356 (less last 36 words of clause (2) (B)).	Sept. 3, 1954, ch. 1257, § 526, 68 Stat. 1183.
8381 (b)	50: 1356 (last 36 words of clause (2) (B)).	

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8212, 8360 of this title.

§ 8392. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.

The adjutant general or an assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may be appointed in the reserve commissioned grade in which Federal recognition in the Air National Guard is extended to him. (Added Pub. L. 85-861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8392	50: 1349 (d).	Sept. 3, 1954, ch. 1257, § 519 (d), 68 Stat. 1179.

The words "grade in which * * * is extended to him" are substituted for the words "in any grade if he is extended * * * in that grade".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see action 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8393. Commissioned officers: sea or foreign service not to be required for promotion.

Sea or foreign service may not be made a condition to the promotion of reserve commissioned officers in reserve grades. (Added Pub. L. 85-861, § 1 (178) (C), Sept. 2, 1958, 72 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8393	50: 1200.	Sept. 3, 1954, ch. 1257, § 210, 68 Stat. 1152.

The words "may not be made a condition to" are substituted for the words "There shall be no requirement for".

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8394. Officers; acceptance of promotion.

(a) An officer of the Air National Guard of the United States or the Air Force Reserve who is promoted as a Reserve is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous. (Aug. 10, 1956, ch. 1041, 70A Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8394 (a)	10: 558 (less last sentence, as applicable to reserve components).	Oct. 14, 1942, ch. 604 (as applicable to reserve components), 56 Stat. 787.
8394 (b)	10: 558 (last sentence, as applicable to reserve components).	

In subsection (a), the words "is considered" are substituted for the words "shall be deemed". The words "is entitled" are substituted for the words "and shall receive". The words "to them" are substituted for the words "to receive the pay and allowances of the higher grade." The words "that date" are substituted for the words "an earlier date". The words "after December 7, 1941" are omitted as executed. The words "to a higher

grade at any time", "for all purposes", and "to higher grade" are omitted as surplusage.

In subsection (b), the words "An officer need not take" are substituted for 10: 558 (1st 29 words of last sentence). The words "since last taking it" are substituted for the words "after the taking of such an oath". The words "to a higher grade" are omitted as surplusage.

§ 8395. During war.

In addition to appointments in time of war under chapter 839 of this title, appointments of reserve officers may be made in time of war. (Aug. 10, 1956, ch. 1041, 70A Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8395	10: 513 (last proviso of last sentence).	June 3, 1916, ch. 134, § 127a (last proviso of last sentence of 7th par.); added July 9, 1952, ch. 608, § 806 (h), 66 Stat. 508.

The exception as to chapter 839 of this title is inserted for clarity. The word "persons" is omitted as surplusage.

Chapter 839.—TEMPORARY APPOINTMENTS

Sec.
8441. General rule.
8442. Commissioned officers; regular and reserve components: appointment in higher grade.
8444. Commissioned officers: during war or emergency.
8445. Officers: additional appointments during war or emergency.
8446. Retention on active duty.
8447. Appointments in commissioned grade: how made; how terminated.
8448. Warrant officers: grades; appointment.
8449. Warrant officers: promotion.
8451. Officers: acceptance of appointment in higher grade.
8452. Medical and dental officers: temporary promotion to captain.

AMENDMENTS

1968—Pub. L. 90-235, § 3(b)(6), Jan. 2, 1968, 81 Stat. 758, struck out item 8450, which read: "Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency".

1958—Pub. L. 85-861, § 1 (180) (F), (G), Sept. 2, 1958, 72 Stat. 1532, struck out item 8443 and added item 8452.

§ 8441. General rule.

Temporary appointments may be made only in the Air Force without specification of component. (Aug. 10, 1956, ch. 1041, 70A Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8441	10: 506d (i).	Aug. 7, 1947, ch. 512, § 515 (i), 61 Stat. 908.

10: 506d (i) (1) is omitted, since the words "regular" and "reserve" are defined in section 101 (33) and (34) of this title to cover appointments as regular and reserve officers of the armed forces. The revised section is substituted for 10: 506d (i) (2) and (3).

§ 8442. Commissioned officers; regular and reserve components: appointment in higher grade.

(a) Whenever the number of officers of the Regular Air Force in any regular grade above second lieutenant is less than the number authorized, the vacancies may be filled by the appointment of qualified officers, as prescribed in subsection (c).

(b) Whenever, under authorization by Congress, the number of commissioned officers of the Regular Air Force on active duty plus the number of other commissioned officers of the Air Force ordered to active duty for a period of more than 30 days is more than the authorized strength of the Regular Air Force in commissioned officers on the active list, the Secretary of the Air Force shall determine the additional number of officers needed in each of the commissioned grades based upon the number of officers serving on active duty and the tasks being performed by the Air Force. Vacancies resulting from that determination may then be filled by the appointment of qualified officers, as prescribed in subsection (c).

(c) Subject to subsections (a) and (b), a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. Under regulations to be prescribed by the Secretary, appointments made under this subsection shall be made on a fair and equitable basis. Selections shall be based upon ability and efficiency with regard being given to seniority and age. (Aug. 10, 1956, ch. 1041, 70A Stat. 521.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8442 (a)	10: 506d (a).	Aug. 7, 1947, ch. 512, § 515 (a), (b), and (c) (less last sentence), 61 Stat. 906, 907.
8442 (b)	10: 506d (b).	
8442 (c)	10: 506d (c) (less last sentence).	

In subsection (a), the words "in any regular grade above second lieutenant" are substituted for the words "holding office under permanent appointments in the grades of major general and brigadier general" and "officers of any promotion list, holding office * * * in the grades of colonel, lieutenant colonel, major, captain, and first lieutenant, respectively", since, the grades enumerated include each commissioned grade in the Regular Air Force except the grade of second lieutenant. The words "the vacancies" are substituted for the words "the additional number authorized in these several grades".

In subsection (b), the words "commissioned officers of the Regular Air Force on active duty plus the number of other commissioned officers of the Air Force ordered to active duty for a period of more than 30 days" are substituted for 10: 506d (b) (words within parentheses) and the words "officers serving on active duty". The words "is more than" are substituted for the word "exceeds". The words "the additional number of officers" are substituted for the words "the requirements". The words "Vacancies resulting from that determination" are substituted for the words "and such requirements in each of such grades". The words "from time to time made", "serving", "and total" are omitted as surplusage. 10: 506d (b) (proviso) is omitted as executed by the declaration of the national emergency on December 16, 1950.

In subsection (c), the words "Subject to" are substituted for the words "Within the limitations specified in". The words "any other grade held by him" are substituted for the words "his permanent appointment or any temporary appointment held by him under this or any other provision of law". 10: 506d (c) (last 37 words of 1st sentence) is omitted as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8445, 8447 of this title.

§ 8443. Repealed. Pub. L. 85-861, § 36B (25), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 522, related to grade of reserve commissioned officers ordered to active duty or serving on active duty.

§ 8444. Commissioned officers: during war or emergency.

(a) In time of emergency declared by Congress or the President, and in time of war, the President may appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary commissioned grade.

(b) An officer appointed under subsection (a) may be ordered to active duty for such period as the President prescribes.

(c) Unless sooner vacated, an appointment under subsection (a) is effective during the war or emergency in which it is made and for six months thereafter.

(d) For the purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, each medical or dental officer of the Air Force who is appointed in a temporary grade under subsection (a) with a view to designation as a medical or dental officer shall, when he enters on active duty, be credited with the constructive service authorized by section 8294 (b) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 522; Sept. 2, 1958, Pub. L. 85-861, § 1 (180) (A), 72 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8444 (a)	10: 506d (e) (1st sentence, less last 29 words).	Aug. 7, 1947, ch. 512, § 515 (e), 61 Stat. 907.
8444 (b)	10: 506d (e) (last 29 words of 1st sentence).	
8444 (c)	10: 506d (e) (less 1st sentence).	

In subsection (a), the words "is not a Regular or Reserve" are substituted for the words "hold no Regular Army or Reserve status". The words "of the several * * * officer" are omitted as surplusage.

In subsection (b), the words "to active duty" are substituted for the words "into the active military service of the United States". The words "to serve therein" and "of time" are omitted as surplusage.

In subsection (c), the words "under subsection (a)" are substituted for the words "of a temporary officer". The words "is effective" are substituted for the words "shall continue".

AMENDMENTS

1958—Subsec. (d). Pub. L. 85-861 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8445, 8447 of this title.

§ 8445. Officers: additional appointments during war or emergency.

(a) In addition to appointments authorized under section 8442 of this title, in time of war, or of national emergency declared by the President, a regular officer or a reserve warrant officer may be appointed in a temporary grade that is higher than his regular or reserve grade, without vacating that grade.

(b) In addition to appointments authorized under subsection (a) of this section, and sections 8442 and 8444 of this title, in time of war a person who holds no commissioned grade in the Regular Air Force may be appointed in any temporary commissioned grade.

(c) Unless sooner vacated, the appointment of an officer under subsection (b), except a member of the Regular Air Force, is effective during the war in which it is made and for six months thereafter.

(d) Each officer appointed under subsection (b) shall, unless he is a member of the Regular Air Force, be relieved from active duty, at his request, within six months after the termination of the war. (Aug. 10, 1956, ch. 1041, 70A Stat. 522; Sept. 2, 1958, Pub. L. 85-861, § 1 (180) (B), 72 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8445 (a)	10: 513 (1st sentence); 10: 600a (b) (less applicability to temporary appointments).	June 3, 1916, ch. 134, § 127a (1st and 2d sentences, and 1st proviso of last sentence, of 7th par.); added June 4, 1920, ch. 227, subch. I, § 51 (7th par., less 23d through 27th words); restated June 15, 1933, ch. 87, § 20 (1st and 2d sentences, and proviso of last sentence), 48 Stat. 161; Sept. 9, 1940, ch. 717, § 101, 54 Stat. 875.
8445 (b)	10: 513 (2d sentence).	
8445 (c)	10: 513 (1st proviso of last sentence, less last 29 words).	
8445 (d)	10: 513 (last 29 words of 1st proviso of last sentence).	May 29, 1954, ch. 249, § 3 (b) (less applicability to temporary appointments), 68 Stat. 158.

In subsection (a), the words "In addition to appointments authorized under section 8442 of this title" are inserted to indicate that the authority granted by this subsection is in addition to the authority granted by that section (see opinion of the Judge Advocate General of the Army (JAGA 1951/6604, 2 Nov. 1951)).

Subsection (b) makes express the authority, heretofore implied, to appoint persons other than commissioned officers of the Regular Air Force (see opinion of the Judge Advocate General of the Army (JAGA 210.1, 5 Sept. 1941)). The words "In addition to appointments authorized under subsection (a) of this section, and sections 8442, 8443, and 8444 of this title" are inserted to indicate that the authority granted by this subsection is in addition to the authority granted by those sections (see opinion of the Judge Advocate General of the Army (JAGA 1951/6604, 2 Nov. 1951)).

In subsection (c), the words "Unless sooner vacated" are inserted for clarity. The words "under subsection (b)" are substituted for the words "made in time of war". The words "is effective during the war in which it is made and for * * * thereafter" are substituted for the words "shall continue until * * * after its termination".

In subsection (d), the words "Unless he is a member of the Regular Air Force" are inserted, since appointments of members of the Regular Air Force under this section are not limited to the period of war and six months thereafter, but remain in effect until terminated by the President (see opinions of the Judge Advocate General of the Army (JAGA 1946/6362, 24 July 1946; JAGA 1947/7385, 5 Nov. 1947; JAGA 1948/3343, 4 Mar. 1948; and JAGA 1951/6604, 2 Nov. 1951)). The words "under subsection (b)" are substituted for the words "in time of war". The words "at his request" are substituted for the words "if he makes application therefor". The words "entitled to be" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 eliminated a reference to section 8443 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8447 of this title.

§ 8446. Retention on active duty.

Notwithstanding any other provision of law, the President may retain on active duty any disabled officer until his physical condition is such that he will not be further benefited by retention in a military or Veterans' Administration hospital or until

he is processed for physical disability benefits provided by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 522; Sept. 2, 1958, Pub. L. 85-861, § 1 (180) (C), 72 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8446	10: 499.	June 19, 1948, ch. 511, 62 Stat. 489.

The word "shall" is substituted for the words "authorized and directed". The words "on active duty" are substituted for the words "in service". The words "warrant officers, and flight officers" are omitted, since the definition of "officer" in section 101 (14) of this title covers commissioned, warrant, and flight officers. The words "who has only a temporary appointment" are substituted for the words "of the Air Force * * * of the United States". The words "his physical condition is such that he" are substituted for the words "their treatment for physical reconstruction has reached a point where they". The words "in the Air Force" are substituted for the words "in the military service".

AMENDMENTS

1958—Pub. L. 85-861 substituted "may retain on active duty any disabled officer" for "shall retain on active duty any disabled officer who has only a temporary appointment", and "military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law", for "military hospital or in the Army".

§ 8447. Appointments in commissioned grade: how made; how terminated.

(a) The appointment of a person under section 8442, 8444, or 8445 of this title shall be made without reference to any other appointment that he may hold in the Air Force.

(b) Temporary appointments of commissioned officers in the Air Force shall be made by the President alone in grades below brigadier general, and by the President, by and with the advice and consent of the Senate, in general officer grades.

(c) The President may vacate at any time a temporary appointment in a commissioned grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 523; Sept. 2, 1958, Pub. L. 85-861, § 1 (180) (D), 72 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8447 (a)	10: 506d (f) (1st sentence).	Aug. 7, 1947, ch. 512, § 515 (f), 61 Stat. 908.
8447 (b)	10: 506d (f) (less 1st and 2d sentences); 10: 513 (less 1st and 2d sentences, and less provisos of last sentence).	June 3, 1916, ch. 134, § 127a (7th par., less 1st and 2d sentences, and less provisos of last sentence); added June 4, 1920, ch. 227, subch. I, § 51 (23d through 27th words of 7th par.); restated June 15, 1933, ch. 87, § 20 (less 1st and 2d sentences, and less proviso of last sentence), 48 Stat. 161.
8447 (c)	10: 506d (f) (2d sentence).	

In subsection (a), the first 15 words are substituted for 10: 506d (f) (1st 46 words of 1st sentence). The word "without" is substituted for the words "shall not contain any". The words "that he may hold" are substituted for the words "held or not held". The words "in the Army of the United States, and such appointments" and "any component of the" are omitted as surplusage.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 eliminated provisions that related to appointment of persons under section 8443 of this title.

§ 8448. Warrant officers: grades; appointment.

(a) The temporary warrant officer grades in the Air Force are those prescribed for regular warrant officers by section 555 (a) of this title.

(b) Whenever, under authorization by Congress, the number of commissioned officers of the Air Force on active duty is more than the authorized strength of the Regular Air Force in commissioned officers on the active list, the Secretary of the Air Force shall determine the additional number needed in each of the warrant officer grades based on the number of warrant officers serving on active duty and the tasks being performed by the Air Force. The Secretary may appoint, by warrant, qualified persons as warrant officers to fill the vacancies resulting from that determination. Appointments under this subsection continue in effect during the pleasure of the Secretary. While holding such an appointment, a warrant officer may be ordered to active duty with any unit of the Air Force.

(c) A warrant officer appointed under subsection (b) is entitled—

(1) to count all periods of active duty under the appointment as warrant or enlisted service for all purposes; and

(2) to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Air Force on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 523; Aug. 8, 1958, Pub. L. 85-603, § 1 (4), 72 Stat. 526; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (39), 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8448 (a)	10: 600a (a) (less 3d and last sentences, as applicable to temporary appointments).	May 29, 1954, ch. 249, §§ 3 (a) (less last sentence, as applicable to temporary appointments), (b) (as applicable to temporary appointments), 5 (a) (last sentence, as applicable to temporary appointments), 68 Stat. 157, 158, 159.
8448 (b)	10: 600a (a) (3d sentence, as applicable to temporary appointments); 10: 591a (1st, 2d, and 5th sentences); 10: 600c (a) (last sentence, as applicable to temporary appointments).	
8448 (c)	10: 591a (3d and 4th sentences).	Aug. 21, 1941, ch. 384, § 3; restated May 29, 1954, ch. 249, § 19 (d), 68 Stat. 166.
8448 (d)	10: 591a (less 1st 5 sentences); 10: 600a (b) (as applicable to temporary appointments).	

In subsection (b), the words "is more than" are substituted for the word "exceeds". The words "the additional number needed" are substituted for the words "the requirements". The words "vacancies resulting from that determination" are substituted for the words "and such requirements in each of such grades". The words "Appointments under this subsection continue in effect during" are substituted for the words "Such temporary appointments * * * shall remain in effect at". The words "from time to time made", "serving", and "total" are omitted as surplusage. The words "by warrant" are substituted for 10: 600a (a) (3d sentence). The words "persons as" are inserted for clarity. The words "by the Secretary" are substituted for 10: 600c (a) (last sentence, as applicable to temporary grades).

In subsection (c), the introductory language is substituted for 10: 591a (1st 22 words of 3d sentence). The words "pay and allowances" are omitted, since they are determined by the grade held. The words "all periods of active duty under the appointment" are substituted for the words "such service". The words "of members of the Air Force on active duty" are substituted for 10: 591a (last 25 words of 4th sentence). The words "while in active Federal service", "while so serving", "be entitled

to the rank * * * of the grades to which they are temporarily appointed" are omitted as surplusage.

In subsection (d), 10: 600a (b) (less last 27 words) is omitted as covered by 10: 591a (less last 4 sentences). The first 19 words are substituted for 10: 591a (1st 50 words of last sentence). The word "existing" is substituted for the word "military". The words "he is entitled" are substituted for the words "such persons may revert".

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861 substituted "section 555(a) of this title" for "section 8310(a) of this title".

Subsec. (d). Pub. L. 85-603 repealed subsec. (d), which permitted warrant officers to be reenlisted in their former enlisted grade upon termination of their appointment as warrant officers.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

§ 8449. Warrant officers: promotion.

Temporary promotions in warrant officer grades shall be governed by such regulations as the Secretary of the Air Force may prescribe. (Aug. 10, 1956, ch. 1041, 70A Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8449	10: 600e (last sentence, as applicable to temporary promotions).	May 29, 1954, ch. 249, § 7 (last sentence, as applicable to temporary promotions), 68 Stat. 159.

§ 8450. Repealed. Pub. L. 90-235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 523, provided for the suspension of laws for promotion or mandatory retirement or separation during war or emergency of temporary warrant officers of the Air Force.

§ 8451. Officers: acceptance of appointment in higher grade.

(a) An officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion. He is entitled to the pay and allowances of the higher grade from that date, unless entitled to them from an earlier date under another provision of law.

(b) An officer need not take the oath of office upon promotion if his service since last taking it has been continuous. (Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8451 (a)	10: 558 (less last sentence, as applicable to temporary appointments).	Oct. 14, 1942, ch. 604 (as applicable to temporary appointments), 56 Stat. 787.
8451 (b)	10: 558 (last sentence, as applicable to temporary appointments).	

In subsection (a), the words "is considered" are substituted for the words "shall be deemed". The words "is entitled" are substituted for the words "and shall receive". The words "to them" are substituted for the words "to receive the pay and allowances of the higher grade". The words "that date" are substituted for the words "an earlier date". The words "after December 7, 1941" are omitted as executed. The words "to a higher grade at any time", "for all purposes", and "to higher grade" are omitted as surplusage.

In subsection (b), the words "An officer need not take" are substituted for 10: 558 (1st 29 words of last sentence). The words "since last taking it" are substituted for the words "after the taking of such an oath". The words "to a higher grade" are omitted as surplusage.

§ 8452. Medical and dental officers: temporary promotion to captain.

Notwithstanding any other provision of law, a medical or dental officer may be promoted to the temporary grade of captain at any time after the first anniversary of the date upon which he graduated from a medical, osteopathic, or dental school, as the case may be. (Added Pub. L. 85-861, § 1 (180) (E), Sept. 2, 1958, 72 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8452	10 App.: 91a (e). 10 App.: 121a (e).	Apr. 30, 1956, ch. 223, § 1 (5th par.), 70 Stat. 120; July 24, 1956, ch. 675, § 1 (b) (less applicability to service credit), 70 Stat. 608.

The words "including those relating to selection for promotion" are omitted as covered by the words "Notwithstanding any other provision of law". The words "who is appointed under this section or any other provision of law" are omitted as surplusage. The words "the first anniversary of the date upon which he graduated from" are substituted for the words "one year after completion of".

Chapter 841.—ACTIVE DUTY

Sec.
8491. Non-regular officers: status.
8494. Commissioned officers: grade in which ordered to active duty.
8495. Air National Guard of United States: status.
8496. Air National Guard of United States: commissioned officers; duty in National Guard Bureau.
8497. Air National Guard of United States: members; status in which ordered into Federal service.
8498. Air National Guard of United States: mobilization; maintenance of organization.
8499. Air National Guard in Federal service: status.
8500. Air National Guard in Federal service: call.
8501. Air National Guard in Federal service: period of service; apportionment.
8502. Air National Guard in Federal service: physical examination.
8503. Retired commissioned officers: status.
8504. Retired members.

AMENDMENTS

1968—Pub. L. 90-235, § 1(a)(4), Jan. 2, 1968, 81 Stat. 753, struck out item 8492, which read: "Members: service extension during war".

1967—Pub. L. 90-130, § 1(29(B), Nov. 8, 1967, 81 Stat. 382, struck out ": limitations; grade" following "Retired members" in item 8504.

1958—Pub. L. 85-861, § 1(181)(B), Sept. 2, 1958, 72 Stat. 1533, added item 8494.

CROSS REFERENCES

Disabled officers having temporary appointments, retention on active duty, see section 8446 of this title.

Temporary appointment to commissioned grade, time for relief from active duty, see section 8445 (d) of this title.

Warrant officers holding temporary appointment, order to active duty, see section 8448 (b) of this title.

§ 8491. Non-regular officers: status.

A commissioned officer of the Air Force, other than of the Regular Air Force, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided

by law for a commissioned officer of the Air Force Reserve—

(1) whose reserve grade is that in which the officer not of the Regular Air Force is serving;

(2) who has the same length of service as the officer not of the Regular Air Force; and

(3) who is on active duty in his reserve grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8491	10: 506d (h).	Aug. 7, 1947, ch. 512, § 515 (h), 61 Stat. 908.

The first 12 words are substituted for 10: 506d (h) (1st 11 words). The words "has the rights and privileges, and is entitled to the benefits" are substituted for the words "shall be entitled * * * to the same rights, privileges, and benefits". Clause (1) is substituted for the words "in a grade the same as such 'active-duty grade' ". The words "as the officer not of the Regular Air Force" are substituted for the words "holding appointment in the Army Reserve". The words "his reserve grade" are substituted for the words "the grade held in the Army".

§ 8492. Repealed. Pub. L. 90-235, § 1(a)(2), Jan. 2, 1968, 81 Stat. 753.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 524, provided for extension of active service of Air Force members during war. See section 671a of this title.

§ 8494. Commissioned officers: grade in which ordered to active duty.

A reserve commissioned officer who is ordered to active duty shall be ordered to that duty in his reserve grade unless the Secretary of the Air Force, in his discretion, orders him to active duty (other than for training) in a higher temporary grade. However, a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college may, upon his request, be ordered to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade. (Added Pub. L. 85-861, § 1(181)(A), Sept. 2, 1958, 72 Stat. 1532, and amended Pub. L. 86-559, § 1(63), June 30, 1960, 74 Stat. 278.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8494	50: 1197.	Sept. 3, 1954, ch. 1257, § 207, 68 Stat. 1152.

The words "reserve grade" are substituted for the words "grades held by them as Reserve officers".

AMENDMENTS

1960—Pub. L. 86-559 authorizes a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college to be ordered, upon his request, to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8495. Air National Guard of United States: status.

Members of the Air National Guard of the United States are not in active Federal service except when ordered thereto under law. (Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8495	50: 1119 (1st sentence).	July 9, 1952, ch. 608, § 709 (1st sentence), 66 Stat. 503.

The words "active Federal service" are substituted for the words "active duty in the service of the United States"

CROSS REFERENCES

Call into Federal service, see section 8500 of this title.

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8496. Air National Guard of United States: commissioned officers; duty in National Guard Bureau.

(a) The President may, with their consent, order commissioned officers of the Air National Guard of the United States to active duty in the National Guard Bureau.

(b) The number of officers of the Air National Guard of the United States in any grade below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force in that grade authorized for duty in that Bureau. (Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8496 (a)	32: 175 (less proviso).	June 3, 1916, ch. 134, § 81 (2d par., less 1st sentence); restated June 4, 1920, ch. 227, subch. I, § 44 (less 1st 5 sentences); restated Sept. 22, 1922, ch. 423, § 4 (less 1st 6 sentences); restated Feb. 28, 1925, ch. 371, § 3 (7th and 8th sentences); restated June 15, 1933, ch. 87, § 16 (2d par., less 1st sentence) 48 Stat. 160; Mar. 16, 1950, ch. 60, 64 Stat. 19; July 9, 1952, ch. 608, § 806 (g) (1st 24 words of last 107 words), 66 Stat. 508.
8496 (b)	32: 175 (proviso).	

In subsection (a), the words "who at the time of their original assignments are members" are omitted as surplusage. 32: 175 (30 words before proviso) is omitted as covered by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.)

In subsection (b), the words "below brigadier general" are substituted for the words "below * * * General Officer". The words "in any grade * * * who are ordered to active duty" are substituted for the words "authorized in each grade for duty".

CROSS REFERENCE

Payment of pay and allowances for the Chief of the National Guard Bureau and officers ordered to active duty under this section, see section 698 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8541 of this title; title 37 section 204.

§ 8497. Air National Guard of United States: members; status in which ordered into Federal service.

Members of the Air National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8497	50: 1123 (a).	July 9, 1952, ch. 608, § 713 (a), 66 Stat. 504.

The words "officers and enlisted" and "in their status" are omitted as surplusage. The word "Reserves" is substituted for the words "Reserve officers and Reserve enlisted members". The words "to active duty" are substituted for the words "into Federal service".

§ 8498. Air National Guard of United States: mobilization; maintenance of organization.

During an initial mobilization, the organization of a unit of the Air National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8498	50: 1122 (a).	July 9, 1952, ch. 608, § 712 (a), 66 Stat. 504.

The words "ordered into active Federal service" are inserted for clarity. The words "shall * * * be maintained as it existed on the date of the order to duty" are substituted for the words "existing at the date of an order to active Federal service shall be maintained intact".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8499. Air National Guard in Federal service: status.

Members of the Air National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Air Force, except those applicable only to members of the Regular Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8499	32: 82.	June 3, 1916, ch. 134, § 101, 39 Stat. 208.

The words "Members of" are inserted for clarity. The words "governing the Air Force, except those applicable only to members of the Regular Air Force" are substituted for the words "governing the Regular Army, so far as such laws and regulations are applicable to officers and enlisted men whose permanent retention in the military service, either on the active list or on the retired list, is not contemplated by existing law", since the Regular Air Force, under section 8075 of this title, consists only of persons whose permanent retention in the military service is "contemplated by law".

§ 8500. Air National Guard in Federal service: call.

Whenever—

(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the Air National Guard of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States, the Territories, Puerto Rico, and the Canal Zone, and, in the District of Columbia, through the commanding general of the National Guard of the District of Columbia. (Aug. 10, 1956, ch. 1041, 70A Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8500	32: 81a.	Jan. 21, 1903, ch. 196, § 4; restated May 27, 1908, ch. 204, § 3, 35 Stat. 400.

The words "or its Territories, Commonwealths, or possessions" are inserted to conform to an opinion of the Judge Advocate General of the Army (C. 16273, May 3, 1904). The words "laws of the United States" are substituted for the words "laws of the Union". The word "may" is substituted for the words "it shall be lawful for". The words "into Federal service" are substituted for the word "forth". The words "members and units" are substituted for the word "number". The words "in such a number as he considers necessary" are substituted for the words "as he may deem". The words "at his command" and 32: 81a (last 11 words) are omitted as surplusage.

§ 8501. Air National Guard in Federal service: period of service; apportionment.

(a) Whenever the President calls the Air National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia into Federal service, he may specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during the term specified, unless sooner relieved by the President. However, no member of the Air National Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the Air National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia is called into Federal service with the Air National Guard of another of those jurisdictions, the President may apportion the total number called on the basis of the populations of the jurisdictions affected by the call. (Aug. 10, 1956, ch. 1041, 70A Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8501 (a)	32: 81b (less last sentence).	Jan. 21, 1903, ch. 196, § 6, 32 Stat. 776.
8501 (b)	32: 81b (last sentence).	Jan. 21, 1903, ch. 196, § 5; restated May 27, 1908, ch. 204, § 4, 35 Stat. 400.

The last proviso of section 5 of the act of January 21, 1903, ch. 196, 32 Stat. 776, is not contained in 32: 81b. It is also omitted from the revised section, since in the opinion of the Judge Advocate General of the Army (JAG 010.3, Dec. 12, 1929, p. 20) it was impliedly repealed by section 3 of the act of April 25, 1914, ch. 71, 38 Stat. 347.

In subsection (a), the words "of the service" are substituted for the words "for which such service is required". The words "members and units called" are substituted for the words "militia so called". The word "member", in the last sentence is substituted for the words "commissioned officer or enlisted man". The words "except as provided in section 81 of this title" are omitted, since that section was repealed by the seventh paragraph of section 803 of the Armed Forces Reserve Act of 1952, 66 Stat. 505.

In subsections (a) and (b), the words "Air National Guard" are substituted for the words "organized militia (including the National Guard)". The words "Federal service" are substituted for the words "service of the United States" and "actual service of the United States".

In subsection (b), the words "When * * * of a * * * is called * * * with * * * of another of those jurisdictions" are substituted for the words "When * * * of more than one * * * is called". The words "the total number" are substituted for the word "them". The last 15 words are substituted for the words "according to representative population".

§ 8502. Air National Guard in Federal service: physical examination.

(a) Under regulations prescribed by the President, each member of the Air National Guard called into Federal service shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member is mustered out of Federal service he shall be examined as to physical fitness. The record of this examination shall be retained by the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8502 (a)	32: 83 (less proviso).	June 3, 1916, ch. 134, § 115, 39 Stat. 212.
8502 (b)	32: 83 (proviso).	

In subsection (a), the words "Each member" are substituted for the words "Every officer and enlisted man".

In subsections (a) and (b), the words "Federal service" are substituted for the words "the service of the United States" and "the active service of the United States".

In subsection (b), the words "a member" are substituted for the words "an officer or enlisted man". The words "The record of this examination shall be retained by the United States" are substituted for the words "and the record thereof shall be filed and kept in the Department of the Army", to conform to the act of June 19, 1934, ch. 668, 48 Stat. 1122 (44 U. S. C. 300 et seq.) which governs the care and custody of records generally.

§ 8503. Retired commissioned officers: status.

A retired commissioned officer of the Air Force who is on active duty is considered, for all purposes except promotion, to be an officer of the organization to which he is assigned. (Aug. 10, 1956, ch. 1041, 70A Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8503	10: 999.	July 9, 1918, ch. 143, subch. XX (2d par.), 40 Stat. 893.

The words "and shall be an extra number therein" are omitted, since, in the opinion of the Judge Advocate General of the Army (JAG 210.85, Feb. 21, 1923), they were repealed by the act of July 31, 1935, ch. 422, 49 Stat. 505. The words "in the discretion of the President, employed * * * assigned to duty" are omitted as surplusage. The words "arms, corps, department" are omitted, since the Air Force does not have organic corps created by statute.

§ 8504. Retired members.

(a) The President may order any retired member of the Regular Air Force to active duty. He may assign a member ordered under this subsection to such duties as he considers necessary in the interest of national defense.

(b) Repealed. Pub. L. 90–130, § 1(29)(A), Nov. 8, 1967, 81 Stat. 382.

(Aug. 10, 1956, ch. 1041, 70A Stat. 526; Nov. 8, 1967, Pub. L. 90–130, § 1(29), 81 Stat. 382.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8504 (a)	50 App.: 356.	Aug. 18, 1941, ch. 362, § 6, 55 Stat. 627.
8504 (b)	5: 627b (h) (last 13 words of 3d proviso).	June 12, 1948, ch. 449, § 303 (h) (last 13 words of 3d proviso), 62 Stat. 372.

In subsection (a), the word "member" is substituted for the word "personnel". The first 15 words of the last sentence are substituted for the words "employ them as he shall deem".

Subsection (b) is substituted for 5: 627b (h) (last 13 words of 3d proviso).

AMENDMENTS

1967—Pub. L. 90–130, § 1(29)(B), struck out ": limitations; grade" following "Retired members" in the section catchline.

Subsec. (b). Pub. L. 90–130, § 1(29)(A), struck out subsec. (b) which provided that female officers of the Air Force, except officers designated under section 8067 of this title, whose retired grade was colonel and who was ordered to active duty should be ordered in that grade.

Chapter 843.—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
8531. Chief of Staff to President: appointment.
8541. National Guard Bureau: assignment of officers of regular or reserve components.
8542. Chief and assistant chief of staff of wings of Air National Guard in Federal service: detail.
8543. Aides: detail; number authorized.
8547. Duties: chaplains; assistance required of commanding officers.
8548. Duties: warrant officers; limitations.
8549. Duties: female members; limitations.

AMENDMENTS

1968—Pub. L. 90–235, § 4(a)(11), (b)(4), Jan. 2, 1968, 81 Stat. 760, struck out item 8537, which read: "Department of Commerce: detail in aid of civil aviation", item 8544, which read: "Duties: regular officers; performance of civil functions restricted", and item 8545, which read: "Duties: officers; superintendence of cooking for enlisted members".

1964—Pub. L. 88–647, title III, § 301(24), Oct. 13, 1964, 78 Stat. 1073, deleted item 8540.

1958—Pub. L. 85–861, § 1 (182), Sept. 2, 1958, 72 Stat. 1533, struck out item 8546.

CROSS REFERENCES

Reserve Forces Policy Board, designation of officer of Regular Air Force as member, see section 175 (a) (5) of this title.

Special appointments, assignments, details and duties, general military law provisions, see section 711 et seq. of this title.

§ 8531. Chief of Staff to President: appointment.

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Air Force as Chief of Staff to the President. Unless entitled to the rank, pay, and allowances of a grade above lieutenant general under another provision of law, an officer so appointed by and with the advice and consent of the Senate is entitled to the rank, pay, and allowances of a general, and is additional to the numbers otherwise authorized for that grade. (Aug. 10, 1956, ch. 1041, 70A Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8531	10: 506b (b) (3d proviso).	Aug. 7, 1947, ch. 512, § 504 (b) (3d proviso), 61 Stat. 886.

10: 506b (b) (words of 3d proviso before semicolon) is omitted as executed by the declaration of a national emergency on December 16, 1950. The first 17 words are substituted for the words "except that there may be a general officer * * * appointed as". The words "a grade above lieutenant general" are substituted for the words "a general, or of a higher grade". The words "otherwise authorized for that grade" are substituted for the words "hereinbefore set forth in this proviso". The words "and such officer", "title", and "to such position" are omitted as surplusage.

§ 8537. Repealed. Pub. L. 90-235, § 4(b)(1), Jan. 2, 1968, 81 Stat. 760.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 526, provided for the detail of Air Force officers to duty under the Secretary of Commerce in connection with the promotion of civil aviation.

§ 8540. Repealed. Pub. L. 88-647, title III, § 301(23), Oct. 13, 1964, 78 Stat. 1073.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 527, related to the detail of members of regular or reserve components as professors and instructors in air science and tactics, and is now covered by section 2111 of this title.

§ 8541. National Guard Bureau: assignment of officers of regular or reserve components.

Except as provided in section 8496 (b) of this title, the President may assign to duty in the National Guard Bureau as many regular or reserve officers of the Air Force as he considers necessary. (Aug. 10, 1956, ch. 1041, 70A Stat. 527.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8541	32: 174.	June 3, 1916, ch. 134, § 81 (1st 7 words of 1st sentence of 2d par.); restated June 4, 1920, ch. 227, subch. I, § 44 (1st 6 words of 5th sentence); restated Sept. 22, 1922, ch. 423, § 4 (1st 6 words of 6th sentence); restated Feb. 28, 1925, ch. 371, § 3 (1st 6 words of 6th sentence); restated June 15, 1933, ch. 87, § 16 (1st 7 words of 1st sentence of 2d par.), 48 Stat. 160.

The words "Except as provided in section 8496 (b) of this title" are inserted to reflect the limitation upon the number of commissioned officers of the Air National Guard of the United States who may be ordered to that duty. The words "or reserve" are inserted, since, under section 682 of this title, Reserves may be detailed or assigned to duties authorized for Regulars.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 204.

§ 8542. Chief and assistant chief of staff of wings of Air National Guard in Federal service: detail.

The President may detail a regular or reserve officer of the Air Force as chief of staff, and a regular or reserve officer or an officer of the Air National Guard as assistant to the chief of staff, of any wing of the Air National Guard that is in Federal service as an Air National Guard organization. (Aug. 10, 1956, ch. 1041, 70A Stat. 527.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8542	32: 10 (less proviso).	June 3, 1916, ch. 134, § 65 (less proviso), 39 Stat. 199.

The words "or reserve" are inserted, since, under section 682 of this title, Reserves may be detailed or assigned to duties authorized for Regulars.

§ 8543. Aides: detail; number authorized.

(a) Each major general of the Air Force is entitled to three aides selected by him from commissioned officers of the Air Force in any grade below major.

(b) Each brigadier general of the Air Force is entitled to two aides selected by him from commissioned officers of the Air Force in any grade below captain. (Aug. 10, 1956, ch. 1041, 70A Stat. 527.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8543 (a)	10: 498 (1st 20 words).	R. S. 1098.
8543 (b)	10: 498 (less 1st 20 words).	

In subsection (a), the words "commissioned officers * * * in any grade below major" are substituted for the words "captains or lieutenants".

In subsections (a) and (b), the words "is entitled to" are substituted for the words "shall have".

In subsection (b), the words "commissioned officers in any grade below captain" are substituted for the word "lieutenants".

§§ 8544, 8545. Repealed. Pub. L. 90-235, § 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760.

Section 8544, act Aug. 10, 1956, ch. 1041, 70A Stat. 527, restricted the performance of civil functions by commissioned officers of the Regular Air Force. See section 973 of this title.

Section 8545, act Aug. 10, 1956, ch. 1041, 70A Stat. 528, provided that cooking for enlisted members of the Air Force should be superintended by the officers of the organizations to which the members belonged.

§ 8546. Repealed. Pub. L. 85-861, § 36B (26), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 528, required medical officers and contract surgeons to attend families of members of the Air Force.

§ 8547. Duties: chaplains; assistance required of commanding officers.

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each

Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Air Force who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties. (Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8547 (a)	10: 238.	R. S. 1125.
8547 (b)	10: 239 [Uncodified: Feb. 2, 1901, ch. 192, § 12 (last sentence), 31 Stat. 750].	R. S. 1127. Feb. 2, 1901, ch. 192, § 12 (last sentence), 31 Stat. 750.

In subsection (a), the words "members of the Air Force" are substituted for the words "officers and soldiers".

In subsection (b), the words "regiments, hospitals, and posts", in 10: 239, are omitted, since at the time of the enactment of section 1127 of the Revised Statutes, chaplains were authorized only for regiments, hospitals, and posts. The revised section preserves the broad coverage of the original statute. The words "each commanding officer shall" are substituted for the words "It shall be the duty of commanders", in 10: 239. The word "furnish" is substituted for the words "to afford", in 10: 239. The words "including necessary transportation" are substituted for the last sentence of section 12 of the Act of February 2, 1901, ch. 192, 31 Stat. 750. The words "his command" are substituted for the words "the same", in 10: 239. The words "to assist" are substituted for the words "as may aid them", in 10: 239.

§ 8548. Duties: warrant officers; limitations.

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8548	10: 593 (1st sentence).	Aug. 21, 1941, ch. 384, § 4 (1st sentence), 55 Stat. 653.

10: 593 (1st sentence, less provisos) is omitted as superseded by section 8012 (e) of this title. 10: 593 (last proviso) is omitted as covered by section 936 (a) (4) of this title (article 136 (a) (4) of the Uniform Code of Military Justice). The words "may be assigned" are substituted for the words "shall be vested with power to".

§ 8549. Duties: female members; limitations.

Female members of the Air Force, except those designated under section 8067 of this title, or appointed with a view to designation under that section, may not be assigned to duty in aircraft engaged in combat missions. (Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8549	5: 627f (a) (proviso).	June 12, 1948, ch. 449, § 307 (a) (proviso), 62 Stat. 373.

The words "other than those designated under section 8067 of this title or appointed with a view to designation under that section" are inserted, since 5: 627f (a), as enacted, was applicable only to women appointed under title III of the Women's Armed Services Integration Act of 1948, of which it was a part, and not to those appointed under other provisions of law.

Chapter 845.—RANK AND COMMAND

Sec.
8571. Rank: commissioned officers on active duty.
8572. Rank: commissioned officers serving under temporary appointments.
8573. Rank: commissioned officers in regular grades of brigadier general and major general; seniority list.
8574. Rank: commissioned officers in regular grades below brigadier general.
8575. Rank: warrant officers.
8577. Command: flying units.
8579. Command: commissioned officers in certain designated categories.
8581. Command: chaplains.
8582. Command: retired officers.

AMENDMENTS

1968—Pub. L. 90–235, § 5(a)(5), Jan. 2, 1968, 81 Stat. 761, struck out item 8576, which read: "Command: when different commands of Air Force and Marine Corps join", and item 8578, which read: "Command, commissioned officers of Air Force in same grade on duty at same place".

1967—Pub. L. 90–130, § 1(30), Nov. 8, 1967, 81 Stat. 382, struck out item 8580 which read: "Command: female members of Air Force."

§ 8571. Rank: commissioned officers on active duty.

(a) Commissioned officers of the Air Force on active duty in the same grade rank among themselves according to date of rank. The date of rank—

(1) for an officer of the Regular Air Force serving in his regular grade, is that stated in his commission or letter of appointment;

(2) for an officer of the Regular Air Force serving in a temporary grade, is his date of appointment in that grade, unless adjusted under section 8572 of this title; and

(3) for a reserve officer, precedes his date of entry on active duty by a period computed by adding—

(A) the years of service after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that are not credited to under section 1332(a)(2) of this title;

(B) the days and months of any part of the year preceding his date of entry on active duty, while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A), if under regulations to be prescribed by the Secretary of the Air Force, his service during that part of a year was satisfactory;

(C) the periods of active service, while in his current reserve grade or in any higher reserve grade, that are not credited to him under clause (A) or (B);

(D) the periods of service, while in his current reserve grade or in any higher reserve grade, that he has performed under section 502, 503, 504, or 505 of title 32, and that are not credited to him under clause (A) or (B); and

(E) one day for each point for drill or equivalent instruction after June 30, 1955, while in his current reserve grade or in any higher reserve grade, that is credited to him under section 1332(a)(2)(B) of this title and not credited to him under clause (A) or (B).

(b) When the dates of rank prescribed by subsection (a) are the same, rank is determined by adding all active commissioned service in the Air Force and the Army, all commissioned service under section 502, 503, 504, or 505 of title 32, and all service credited for points under section 1332 (a) (2) (B) of this title.

(c) When the dates of rank prescribed by subsection (a) and service computed under subsection (b) are the same:

(1) Regular officers rank before reserve officers.

(2) Regular officers rank among themselves according to sections 8573 and 8574 of this title.

(3) Reserve officers rank among themselves according to age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528; Sept. 2, 1958, Pub. L. 85–861, §§ 1 (183), 33 (a) (41), 72 Stat. 1533, 1566; June 30, 1960, Pub. L. 86–559, § 1 (64), 74 Stat. 278.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8571 (a)	10: 511 (1st sentence).	June 3, 1916, ch. 134, § 127a (8th par.); added June 4, 1920, ch. 227, subch. I, § 51 (8th par.); restated Feb. 28, 1925, ch. 371, § 5, 43 Stat 1078; Dec. 14, 1942, ch. 732, 56 Stat. 1050.
8571 (b)	10: 511 (2d sentence).	
8571 (c)	10: 511 (less 1st and 2d sentences).	

In subsection (a), the words "Unless special assignment is made by the President under the provisions of the One hundred and nineteenth Article of War", are omitted as surplusage, since they relate to command and not to rank. The substance of the omitted words is covered by section 8578 of this title.

In subsection (a) (1), the words "serving in his regular grade" are inserted, since clause (2) covers all officers serving in a temporary grade.

Subsection (a) (2) is inserted as a necessary implication of the words "is that stated in his commission or letter of appointment".

In subsection (a) (3), the words "Federal service" are substituted for the words "service of the United States". The words "his date of rank precedes the date of his entry" are substituted for the words "shall precede that on which he is placed". The words "of his active duty" are substituted for the words "equal to the total length of active Federal service". The words "placed on active duty" are substituted for the word "called", since the clause applies to Reserves who are "ordered" as well as officers of the Air National Guard who are "called". The words "is his date of entry on active duty" are inserted to make explicit that which is implicit in the statement of the rule applicable to officers with prior service in the same or a higher grade.

In subsection (b), the words "which shall include all time served on active duty as a commissioned officer in the Federal service" are omitted as surplusage. The reference to sections 144—146 of title 32 is omitted, since those sections relate to pay and allowances only.

In subsection (c), the introductory clause is substituted for the words "When length of such service is the same" to reflect revised subsections (a) and (b). The words "shall take rank among themselves according to their places on the promotion list" are omitted, since rank among regular officers is covered by sections 8573 and 8574 of this title. Clause (2) is inserted for clarity to reflect those sections. The words "rank before" are substituted for the word "preceding". The words "of the same date of rank and length of service" are omitted as covered by the introductory clause.

AMENDMENTS

1960—Subsec. (a) (3). Pub. L. 86–559 added cl. (B), redesignated former cl. (B)—(D) as (C)—(E), and substituted "June 30, 1955" for "July 1, 1955", "current reserve grade" for "current grade", and "higher reserve grade" for "higher grade" wherever appearing.

1958—Subsec. (a). Pub. L. 85–861, § 1 (183), eliminated references to officers of the Air National Guard called into Federal service, permitted reserve officers to credit the years of service after July 1, 1955 that are credited to them under section 1332 (a) of this title, and the periods of service performed under section 502 of Title 32, and authorized reserve officers to add one day for each point for drill or equivalent instruction after July 1, 1955, that is credited under section 1332 (a) (2) (B) of this title.

Subsec. (b). Pub. L. 85–861, § 1 (183), substituted "rank is determined by adding all active commissioned service in the Air Force and the Army, all commissioned service under section 502, 503, 504, or 505 of title 32, and all service credited for points under section 1332 (a)(2) (B) of this title" for "rank is determined by length of all active commissioned service in the Air Force and the Army and commissioned service under sections 503, 504, and 505 of title 32".

Subsec. (c). Pub. L. 85–861, §§ 1 (183), 33 (a) (41), substituted "and service computed" for "and length of active commissioned service computed" in opening provisions, and "sections 8573 and 8574" for "sections 8273 and 8274" in cl. (2), and eliminated officers of the Air National Guard from clauses (1) and (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (c) (2) of this section by section 33 (a) (41) of Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8572. Rank: commissioned officers serving under temporary appointments.

The President may, in accordance with the needs of the Air Force, adjust dates of rank of commissioned officers of the Air Force serving in temporary grades. (Aug. 10, 1956, ch. 1041, 70A Stat. 529.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8572	10: 506d (c) (last sentence).	Aug. 7, 1947, ch. 512, § 515 (c) (last sentence), 61 Stat. 907.

The word "commissioned" is inserted for clarity, since the source statute related only to commissioned officers. The words "in his discretion, from time to time" are omitted as surplusage.

CROSS REFERENCES

Temporary appointments, see section 8441 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8571 of this title.

§ 8573. Rank: commissioned officers in regular grades of brigadier general and major general; seniority list.

(a) The date of rank of an officer whose regular grade is brigadier general is the date of his appointment in that regular grade, if at the time of that appointment he held no temporary general officer grade. The date of rank of an officer whose regular grade is major general is the date of rank he held in the regular grade of brigadier general, if he held that grade at the time of his appointment in the regular grade of major general.

(b) If at the time of his appointment in his current regular grade such an officer held only a temporary general officer grade, his date of rank is the date of rank he held in that temporary grade, except that if he was promoted to that temporary grade from the temporary grade of brigadier general his date of rank is the date of rank he held in the temporary grade of brigadier general.

(c) Notwithstanding subsections (a) and (b), the date of rank of such an officer may not be earlier than that of the junior general officer in the same regular grade who was appointed to that grade before him.

(d) The names of general officers of the Regular Air Force shall be carried on a seniority list in the order of seniority in both regular grade and date of rank as determined under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 529.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8573 (a)	10: 506a (c) (1) (less proviso); 10: 506a (c) (2) (less proviso).	Aug. 7, 1947, ch. 512, § 503 (b), (c), 61 Stat. 886.
8573 (b)	10: 506a (c) (1) (proviso, less words after semicolon); 10: 506a (c) (2) (proviso, less words after semicolon).	
8573 (c)	10: 506a (c) (1) (words of proviso after semicolon); 10: 506a (c) (2) (words of proviso after semicolon).	
8573 (d)	10: 506a (b).	

The revised section consolidates and restates, for clarity, the provisions relating to date of rank of brigadier generals and major generals of the Regular Air Force.

In subsection (a), the words "whose regular grade is" are substituted for the words "appointed in the grade * * * in the Regular Air Force". The last 20 words of the first sentence are inserted to reflect the rule stated in revised subsection (b). The last 18 words of the last sentence are inserted for clarity.

In subsection (b), the words "in his current regular grade" are inserted for clarity. The words "a general officer grade" are substituted for the words "grade of brigadier general or any higher temporary grade", in 10: 506a (c) (1), and "grade of brigadier general or higher temporary grade", in 10: 506a (c) (2).

In subsection (c), the last eight words are inserted for clarity.

In subsection (d), the last 18 words are substituted for 10: 506a (b) (2d sentence).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8571 of this title.

§ 8574. Rank: commissioned officers in regular grades below brigadier general.

(a) Among commissioned officers of the same grade in the Regular Air Force who are on the same promotion list, rank in regular grade is determined by the order in which their names appear on that list.

(b) Among commissioned officers of the same grade in the Regular Air Force who are not on the same promotion list or not on a promotion list, rank in regular grade is determined—

(1) by date of rank;

(2) if the dates of rank are the same, by length of continuous active commissioned service in the Regular Air Force;

(3) if the dates of rank and length of continuous active commissioned service in the Regular Air Force are the same, by rank established at the time of original appointment in the Regular Air Force; and

(4) in other cases, by the Secretary of the Air Force.

(c) Rank among the graduates of each class at the United States Military Academy, United States Naval Academy, or United States Air Force Academy who, upon graduation, are appointed in the Regular Air Force shall be fixed under regulations to be prescribed by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 530; Sept. 2, 1958, Pub. L. 85-861, §§ 1 (184), 33 (a) (24), 72 Stat. 1533, 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8574 (a)	10: 559 (d) (2).	Aug. 7, 1947, ch. 512, §§ 505 (d) (2), (3) (less last sentence), 506 (f) (less 1st sentence, and less last 23 words of last sentence), 61 Stat. 889, 892.
8574 (b)	10: 166e (1st sentence). 10: 559 (d) (3) (less last sentence); 10: 1837 (d) (last sentence, less applicability to strength).	
8574 (c)	10: 506c (f) (less 1st sentence, and less last 23 words of last sentence).	Apr. 16, 1947, ch. 38, § 106 (1st sentence), 61 Stat. 44. Sept. 19, 1951, ch. 407, § 307 (d) (last sentence, less applicability to strength), 65 Stat. 332.

In subsection (a), the last 17 words are substituted for 10: 559 (d) (2) (less 1st 9 words).

In subsection (b), 10: 166e (1st sentence) and 1837 (d) (last sentence, less applicability to strength) are omitted as executed by the language of the revised subsection. Clause (1) is substituted for the words "the officer with the earliest date of rank shall be the senior", in 10: 599 (d) (3). In clause (2), the words "by length of" are substituted for the words "the officer with the greatest amount * * * shall be the senior", in 10: 559 (d) (3). In clause (3), the words "by rank" are substituted for the words "seniority shall be as", in 10: 559 (d) (3). In clause (4), the word "other" is substituted for the words "not covered by the foregoing", in 10: 559 (d) (3).

In subsection (c), the word "rank" is substituted for the words "relative seniority". The words "who, upon graduation, are appointed in the Regular Air Force" are inserted, since graduates may be appointed in either the Army or the Air Force.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-861 included graduates of the Naval Academy, and substituted "regulations to be prescribed" for "regulations prescribed".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (c) of this section by section 33 (a) (24) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8296, 8571 of this title.

§ 8575. Rank: warrant officers.

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 530.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8575	10: 593 (less 1st sentence).	Aug. 21, 1941, ch. 384, § 4 (less 1st sentence), 55 Stat. 653; May 29, 1954, ch. 249, § 19 (e), 68 Stat. 167.

10: 593 (2d sentence) is omitted as executed. The words "within each warrant officer grade" are inserted for clarity, since section 745 of this title covers rank between warrant officers in different warrant officer grades. The words "they shall take precedence" are omitted as surplusage.

CROSS REFERENCES

Rank of warrant officers, general military law provisions, see section 745 of this title.

§ 8576. Repealed. Pub. L. 90-235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 530, provided for command when different commands of the Air Force and Marine Corps joined or served together. See section 747 of this title.

§ 8577. Command: flying units.

Flying units shall be commanded by commissioned officers of the Air Force who have received aeronautical ratings as pilots of service types of aircraft. (Aug. 10, 1956, ch. 1041, 70A Stat. 530.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8577	10: 294.	June 3, 1916, ch. 134, § 13a (7th proviso); added June 4, 1920, ch. 227, subch. I, § 13 (2d sentence of 2d par.); restated July 2, 1926, ch. 721, § 2 (3d sentence), 44 Stat. 781; Oct. 4, 1940, ch. 742 (4th proviso), 54 Stat. 963.

The words "in all cases" and "or qualified permanent general officers of the line who have received aeronautical ratings as pilots of service types of aircraft" are omitted as surplusage. The words "and who are commissioned in the Air Corps" are omitted, since the functions of the Air Corps were transferred to the Air Force under section 208 of the National Security Act of 1947 (5 U. S. C. 626c).

§ 8578. Repealed. Pub. L. 90-235, § 5(a)(2), Jan, 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 530, provided for command when two or more commissioned officers of the Air Force in the same grade were on duty at the same place. See section 749 of this title.

§ 8579. Command: commissioned officers in certain designated categories.

(a) An officer designated as a medical, dental, veterinary, or medical service officer is not entitled to exercise command because of his rank, except within the categories prescribed in section 8067 (a)—(d) of this title.

(b) An Air Force nurse or medical specialist may exercise command only within his category, or over persons placed under his charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 531; Sept. 2, 1958, Pub. L. 85-861, § 1 (156), (185), 72 Stat. 1513, 1533.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8579 (a)	10: 82.	R. S. 1169.
8579 (b)	10: 166e (less 1st sentence).	Apr. 16, 1947, ch. 38, § 106 (less 1st sentence), 61 Stat. 44.

In subsection (a), the words "Except as provided in section 94 of this title", not contained in section 1169 of the Revised Statutes, but contained in the United States Code, are omitted as surplusage, since 10: 94 deals exclusively with assignments. The words "except within the categories prescribed in section 8067 (a)—(d) of this title" are substituted for the words "in the line or in other staff corps". Air Force nurses and women medical specialists are not covered by subsection (a), since their command authority is specifically stated in subsection (b).

In subsection (b), the words "may exercise command only" are substituted for the words "shall not be entitled * * * to command except". The words "by virtue of their rank" and "by competent authority" are omitted as surplusage. 10: 166 (e) (last 22 words of last sentence) is omitted as superseded by section 8012 (e) of this title.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 eliminated the word "woman" preceding "medical specialist", and substituted "his" for "her" in two instances.

§ 8580. Repealed. Pub. L. 90-130, § 1(30), Nov. 8, 1967, 81 Stat. 382.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided that the Secretary of the Air Force should prescribe the military authority that female members of the Air Force, except those designated under section 8067 of this title to perform professional functions, might exercise.

§ 8581. Command: chaplains.

An officer designated as a chaplain has rank without command. (Aug. 10, 1956, ch. 1041, 70A Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8581	10: 235.	R. S. 1122.

The words "and shall be on the same footing with other officers of the Army, as to tenure of office, retirement, and pensions" are omitted as obsolete, since there is no distinction between the status of a chaplain as an officer and the status of other officers of the Air Force.

§ 8582. Command: retired officers.

A retired officer has no right to command except when on active duty. (Aug. 10, 1956, ch. 1041, 70A Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8582	10: 1024.	R. S. 1255.

The words "has no right to" are substituted for the words "shall be withdrawn from". The words "and from the line of promotion" are omitted, since they refer to the operation of laws relating to promotion in the Regular Air Force which apply, under sections 8296 and 8304 of this title, only to officers on the active list. The words "except when on active duty" are inserted for clarity. The words "from active service" are omitted as surplusage.

§§ 8611, 8612. Repealed. Pub. L. 90-235, § 8(2), Jan. 2, 1968, 81 Stat. 764.

Section 8611, act. Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided that the President could prescribe the uniform of the Air Force.

Section 8612, act Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided for the disposition of uniforms of enlisted members of the Air Force who were discharged and for the disposition of uniforms of and issuance of civilian clothing to enlisted members of the Air Force who were discharged otherwise than honorably.

Chapter 849.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
8632.[1] Members of Air Force: forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs.
8633.[1] Commissioned officers: forfeiture of pay when dropped from rolls.
8634. Air Force band: may not be paid for performance outside air base.
8636.[1] Enlisted members: pay and allowances not to accrue during suspended sentence of dishonorable discharge.
8639. Enlisted members: officers not to use as servants.

AMENDMENTS

1968—Pub. L. 90-235, §§ 6(a)(10), 7(b)(5), Jan. 2, 1968, 81 Stat. 762, 763, struck out item 8631, which read: "Dealing in quartermaster supplies prohibited", item 8635, which read: "Enlisted members: restriction on civilian employment", and item 8637, which read: "Enlisted members: forfeiture of right to pension by deserters".

1958—Pub. L. 85-861, §§ 1 (186), 33 (a) (40), Sept. 2, 1958, 72 Stat. 1533, 1566, substituted "8632" for "8362" in item 8632, and struck out item 8638.

§ 8631. Repealed. Pub. L. 90-235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 532, prohibited any officer of the Air Force who was engaged in the procurement or sale of quartermaster supplies from dealing in said supplies.

§§ 8632, 8633. Repealed. Pub. L. 87-649, § 14c(54), (55), Sept. 7, 1962, 76 Stat. 501, 502.

Sections, act Aug. 10, 1946, ch. 1041, 70A Stat. 532, provided for forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs, and for forfeiture when dropped from rolls, and are now covered by section 802 and 803 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 8634. Air Force band: may not be paid for performance outside air base.

No Air Force band or member thereof may receive remuneration for furnishing music outside the limits of an air base in competition with local civilian musicians. (Aug. 10, 1956, ch. 1041, 70A Stat. 532.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8634	10: 905.	May 11, 1908, ch. 163, 35 Stat. 110.

The last six words are substituted for 10: 905 (last 14 words).

§ 8635. Repealed. Pub. L. 90-235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 532, set forth restrictions on civilian employment for enlisted members of the Air Force on active duty. See section 974 of this title.

§ 8636. Repealed. Pub. L. 87-649, § 14c(56), Sept. 7, 1962, 76 Stat. 502.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, provided that pay and allowances do not accrue to an enlisted member of the Air Force who is in confinement under sentence of dishonorable discharge, while the execution of the sentence to discharge is suspended, and is now covered by section 804 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 8637. Repealed. Pub. L. 90-235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, provided that an enlisted member of the Air Force who deserted forfeited all rights to a pension.

§ 8638. Repealed. Pub. L. 85-861, § 36B (27), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, required enlisted members to make up time lost, and is now covered by section 972 of this title.

§ 8639. Enlisted members: officers not to use as servants.

No officer of the Air Force may use an enlisted member of the Air Force as a servant. (Aug. 10, 1956, ch. 1041, 70A Stat. 533.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8639	10: 608.	R. S. 1232.

The words "in any case whatever" are omitted as surplusage.

§§ 8662, 8663. Repealed. Pub. L. 90-377, § 6(3), July 5, 1968, 82 Stat. 288.

Section 8662, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, provided for the military training, organization, and equipping of prisoners who have been sent to the United States Disciplinary Barracks.

Section 8663, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, authorized the Secretary of the Air Force to parole or remit the sentence and restore to duty offenders who are confined in the United States Disciplinary Barracks.

Chapter 853.—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
8683. Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted.
8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
8686. Members of Air National Guard of United States: credit for service as members of Air National Guard.
8687. Compensation: members of Air Force other than of Regular Air Force; when same as that provided for members of Regular Air Force.
8689.[1] Assignments and allotments of pay.
8691. Flying officer rating: qualifications.
8692. Pilot rating in time of peace: qualifications.

AMENDMENTS

1968—Pub. L. 90-235, §§ 6(a)(5), 7(a)(6), (b)(6), Jan. 2, 1968, 81 Stat. 762, 763, struck out item 8682, which read: "Service credit: officers; service as cadet not counted", item 8685, which read: "Regular Air Force; Air Force Reserve: female members; definition of 'dependents'", item 8690, which read: "Exemption from arrest for debt: enlisted members", and item 8693, which read: "Replacement of certificates of discharge".

1958—Pub. L. 85-861, § 1 (189), Sept. 2, 1958, 72 Stat. 1534, struck out items 8681 and 8688.

[1] Sections 8632, 8633, and 8636 repealed and analysis was not amended to reflect such repeals.

[1] Section 8689 repealed and analysis was not amended to reflect such repeal.

§ 8681. Repealed. Pub. L. 85–861, § 36B (28), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 534, prescribed the service to be listed in the official Air Force Register.

§ 8682. Repealed. Pub. L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 535, provided that in computing length of service, no commissioned officer of the Air Force could be credited with service as a cadet at the Military Academy or the Air Force Academy, or as a midshipman at the Naval Academy, if he was appointed as a cadet or midshipman after Aug. 24, 1912. See section 971 of this title.

§ 8683. Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted.

In computing years of active service, there shall be credited for all purposes, except the determination of grade, rank, and right to promotion in the Regular Air Force, the following service, in addition to any other service that may be credited—

(1) all active service performed in the Army Nurse Corps as it existed at any time before April 16, 1947;

(2) all active service performed in the Navy Nurse Corps as it existed at any time before April 16, 1947;

(3) all active service performed under an appointment under the Act of December 22, 1942, ch. 805 (56 Stat. 1072), or the Act of June 22, 1944, ch. 272 (58 Stat. 324); and

(4) all active full-time service, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(A) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(B) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist.

(Aug. 10, 1956, ch. 1041, 70A Stat. 535; Sept. 2, 1958, Pub. L. 85–861, § 1 (156), 72 Stat. 1513; Aug. 25, 1959, Pub. L. 86–197, § 1 (7), 73 Stat. 426.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8683	10: 166i.	Apr. 16, 1947, ch. 38, § 110; restated May 16, 1950, ch. 186, § 3 (f), 64 Stat. 161.

The words "active service" are substituted for the words "active Federal military service" and "active military service" for uniformity. In clauses (1) and (2), the words "as it existed at any time before April 16, 1947" are inserted for clarity, since the legislative history of 10: 166i shows that the reference is intended to apply to the corps established by law before April 16, 1947. Service as an Air Force nurse would now be included as "other service that may be credited". In clause (4), the word "Army" is substituted for the words "War Department", appearing in section 110 of the Army-Navy Nurses Act of 1948, as amended by section 3 (f) of the act of May 16, 1950, ch. 186, 64 Stat. 161, and the words "Department of the Army", in 10: 166i, since the Medical Department was in the Army and not in the War Department. The words "Army Medical Service", inserted by the editors of the United States Code, are omitted, since the Army Medical Service was not in existence during the time covered by the service described. The words "if the service was performed after" are substituted for the words "rendered subsequent to".

REFERENCES IN TEXT

The Women's Medical Specialist Corps, referred to in subd. (4)(B), was redesignated the Army Medical Specialist Corps by Pub. L. 85–155, Aug. 21, 1957, 71 Stat. 375. See section 3070 of this title. See, also, act Aug. 9, 1955, ch. 654, 69 Stat. 579.

AMENDMENTS

1959—Par. (4). Pub. L. 86–197 inserted in cl. (A) ", and before April 1, 1943", and in cl. (B) inserted "and before January 1, 1949," following "Specialist Corps" and "before January 1, 1949," following "in the Air Force."

1958—Pub. L. 85–861 eliminated the word "woman" which preceded "medical specialist".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8925, 8926 of this title.

§ 8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.

An enlisted member of the Regular Air Force is entitled to count active service as an officer in the Air Force, and in the Army, as enlisted service for all purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 535.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8684	10: 631a (last proviso).	July 14, 1939, ch. 267, § 1 (last proviso); restated May 29, 1954, ch. 249, § 19 (b) (last proviso), 68 Stat. 166.

CROSS REFERENCES

Reenlistment after service as officer, see section 8258 of this title.

§ 8685. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 535; Sept. 2, 1958, Pub. L 85–861, § 1(187), 72 Stat 1534, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Air Force, Air National Guard of the United States or Air Force Reserve.

§ 8686. Members of Air National Guard of United States: credit for service as members of Air National Guard.

For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Air Force;

(2) full-time training or other full-time duty performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard under sections 316 and 503—505 of title 32 for which he is entitled to pay from the United States, or for which he

has waived such pay, shall be considered active duty for training in Federal service as a Reserve of the Air Force; and

(3) inactive-duty training performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Air Force.

(Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 536.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8686	50: 1124 (less proviso of clause (b)).	July 9, 1952, ch. 608, § 714 (less proviso of clause (b)), 66 Stat. 504.

The words "now or hereafter enacted", in the introductory clause of 50: 1124, are omitted as surplusage.

In clause (1), the words "by law" and "receive", in 50: 1124 (a), are omitted as surplusage. The words "in Federal service as a Reserve of the Air Force" are substituted for the words "in the service of the United States as Reserve members". The words "as the case may be" are inserted for clarity.

In clause (2), the word "receive", in 50: 1124 (b), is omitted as surplusage. The reference to sections 144—146 of title 32 is omitted, since those sections related to pay and allowances, not to the performance of duties, and were superseded by the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The reference to section 186 of title 32 is omitted, since that section does not prescribe duty or service. The words "or for which he has waived such pay" are substituted for the words "or without pay as provided in section 971 of this title" for clarity. The words "in Federal service as a Reserve of the Air Force" are substituted for the words "in the service of the United States as Reserve members".

In clause (3), the words "by the appropriate Secretary" are omitted as surplusage. The words "in Federal service as a Reserve of the Air Force" are substituted for the words "in the service of the United States as Reserve members".

CROSS REFERENCES

Regulations to carry out this section, see section 280 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280 of this title.

§ 8687. Compensation: members of Air Force other than of Regular Air Force; when same as that provided for members of Regular Air Force.

A member of the Air Force, other than of the Regular Air Force, is entitled to the pensions and other compensation provided by law or regulation for a member of the Regular Air Force of corresponding grade and length of service, whenever—

(1) he is called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) he is called or ordered to active duty, or to perform inactive-duty training, for any period or time, and is disabled in line of duty from injury while so employed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 536; Sept. 2, 1958, Pub. L. 85-861, § 1(188), 72 Stat. 1534; Sept. 7, 1962, Pub. L. 87-649, § 6 (d), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8687	10: 456 (less applicability to hospitalization and death gratuities); 32: 160a (less applicability to hospitalization and death gratuities).	Aug. 30, 1935, ch. 830, § 1 (less applicability to death gratuities and hospitalization); restated Apr. 3, 1939, ch. 35, § 5 (less applicability to death gratuities and hospitalization); July 25, 1939, ch. 349 (less applicability to death gratuities and hospitalization); Dec. 10, 1941, ch. 562 (less applicability to death gratuities and hospitalization); restated June 20, 1949, ch. 225, § 2 (less applicability to death gratuities and hospitalization), 63 Stat. 202; June 28, 1950, ch. 383, § 401 (p) (less applicability to death gratuities and hospitalization), 64 Stat. 271. June 20, 1949, ch. 225, § 3 (less applicability to hospitalization and death gratuities), 63 Stat. 202.

The words "A member of the Air Force" are substituted for the words "All officers, warrant officers, and enlisted men of the * * * Air Force of the United States", in 10: 456, and "All officers, warrant officers, and enlisted men of the National Guard of the United States * * * and air", in 32: 160a. The word "member", before the words "of the Regular Air Force", is substituted for the words "officers and enlisted men", in 10: 456 and 32: 160a. The words "active duty (other than for training)" are substituted for the words "active military service * * * for extended military service" for clarity. Reference, in 10: 456 and 32: 160a, to retired pay is omitted as superseded by chapter 61 of this title (see opinion of the Comptroller General, B-100262, 25 Apr. 1951, 30 Comp. Gen. 409). The references in 32: 160a, to 10: 22—23, 24—26, and 30—36, are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 10: 23a, in 32: 160a, is omitted as executed. So far as the references in 32: 160a apply to the pay and allowances, pensions, retirement pay, and other compensation for members of the Air National Guard of the United States on active duty, they are omitted as covered by 10: 456. With the exception of 32: 62 (4th proviso of last sentence), the references in 32: 160a do not refer to the training of members of the Air National Guard of the United States, and are therefore omitted from the revised section. The words "active duty for training", in 10: 456, are omitted as covered by the words "active duty". The words "shall be deemed to have been in the active military service during such period and", in 10: 456; and "in all respects" and "now or may hereafter", in 10: 456 and 32: 160a; are omitted as surplusage.

In clause (1), the words "to active duty" are substituted for the words "into the active military service by the Federal Government", in 10: 456, and "if engaged", in 32: 160a. The words "a period of more than" are substituted for the words "extended military service in excess of", in 10: 456, and "periods in excess of", in 32: 160a.

In clause (2), the words "to active duty" are substituted for the words "by the Federal Government to active military service", in 10: 456, and "if engaged", in 32: 160a.

AMENDMENTS

1962—Pub. L. 87-649 substituted "the pensions and other compensation" for "the pay and allowances, pensions, and other compensation." See section 204 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Pub. L. 85-861 inserted "under section 270 (b) of this title" following "other than for training", in cl. (1).

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF BENEFITS

Benefits under act June 20, 1949, effective from August 14, 1945, see note under section 3687 of this title.

§ 8688. Repealed. Pub. L. 85–861, § 36B (29), Sept. 2, 1958, 72 Stat. 1571.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 536, related to the death gratuity payable to survivors of members of the Air Force and is now covered by sections 1475—1480 of this title.

§ 8689. Repealed. Pub. L. 87–649, § 14c(57), Sept. 7, 1962, 76 Stat. 502.

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 537; Sept. 26, 1961, Pub. L. 87–304, § 9(d), 75 Stat. 665, related to assignments and allotments of pay, and is now covered by section 701 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 8690. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 538, exempted enlisted members of the Air Force, while on active duty, from arrest for any debt, unless it was contracted before enlistment and amounted to at least $20 when first contracted.

§ 8691. Flying officer rating: qualifications.

Only officers of the Air Force in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 538.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8691	10: 291c; 10: 291c–1; 10: 291e.	June 3, 1916, ch. 134, § 13a (8th, 9th, and 11th provisos); added July 2, 1926, ch. 721, § 2 (4th sentence, less 2d proviso), 44 Stat. 781; June 16, 1936, ch. 587, § 3, 49 Stat. 1524; Oct. 4, 1940, ch. 742 (last proviso), 54 Stat. 963. June 24, 1948, ch. 632 (2d proviso under "Finance Department"), 62 Stat. 650.

10: 291c (proviso) and the words "after June 30, 1948", in 10: 291c–1, are omitted as executed. The definition of the term "flying officer", in 10: 291c, originally was a definition of the term "flying officer in time of peace" as provided by section 2 of the act of July 2, 1926, ch. 721, 44 Stat. 781. Section 1 of the act of October 4, 1940, ch. 742, 54 Stat. 963, eliminated the words "in time of peace". As a consequence of that amendment, 10: 291e (1st 26 words) is omitted as surplusage. Clause (2) is substituted for 10: 291c–1 (less last 10 words). The words "commissioned officers or warrant", in 10: 291c–1, are omitted as surplusage. In clause (4), the last 19 words are substituted for the words "any other".

§ 8692. Pilot rating in time of peace: qualifications.

To be eligible to receive a rating as a pilot in time of peace, a member of the Air Force, other than an aviation cadet, must pilot a heavier-than-air craft for at least 200 hours, of which 75 are alone, and must successfully complete the prescribed course.

(Aug. 10, 1956, ch. 1041, 70A Stat. 538.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8692	10: 291d.	June 3, 1916, ch. 134, § 13a (10th proviso) added July 2, 1926, ch. 721, § 2 (2d proviso of 4th sentence), 44 Stat. 781.

The words "To be eligible" are substituted for the words "In order". The word "member" is substituted for the words "officer or an enlisted man". The words "by competent authority" are omitted as surplusage.

§ 8693. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 538, provided for the replacement of a lost or destroyed certificate of discharge from the Air Force. See section 1040 of this title.

Chapter 855.—HOSPITALIZATION

Sec.
8721. Members of Air Force, other than of Regular Air Force.
8722. Members of C. A. T. C.; members of Air Force not covered by section 8721 of this title.
8723. When Secretary may require.

AMENDMENTS

1958—Pub. L. 85–861, § 1 (190) (D), Sept. 2, 1958, 72 Stat. 1534, eliminated a reference to members of the A. F. R. O. T. C. in item 8722.

§ 8721. Members of Air Force, other than of Regular Air Force.

A member of the Air Force, other than of the Regular Air Force, is entitled to the hospital benefits provided by law or regulation for a member of the Regular Air Force of corresponding grade and length of service, whenever—

(1) he is called or ordered to active duty (other than for training under section 270 (b) of this title) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

(2) he is called or ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 538; Sept. 2, 1958, Pub. L. 85–861, § 1 (190) (A), 72 Stat. 1534.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8721	10: 456 (as applicable to hospitalization); 32: 160a (as applicable to hospitalization).	Aug. 30, 1935, ch. 830, § 1 (as applicable to hospitalization); restated Apr. 3, 1939, ch. 35, § 5 (as applicable to hospitalization); July 25, 1939, ch. 349 (as applicable to hospitalization); Dec. 10, 1941, ch 562 (as applicable to hospitalization); restated June 20, 1949, ch. 225, § 2 (as applicable to hospitalization), 63 Stat. 202; June 28, 1950, ch. 383, § 401 (p) (as applicable to hospitalization), 64 Stat. 271. June 20, 1949, ch. 225, § 3 (as applicable to hospitalization), 63 Stat. 202.

The words "A member of the Air Force" are substituted for the words "All officers, warrant officers, and enlisted men of the * * * Air Force of the United States", in 10: 456, and "All officers, warrant officers, and enlisted men of the National Guard of the United States * * * and air", in 32: 160a. The word "member", before the words "of the Regular Air Force", is substituted for the words "officers and enlisted men", in 10: 456 and 32: 160a. The references, in 32: 160a, to 10: 22–23, 24–26, and 30–36, are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 10: 23a, in 32: 160a, is omitted as executed. With the exception of 32: 62 (4th proviso of last sentence), the references in 32: 160a do not refer to the training of members of the Air National Guard of the United States, and are therefore omitted from the revised section. The words "active duty for training", in 10: 456, are omitted as covered by the words "active duty". The words "shall be deemed to have been in the active military service during such period and", in 10: 456, and "in all respects" and "now or may hereafter", in 10: 456 and 32: 160a, are omitted as surplusage.

In clause (1), the words "to active duty" are substituted for the words "into the active military service by the Federal Government", in 10: 456, and "if engaged", in 32: 160a. The words "a period of more than" are substituted for the words "extended military service in excess of", in 10: 456, and "periods in excess of", in 32: 160a.

In clause (2), the words "to active duty" are substituted for the words "by the Federal Government to active military service", in 10: 456, and "if engaged", in 32: 160a.

AMENDMENTS

1958—Pub. L. 85–861 inserted "(other than for training under section 270 (b) of this title)" following "active duty" in cl. (1).

EFFECTIVE DATE OF BENEFITS

Benefits under act June 20, 1949, effective from August 14, 1945, see note under section 3687 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8722 of this title.

§ 8722. Members of C. A. T. C.; members of Air Force not covered by section 8721 of this title.

(a) Under such regulations as the President may prescribe, the following persons are entitled to the benefits of subsection (b):

(1) Each Reserve of the Air Force, and each officer who has no regular or reserve appointment, and who is injured, or contracts a disease, in line of duty while on active duty in time of peace.

(2) Each member of the Air Force Reserve who is injured in line of duty while not on active duty and while voluntarily participating in an aerial flight in a Government-owned aircraft under proper authority and as an incident of training.

(3) Each person attending a Citizens' Air Training Camp, who is injured, or contracts a disease in line of duty while traveling to or from, or while attending, a training camp under section 9411 of this title.

(b) So far as any benefit named in this subsection is not provided for him under section 8721 of this title, any person named in subsection (a) is entitled to—

(1) the hospitalization, rehospitalization, and medical and surgical care in a hospital and at his home appropriate for the treatment of his injury or disease until the resulting disability cannot be materially improved by further hospitalization or treatment;

(2) the basic pay and allowances, whether in money or in kind, to which he was entitled at the time when the injury was incurred or the disease contracted, during the period of his hospitalization or rehospitalization, but not for more than a total of six months after the end of his prescribed tour of duty or training;

(3) subsistence during hospitalization or rehospitalization when he is not entitled to basic pay and allowances under clause (2); and

(4) necessary transportation incident to his hospitalization, rehospitalization, and return to his home when he is discharged from a hospital.

(Aug. 10, 1956, ch. 1041, 70A Stat. 539; Sept. 2, 1958, Pub. L. 85–861, § 1 (190) (B), (C), 72 Stat. 1534.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8722 (a)	10: 455a (1st 73 words); 10: 455b (1st 55 words); 10: 455c (1st 63 words).	June 15, 1936, ch. 547, § 1 (1st, 2d, and 3d sentence), 49 Stat. 1507, 1508.
8722 (b)	10: 455a (less 1st 73 words); 10: 455b (less 1st 55 words); 10: 455c (less 1st 63 words).	

In subsection (a), the words "the following persons * * * to the benefits of subsection (b)" are inserted for clarity. 10: 455a (words between 1st and 2d semicolons) is omitted as executed.

In subsection (a) (1), the words "Each Reserve of the Air Force" are substituted for the words "Members of the Army Reserve and members of the National Guard of the United States", in 10: 455a. The words "each officer of the Air Force who has no regular or reserve appointment" are inserted, since, under section 8491 of this title, officers without component who are on active duty are entitled to the benefits provided for reserve officers of the same grade and length of service. The words "under proper orders", in 10: 455a, are omitted as surplusage.

In subsection (a) (2), the words "is injured" are substituted for the words "suffer personal injury", in 10: 455b. 10: 455b (words within parentheses) is omitted as surplusage.

In subsection (b), the words "So far as any benefit named in this subsection is not provided for him under section 8721 of this title" are inserted, since it is possible that the benefits provided by that revised section will, as to certain persons, overlap those provided by this revised section.

In subsection (b) (2), the word "basic" is inserted before the word "pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.).

In subsection (b) (3), the word "during" is substituted for the words "for any period of", in 10: 455a. The words "they shall be entitled to" and "at Government expense", in 10: 455a, are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85–861, § 1 (190) (B), eliminated reference to members of the A. F. R. O. T. C. in the catchline.

Subsec. (a). Pub. L. 85–861, § 1 (190) (C), eliminated provisions that related to members of the Air Force Reserve Officers' Training Corps in cl. (3).

§ 8723. When Secretary may require.

The Secretary of the Air Force may order the hospitalization, medical and surgical treatment, and domiciliary care for as long as necessary, of any member of the Air Force on active duty, and may incur obligations with respect thereto, whether or not the member was injured, or contracted a disease, in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours. (Aug. 10, 1956, ch. 1041, 70A Stat. 539.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8723	10: 455c; 32: 164d.	July 15, 1939, ch. 282; restated Oct. 14, 1940, ch. 875, § 5, 54 Stat. 1137.

The words "under such regulations as he may prescribe", in 10: 455e and 32: 164d, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The references to 10: 455a—455d and 32: 164a—164c, and the words "nor any other law of the United States shall be construed as limiting the power and authority", are omitted, since the revised section makes explicit the authority of the Secretary to require the prescribed hospitalization and care. The words "or in training, under the provision of section 62—" are omitted as covered by the words "active duty". The words "so long as any or all are necessary" and "in the active military service" are omitted as surplusage. With the exception of 32: 62 (4th proviso of last sentence), the references to 32: 62–65, 144—146, 183, and 186, in 10: 455e and 32: 164d, do not refer to members of the Air National Guard of the United States and are therefore omitted from the revised section. 10: 455e (1st proviso) and 32: 164d (1st proviso) are omitted, since they apply only to the National Guard and are covered by section 320 of title 32.

Chapter 857.—DECORATIONS AND AWARDS

Sec.
8741. Medal of honor: award.
8742. Air Force cross: award.
8743. Distinguished-service medal: award.
8744. Medal of honor; Air Force cross; distinguished-service medal: limitations on award.
8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award.
8746. Silver star: award.
8747. Medal of honor; Air Force cross; distinguished-service cross; service medal; silver star: replacement.
8748. Medal of honor; Air Force cross; distinguished-service cross; service medal; silver star: availability of appropriations.
8749. Distinguished flying cross: award; limitations.
8750. Airman's Medal: award; limitations.
8751. Service medals: issue; replacement; availability of appropriations.
8752. Medals: posthumous award and presentation.

AMENDMENTS

1960—Pub. L. 86–593, § 1(7), July 6, 1960, 74 Stat. 332, substituted "Air Force cross" for "distinguished-service cross" in items 8742, 8744, and 8745, included "Air Force cross" in items 8747 and 8748, and substituted "Airman's Medal" for "Soldier's Medal" in item 8750.

CROSS REFERENCES

Decorations and awards, general military law provisions, see section 1121 et seq. of this title.

Meritorious Service Medal, establishment of, see Ex. Ord. No. 11448, set out as a note preceding section 1121 of this title.

§ 8741. Medal of honor: award.

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the Air Force, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; July 25, 1963, Pub. L. 88–77, § 3(1), 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8741	10: 1403.	July 9, 1918, ch. 143, (8th par. under "Ordnance Department"), 40 Stat. 870.

The words "That the provisions of existing law relating to the award of medals of honor to officers, noncommissioned officers, and privates of the Army be, and they hereby are, amended so that", in the act of July 9, 1918, ch. 143 (8th par. under "Ordnance Department"), 40 Stat. 870, are not contained in 10: 1403. They are also omitted from the revised section as surplusage. The word "member" is substituted for the words "officer or enlisted man". The word "only" is omitted as surplusage. The word "award" is inserted for clarity, since the President determines the recipient of the medal in addition to presenting it.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the medal of honor, which was limited to those cases in which persons distinguished themselves in action involving actual conflict with an enemy, to permit its award for distinguished service while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

CROSS REFERENCES

Award of Medal of Honor to members of Army and Navy, see sections 3741 and 6241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8742. Air Force cross: award.

The President may award an Air Force cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict aganist an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; July 6, 1960, Pub. L. 86–593, § 1(1), 74 Stat. 331; July 25, 1963, Pub. L. 88–77, § 3(2), 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8742	10: 1406.	July 9, 1918, ch. 143 (9th par. under "Ordnance Department"), 40 Stat. 870.

The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words "since the 6th day of April, 1917" are omitted as executed. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words "or herself" are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words "or who shall hereafter distinguish" are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the Air Force cross, which was limited to those cases in which persons distinguished themselves in connection with military operations against an armed enemy, to permit its award for extraordinary heroism not justifying the award of a medal of honor, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

1960—Pub. L. 86–593 substituted "Air Force cross" for "Distinguished-service cross" in the catchline, and substituted "an Air Force cross" for "a distinguished-service cross" in the text.

REFERENCES TO DISTINGUISHED-SERVICE CROSS AND SOLDIER'S MEDAL CONSIDERED MADE TO AIR FORCE CROSS AND AIRMAN'S MEDAL

Section 3 of Pub. L. 86–593 provided that: "References that other laws, regulations, and orders make, with respect to the Air Force, to the distinguished-service cross and the Soldier's Medal shall be considered to be made to the Air Force cross and the Airman's Medal, respectively."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8743. Distinguished-service medal: award.

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Air Force, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility. (Aug. 10, 1956, ch. 1041, 70A Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8743	10: 1407.	July 9, 1918, ch. 143 (10th par., less words after 1st semicolon, under "Ordnance Department"), 40 Stat. 870.

The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words "since the 6th day of April, 1917" are omitted as executed. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words "or herself" are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words "or who shall distinguish" are omitted as surplusage.

CROSS REFERENCES

Award of distinguished-service medal to members of Army and Navy, see sections 3743 and 6243 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8744. Medal of honor; Air Force cross; distinguished service medal: limitations on award.

(a) No more than one medal of honor, Air Force cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Air Force that the person is entitled to the award.

(c) No medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Air Force determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination. (Aug. 10, 1956, ch. 1041, 70A Stat. 540; July 5, 1960, Pub. L. 86–582, § 1(3), 74 Stat. 320; July 6, 1960, Pub. L. 86–593, § 1(2), 74 Stat. 331.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8744 (a)	10: 1411.	July 9, 1918, ch. 143 (12th par., less words after 2d semicolon, under "Ordnance Department"); restated Jan. 24, 1920, ch. 55, § 1 (less last sentence), 41 Stat. 398.
8744 (b)	10: 1409 (words before 1st semicolon).	July 9, 1918, ch. 143 (less words between 1st and 2d semicolons of 15th par. under "Ordnance Department"), 40 Stat. 871.
8744 (c)	10: 1409 (words after 2d semicolon).	

In subsection (a), the words "may be awarded to a person" are substituted for the words "shall be issued to any one person" to conform to the other subsections of the revised section.

In subsection (b), the word "thereof" is substituted for the words "of either of said medal or of said cross". The words "Except as otherwise prescribed in this section", "at the time of", "specific", "official", and "has so distinguished himself as" are omitted as surplusage.

In subsection (c), 10: 1409 (words after 3d semicolon) is omitted as executed. The words "hereinbefore authorized" are omitted as surplusage.

AMENDMENTS

1960—Pub. L. 86–593 substituted "Air Force cross" for "distinguished-service cross" in the catchline, and substituted "Air Force cross" for "distinguished-service cross" wherever appearing in subsecs. (a)—(d).

Subsec. (b). Pub. L. 86–582, § 1(3)(A), substituted "Except as provided in subsection (d), no" for "No."

Subsec. (d). Pub. L. 86–582, § 1(3)(B), added subsec. (d).

PERSONS AWARDED DISTINGUISHED-SERVICE CROSS OR SOLDIER'S MEDAL BEFORE JULY 6, 1960

Section 2 of Pub. L. 86–593 provided that: "For the purposes of sections 8744(a) and 8750(b) of title 10, United States Code, a person who was awarded a distinguished-service cross or Soldier's Medal before the date of enactment of this Act [July 6, 1960] shall be treated as if he had not been awarded an Air Force cross or Airman's Medal, as the case may be."

EXTENSION OF TIME LIMITATION

Act Aug. 2, 1956, ch. 877, 70 Stat. 933, provided: "That, notwithstanding any other provision of law, a decoration or device in lieu of decoration which, prior to the date of enactment of this Act [Aug. 2, 1956], has been authorized by Congress to be awarded to any person for an act or service performed while on active duty in the military or naval forces of the United States, or while serving with such forces, may be awarded at any time not later than one year after the date of enactment of this Act [Aug. 2, 1956] for any such act or service performed between June 27, 1950, and July 27, 1953, inclusive, if written recommendation for the decoration or device in lieu of decoration has been submitted to the appropriate office in a military department at the seat of Government before the date of enactment of this Act [Aug. 2, 1956]".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award.

The President may delegate his authority to award the medal of honor, Air Force cross, and distinguished-service medal, to a commanding general of a separate air force or higher unit in the field. (Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, Pub. L. 86–593, § 1(3), 74 Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8745	10: 1410.	July 9, 1918, ch. 143 (16th par., less words after semicolon, under "Ordnance Department"), 40 Stat. 872.

The words "under such conditions, regulations, and limitations as he shall prescribe" are omitted as surplusage. The words "his authority" are substituted for the words "the power conferred upon him by sections 1403, 1406—1408, 1409—1412, 1416, 1420, 1422, 1423, and 1424 of this title".

AMENDMENTS

1960—Pub. L. 86–593 substituted "Air Force cross" for "distinguished-service cross" in the catchline, and substituted "Air Force cross" for "distinguished-service cross" in the text.

CROSS REFERENCES

Delegation of functions, see section 301 et seq. of Title 3, The President.

§ 8746. Silver star: award.

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, is cited for gallantry in action that does not warrant a medal of honor or Air Force cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 25, 1963, Pub. L. 88–77, § 3(3), 77 Stat. 95.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8746	10: 1412.	July 9, 1918, ch. 143 (words after 2d semicolon of 12th par. under "Ordnance Department"); restated Jan. 24, 1920, ch. 55, § 1 (last sentence); restated Dec. 15, 1942, ch. 736, 56 Stat. 1052.

The words "may award" are inserted to conform to other sections of this chapter. The words "if the person earned" are inserted for clarity. The words "commanded by" are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 substituted provisions permitting the issuance of a silver star for gallantry while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, and requiring it to be of appropriate design, for provisions which authorized the issuance of the silver star for gallantry in action and which required that the silver star be three-sixteenths of an inch in diameter, the citation thereof be published in orders issued from the headquarters of a force that is the appropriate command of a general officer, and that it be worn as directed by the President.

CROSS REFERENCES

Award of silver star to members of Army and Navy, see sections 3746 and 6244 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement.

Any medal of honor, Air Force cross, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is lost or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, Pub. L. 86–593, § 1(4), 74 Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8747	10: 1416.	July 9, 1918, ch. 143 (14th par. under "Ordnance Department"), 40 Stat. 871.

The words "issued for wear with or in place of any of them" are inserted for clarity. The words "presented under the provisions of this title" and "such medal, cross, bar, ribbon, rosette, or device" are omitted as surplusage.

AMENDMENTS

1960—Pub. L. 86–593 included "Air Force cross" in the catchline and in the text of the section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.

The Secretary of the Air Force may spend, from any appropriation for contingent expenses of the Department of the Air Force, amounts necessary to provide medals and devices under sections 8741, 8742, 8743, 8744, 8746, 8747, and 8752 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, 86–593, § 1(4), 74 Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8748	10: 1424.	July 9, 1918, ch. 143 (13th par. under "Ordnance Department"), 40 Stat. 871.

The word "amounts" is substituted for the words "so much as may be". The word "provides" is substituted for the words "defray the cost of". The words "medals and devices under" are substituted for the words "medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices provided for in". The words "from time to time" are omitted as surplusage.

AMENDMENTS

1960—Pub. L. 86–593 included "Air Force cross" in the catchline.

§ 8749. Distinguished flying cross: award; limitations.

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable. (Aug. 10, 1956, ch. 1041, 70A Stat. 541.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8749 (a)	10: 1429 (less 2d and last sentences).	July 2, 1926, ch. 721, § 12 (less 1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.
8749 (b)	10: 1429 (2d sentence).	
8749 (c)	10: 1429 (last sentence, less 1st 49 words).	

In subsection (a), the words "under such rules and regulations as he may prescribe" are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal. The words "since the 6th day of April, 1917, has distinguished, or who, after July 2, 1926" and 10: 1429 (proviso of 1st sentence) are omitted as executed.

CROSS REFERENCES

Award of distinguished flying cross to members of Army and Navy, see sections 3749 and 6245 of this title.

§ 8750. Airman's Medal: award; limitations.

(a) The President may award a decoration called the "Airman's Medal", of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism not involving actual conflict with an enemy.

(b) Not more than one Airman's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs. (Aug. 10, 1956, ch. 1041, 70A Stat. 542; July 6, 1960, Pub. L. 86–593, § 1(6), 74 Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8750 (a)	10: 1428 (less last sentence).	July 2, 1926, ch. 721, § 11, 44 Stat. 789.
8750 (b)	10: 1428 (last sentence).	

The words "Under such rules and regulations as he may prescribe" are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words "but not in the name of Congress" are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word "award" is substituted for the word "present" to cover the determination of the recipients as well as the actual presentation of the medal. The words "a decoration called" are substituted for the words "a medal to be known as". The words "including the National Guard and the Organized Reserves" are omitted as surplusage. The words "or herself" are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words "after July 2, 1926" are omitted as executed.

In subsection (b), the words "that would otherwise justify" are substituted for the words "sufficient to".

AMENDMENTS

1960—Pub. L. 86–593 substituted "Airman's Medal" for "Soldier's Medal" in the catchline and substituted "Airman's Medal" for "Soldier's Medal" wherever appearing in the text.

CROSS REFERENCES

Award of Soldier's Medal to member of Army, see section 3750 of this title.

§ 8751. Service medals: issue; replacement; availability of appropriations.

(a) The Secretary of the Air Force shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Air Force after September 26, 1947, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Air Force, amounts

necessary to provide medals and devices under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 542.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8751 (a)	10: 1415a (less 21st through 30th words, and less clauses (a) through (n)).	May 12, 1928, ch. 528, §§ 1 (less 25th through 34th words, and less clauses (a) through (n)), 2 (less applicability to § 1 (clauses (a) through (n))), 3 (less applicability to § 1 (clauses (a) through (n))), 45 Stat. 500.
8751 (b)	10: 1415b (less applicability to 10: 1415a (clauses (a) through (n))).	
8751 (c)	10: 1415c (less applicability to 10: 1415a (clauses (a) through (n))).	

In subsection (a), the words "authorized for members of the Air Force after September 26, 1947" are substituted for the words "hereafter authorized", since, under Transfer Order 1, that date was the effective date of the transfer of personnel from the Army to the Air Force under section 208 (e) of the National Security Act of 1947, as amended (5 U. S. C. 626c (e)). 10: 1415a (proviso) is omitted as surplusage, since the revised section is not limited to persons who are members of the Air Force at the time of the issue.

In subsection (b), the words "member of the Air Force" are substituted for the words "persons in the military service of the United States".

In subsection (c), the last 16 words are substituted for 10: 1415c (last 16 words).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8752 of this title.

§ 8752. Medals: posthumous award and presentation.

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 8751 of this title, it shall be presented to his family. (Aug. 10, 1956, ch. 1041, 70A Stat. 542; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (23), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8752 (a)	10: 1409 (words between 1st and 2d semicolons); 10: 1429 (1st 49 words of last sentence).	July 9, 1918, ch. 143 (words between 1st and 2d semicolons of 15th par. under "Ordnance Department"), 40 Stat. 871.
8752 (b)	10: 1415a (21st through 30th words, less applicability to clauses (a) through (n)).	July 2, 1926, ch. 721, § 12 (1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549. May 12, 1928, ch. 528, § 1 (25th through 34th words, less applicability to clauses (a) through (n)), 45 Stat. 500.

In subsection (a), the words "If a person" are substituted for the words "In case an individual * * * dies", in 10: 1409, and "In case an individual * * * shall have died", in 10: 1429. The words "within three years from the date", in 10: 1409, are omitted as covered by section 8744 of this title. The words "who shall distinguish himself", in 10: 1409, and "who distinguishes himself", in 10: 1429, are omitted as covered by the words "the award * * * to which he is entitled".

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-861 substituted "it shall be presented" for "it may be presented".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

Chapter 859.—SEPARATION FROM REGULAR AIR FORCE FOR SUBSTANDARD PERFORMANCE OF DUTY

Sec.
8781. Selection boards: composition; duties.
8782. Boards of inquiry: composition; duties.
8783. Boards of review: composition; duties.
8784. Removal of officer: action by Secretary of the Air Force upon recommendation.
8785. Rights and procedures.
8786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.
8787. Officers eligible to serve on boards.

AMENDMENTS

1960—Pub. L. 86-616, § 7(a), July 12, 1960, 74 Stat. 391, substituted "substandard performance of duty" for "failure to meet standards" in the heading of the chapter, and added item 8787.

§ 8781. Selection boards: composition; duties.

The Secretary of the Air Force may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on the active list. (Aug. 10, 1956, ch. 1041, 70A Stat. 542; July 12, 1960, Pub. L. 86-616, § 7(a), 74 Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8781	10: 581.	June 29, 1948, ch. 708, § 102, 62 Stat. 1081.

The words "Immediately following June 29, 1948" are omitted as executed. The word "commissioned" is inserted before the word "officer", since the chapter is limited to proceedings involving commissioned officers.

AMENDMENTS

1960—Pub. L. 86-616 substituted provisions authorizing the Secretary to convene a board at any time for provisions which required the Secretary to convene a board annually, and substituted "because his performance of duty has fallen below standards prescribed by the Secretary" for "because of failure to achieve the standards of performance to be prescribed by the Secretary by regulation."

SAVINGS PROVISION

Section 7(c) of Pub. L. 86-616 provided that: "The amendments made by this section [to this chapter] do not apply to any proceedings begun under chapter 859 of title 10, United States Code [this chapter], before the enactment of this section [July 12, 1960]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8782, 8783 of this title.

§ 8782. Boards of inquiry: composition; duties.

(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause un-

der section 8781 of this title, shall be retained on the active list of the Regular Air Force.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 8781 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86-616, § 7(a), 74 Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8782 (a)	10: 582 (1st sentence less 1st 21 words).	June 29, 1948, ch. 708, §§ 103, 104 (1st 32 words of 1st sentence), 62 Stat. 1081.
8782 (b)	10: 582 (1st 21 words of 1st sentence).	
8782 (c)	10: 582 (less 1st sentence).	
8782 (d)	10: 583 (1st 32 words of 1st sentence).	

In subsection (c), the words "and shall not be subject to further action" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-616 eliminated provisions which required the boards to be composed of general officers, and substituted "whether an officer, required to show cause under section 8781 of this title, shall be retained" for "as to the fitness of officers to be retained."

Subsec. (b). Pub. L. 86-616 substituted "so required to show cause for retention" for "required to show cause for retention under section 8781 of this title."

Subsec. (c). Pub. L. 86-616 redesignated former subsec. (d) as (c) and substituted therein "determines that the officer has failed to establish that he should be retained on the active list" for "recommends the removal of an officer from the active list of the Regular Air Force." Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86-616 redesignated former subsec. (c) as (d) and substituted therein "determines that the officer has established that he should be retained on the active list" for "recommends the retention of an officer" and "at any time after one year from the date of that determination" for "at any future time." Former subsec. (d) redesignated (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8783 of this title.

§ 8783. Boards of review: composition; duties.

(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8782 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 8781 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86-616, § 7(a), 74 Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8783 (a)	10: 583 (1st sentence, less 1st 32 words).	June 29, 1948, ch. 708, § 104 (less 1st 32 words of 1st sentence, and less last sentence), 62 Stat. 1081.
8783 (b)	10: 583 (2d sentence).	
8783 (c)	10: 583 (less 1st, 2d, and last sentences).	

In subsection (b), the words "and shall not be subject to further action" are omitted as surplusage.

In subsection (c), the words "the removal" are substituted for the words "against the retention".

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-616 substituted "three or more officers" for "five or more general officers", and eliminated provisions which permitted the boards to make recommendations as to the retention of officers.

Subsec. (b). Pub. L. 86-616 redesignated former subsec. (c) as (b), and substituted therein "If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list" for "If a board of review recommends the removal of an officer from the active list of the Regular Air Force." Former subsec (b) redesignated (c).

Subsec. (c). Pub. L. 86-616 redesignated former subsec. (b) as (c), and substituted therein "If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list" for "If a board of review recommends the retention of an officer" and "at any time after one year from the date of that determination" for "at any future time." Former subsec. (c) redesignated (b).

§ 8784. Removal of officer: action by Secretary of the Air Force upon recommendation.

The Secretary of the Air Force may remove an officer from the active list of the Regular Air Force if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive. (Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86-616, § 7(a), 74 Stat. 392.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8784	10: 580; 10: 583 (last sentence, less provisos).	June 29, 1948, ch. 708, §§ 101, 104 (last sentence, less provisos), 62 Stat. 1081.

The word "sufficient" is substituted for the word "satisfactory", in 10: 580. The words "if the removal is recommended by a board of review under this chapter" are substituted for the words "in the manner hereinafter prescribed", in 10: 580. The words "Notwithstanding any other provision of law", in 10: 580, are omitted as surplusage. The words "such a case" are substituted for the words "removing any officer from the active list", in 10: 583.

AMENDMENTS

1960—Pub. L. 86-616 substituted "if his removal is recommended by a board of review under this chapter" for "for any cause that he considers sufficient, if removal for that cause is recommended by a board of review under this chapter."

§ 8785. Rights and procedures.

Each officer under consideration for removal from the active list of the Regular Air Force under this chapter shall be—

(1) notified in writing, at least 30 days before the hearing of his case by a board of inquiry, that he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Air Force, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding.

(Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86-616, § 7(a), 74 Stat. 392.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8785 (a)	10: 584 (less last sentence).	June 29, 1948, ch. 708, § 105, 62 Stat. 1082.
8785 (b)	10: 584 (last sentence).	

In subsection (b), the word "for" is substituted for the words "in the consideration of the case of".

AMENDMENTS

1960—Pub. L. 86-616 required the notification to be given at least 30 days before the hearing of the case by a board of inquiry, and eliminated provisions which permitted the officer to appear in person and by counsel before a board of review, and which prohibited any person from being a member of more than one board convened under this chapter for the same officer.

§ 8786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Air Force, the Secretary of the Air Force may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for honorable discharge with severance benefits under subsection (b).

(b) Each officer removed from the active list of the Regular Air Force under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded. (Aug. 10, 1956, ch. 1041, 70A Stat. 544; July 12, 1960, Pub. L. 86-616, § 7(a), 74 Stat. 392.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8786 (a)	10: 583 (provisos of last sentence).	June 29, 1948, ch. 708, §§ 104 (provisos of last sentence), 106, 62 Stat. 1082.
8786 (b)	10: 585 (less last proviso).	
8786 (c)	10: 585 (last proviso).	

In subsection (a), the words "during proceedings under this chapter" are inserted for clarity. The words "with severance benefits under subsection (b)" are substituted for 10: 583 (last proviso of last sentence).

In subsection (b), the words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "at the rate to which he was entitled" are substituted for the words "being received". The words "not more than 12" are substituted for 10: 585 (1st proviso).

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-616 substituted "for which he would be eligible if retired at his request" for "to which he would be entitled if retired at his request" in cl. (1), and "voluntary retirement under any law, be honorably discharged in the grade then held with severancy pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade" for "voluntary retirement, be honorably discharged in the grade then held with severance pay equal to one month's basic pay at the rate to which he was entitled on the date of discharge, multiplied by the number of years of his active commissioned service, but not more than 12" in cl. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8924 of this title.

§ 8787. Officers eligible to serve on boards.

(a) No officer may serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer. (Added Pub. L. 86-616, § 7(a), July 12, 1960, 74 Stat. 392).

Chapter 860.—SEPARATION FROM REGULAR AIR FORCE FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

Sec.
8791. Selection boards: composition; duties.
8792. Boards of inquiry: composition; duties.
8793. Boards of review: composition; duties.
8794. Removal of officer: action by Secretary of the Air Force upon recommendation.
8795. Rights and procedures.
8796. Officers considered for removal: retirement or discharge.
8797. Officers eligible to serve on boards.

§ 8791. Selection boards: composition; duties.

The Secretary of the Air Force may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 393.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8792, 8793 of this title.

§ 8792. Boards of inquiry: composition; duties.

(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 8791 of this title, shall be retained on the active list of the Regular Air Force.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 8791 of this title. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 393.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8793 of this title.

§ 8793. Boards of review: composition; duties.

(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8792 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 8791 of this title. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 394.)

§ 8794. Removal of officer: action by Secretary of the Air Force upon recommendation.

The Secretary of the Air Force may remove an officer from the active list of the Regular Air Force if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 394.)

§ 8795. Rights and procedures.

Each officer under consideration for removal from the active list of the Regular Air Force under this chapter shall be—

(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a board of inquiry, for which he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Air Force, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interest of national security.

In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 394.)

§ 8796. Officers considered for removal: retirement or discharge.

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Air Force, the Secretary of the Air Force may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for discharge under subsection (b).

(b) Each officer removed from the active list of the Regular Air Force under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b)(2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 394.)

§ 8797. Officers eligible to serve on boards.

(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 394.)

Chapter 861.—SEPARATION FOR VARIOUS REASONS

Sec.
8814. Regular commissioned officers: discharge during three-year probationary period.
8817. Aviation cadets: discharge.
8818. Regular female members: termination of appointment or enlistment.
8819. Reserve officers: discharge for failure of promotion to first lieutenant.
8820. Air National Guard of United States officers: discharge.

AMENDMENTS

1968—Pub. L. 90-235, § 3(a)(5), (b)(7), Jan. 2, 1968, 81 Stat. 758, struck out item 8811, which read: "Air Force enlisted members: discharge certificate; limitations on discharge", item 8812, which read: "Air Force enlisted members: during war or emergency; discharge", item 8813, which read: "Air Force enlisted members: dependency discharge", item 8815, which read: "Regular enlisted members: resignation of members enlisted on career basis; limitations", and item 8816, which read: "Regular enlisted members: minority discharge".

1958—Pub. L. 85-861, § 1 (191) (B), Sept. 2, 1958, 72 Stat. 1534, added item 8819.

CROSS REFERENCES

Separation, generally, see section 1161 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006 of this title.

§§ 8811 to 8813, Repealed. Pub. L. 90-235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 8811, act Aug. 10, 1956, ch. 1041, 70A Stat. 544, provided for the discharge of enlisted members of the Air Force and limitations thereon, and for the issuance of discharge certificates. See section 1169 of this title.

Section 8812, act Aug. 10, 1956, ch. 1041, 70A Stat. 544, provided for the discharge of members of the Air Force enlisted during war or emergency. See section 1172 of this title.

Section 8813, act Aug. 10, 1956, ch. 1041, 70A Stat. 544, provided for dependency discharges for enlisted members of the Air Force.

§ 8814. Regular commissioned officers: discharge during three-year probationary period.

The Secretary of the Air Force may discharge a regular commissioned officer of the Air Force who has less than three years of continuous service as a commissioned officer therein. However, such an officer may not be discharged because of his marriage, unless the marriage occurred within one year after the date of his original appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 545.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8814	10: 484a.	June 3, 1916, ch. 134, § 23; restated June 4, 1920, ch. 227, subch. I, § 23; restated July 25, 1939, ch. 338, 53 Stat. 1074.

The words "under such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "until July 1, 1942, the marriage of an officer shall not be a cause for revocation of commission" are omitted as executed. The word "appointment" is substituted for the word "commission", since the intent is to rescind the authority of a person to be an officer and not merely to revoke the written indicia of that authority. The word "regular" is inserted for clarity, since only regular officers are on the "active list". The word "discharge" is substituted for the words "revoke the commission", since the discharge of the officer would terminate his appointment. The words "hereafter", "on the active list", "at the date of said revocation", "initially commissioned after the date of this section", and "and each officer whose commission is so revoked shall be discharged from the Army" are omitted as surplusage.

CROSS REFERENCES

Effect of failure of promotion to first lieutenant, see section 8298 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8298 of this title.

§§ 8815, 8816. Repealed. Pub. L. 90-235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758.

Section 8815, act Aug. 10, 1956, ch. 1041, 70A Stat. 545, provided for the resignation of regular enlisted members of the Air Force enlisted on a career basis and limitations thereon.

Section 8816, act Aug. 10, 1956, ch. 1041, 70A Stat. 545, provided for minority discharges for regular enlisted members of the Air Force. See section 1170 of this title.

§ 8817. Aviation cadets: discharge.

The Secretary of the Air Force may discharge an aviation cadet at any time. (Aug. 10, 1956, ch. 1041, 70A Stat. 545.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8817	10: 299 (last sentence).	June 3, 1941, ch. 165, § 3 (last sentence), 55 Stat. 239.

10: 299 (last sentence, less 1st 14 words) is omitted as superseded by section 681 of this title.

§ 8818. Regular female members: termination of appointment or enlistment.

The Secretary of the Air Force, under regulations prescribed by the President, may terminate the appointment or enlistment of any female member of the Regular Air Force. However, the appointment of a commissioned officer may not be terminated under this section by dismissal. (Aug. 10, 1956, ch. 1041, 70A Stat. 545.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8818	5: 627f (less (a)); 10: 81-2 (less 1st proviso); 10: 166j.	June 12, 1948, ch. 449, § 307 (less (a)), 62 Stat. 373. June 24, 1952, ch. 457 (last proviso), 66 Stat. 156. Apr. 16, 1947, ch. 38, § 111, 61 Stat. 46.

The words "the circumstances and in accordance with", in 5: 627f (b), 10: 81-2 (last proviso), and 10: 166j, are omitted as surplusage. The word "appointment" is substituted for the word "commission", in 5: 627f (b), 10: 81-2, and 10: 166j, and for the word "warrant", in 5:627f (b), since the intent is to rescind the authority of a person to be an officer, and not merely to revoke the written indicia of authority. The applicability of 10: 81-2 (last proviso) and 166j to the separation of reserve officers is omitted as superseded by section 1162 of this title. The words "any female member" are substituted for the words "of any female person", in 5: 627f (b); "any officer appointed pursuant hereto", in 10: 81-2; and "any officer commissioned in any of the corps established by sections 166—166*l* and 374—377 of this title", in 10: 166j; since these words, collectively, describe all of the female members of the Regular Air Force. The last sentence is inserted because of section 1161 of this title. 10: 81-2 (less provisos) is omitted from this title as executed, since distinctions between the applicability of laws to men and women are omitted except where the context requires otherwise.

SEPARATION FROM SERVICE

Regulations governing separation from service, see Ex. Ord. No. 10240, Apr. 27, 1951, 16 F. R. 3689, set out as a note under section 3818 of this title.

§ 8819. Reserve officers: discharge for failure of promotion to first lieutenant.

(a) Except as provided by sections 1005 and 1006 of this title, each second lieutenant of the Air Force Reserve who completes three years of service, computed under section 8360 (e) of this title, in that grade shall be discharged from his reserve appointment if he is found to be not qualified for promotion.

(b) Except as provided by section 1005 of this title, each second lieutenant of the Air National Guard of the United States who completes three years of service, computed under section 8360(e) of this title, in that grade shall be discharged from his reserve appointment if he is found to be not qualified for promotion, unless before he completes that service he is appointed in the grade of first lieutenant by the governor or other appropriate authority of the jurisdiction concerned. (Added Pub. L. 85–861, § 1(191)(A), Sept. 2, 1958, 72 Stat. 1534, and amended Pub. L. 86–559, § 1(65), June 30, 1960, 74 Stat. 278.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8819 (a)	50: 1339 (b).	Sept. 3, 1954, ch. 1257, §§ 509 (b), 520 (b), 68 Stat. 1174, 1179.
8819 (b)	50: 1350 (b).	

In subsection (a), the words "of the Air Force Reserve" are inserted, since the general rule for second lieutenants of the Air National Guard of the United States is contained in subsection (b).

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–559 substituted "if he is found to be not qualified for promotion" for "within 90 days after he completes that service."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sectons 123, 8360 of this title.

§ 8820. Air National Guard of United States officers: discharge.

(a) The Secretary may terminate the reserve appointment of an officer of the Air National Guard of the United States and withdraw his Federal recognition as an officer of the Air National Guard, if he has been absent without leave for three months.

(b) An officer of the Air National Guard of the United States whose Federal recognition as an officer of the Air National Guard is withdrawn under section 323 (b) of title 32 shall be discharged from his reserve appointment. (Aug. 10, 1956, ch. 1041, 70A Stat. 546.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8820 (a)	32: 115 (less 1st and 2d sentences).	June 3, 1916, ch. 134, § 76 (less 1st sentence, and less 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, § 13 (less 1st sentence, and less 1st 24 words of 2d sentence), 48 Stat. 158; July 9, 1952, ch. 608, § 806 (e), 66 Stat. 507.
8820 (b)	32: 115 (2d sentence, less 1st 24 words).	

Chapter 863.—SEPARATION OR TRANSFER TO RETIRED RESERVE

Sec.
8843. Age 60: reserve officers below major general except those covered by section 8845 of this title.
8844. Age 62: reserve major generals, except those covered by section 8845 of this title.
8845. Age 64: Chief of National Guard Bureau; adjutants general.
8846. Deferred officers.
8848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels.
8850. Thirty years or more: reserve commissioned officers; excessive number.
8851. Thirty years or five years in grade: reserve colonels and brigadier generals.
8852. Thirty-five years or more in grade: reserve major generals.[1]
8853. Computation of years of service.
8855. Retention in active status of certain officers until age 60.

AMENDMENTS

1967—Pub. L. 90–130, § 1(31)(A), Nov. 8, 1967, 81 Stat. 382, eliminated item 8847 which read: "Twenty-five years: female reserve officers below lieutenant colonel, except those designated under section 8067 (a)—(d) or (g)—(i) of this title; Air Force nurses and medical specialists."

1960—Pub. L. 86–559, § 1(77), June 30, 1960, 74 Stat. 280, inserted "except those covered by section 8845 of this title" in item 8843, substituted "except those covered by section 8845 of this title" for "except Chief of National Guard Bureau" in item 8844, included adjutants general in item 8845, substituted "section 8067 (a)—(d) or (g)—(i) of this title; Air Force nurses and medical specialists" for "section 8067 of this title" in item 8847, eliminated items 8841, 8842 and 8849, and added item 8855.

1958—Pub. L. 85–861, § 1 (192), Sept. 2, 1958, 72 Stat. 1534, added items 8841—8853.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007 of this title.

§§ 8841, 8842. Repealed. Pub. L. 86–559, § 1(66), June 30, 1960, 74 Stat. 278.

Sections, Pub. L. 85–861, § 1(192), Sept. 2, 1958, 72 Stat. 1535, related to separation or transfer to Retired Reserve of female reserve nurses and medical specialists at age 50 if in a Reserve grade below major and at age 55 if in a Reserve grade above captain.

§ 8843. Age 60: reserve officers below major general, except those covered by section 8845 of this title.

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each commissioned officer whose reserve grade is below major general, except an officer covered by section 8845 of this title shall, on the last day of the month in which he becomes 60 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85–861, § 1 (192), Sept. 2, 1958, 72 Stat. 1535, and amended Pub. L. 86–599, § 1(67), June 30, 1960, 74 Stat. 278.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8843	50: 1353 (a).	Sept. 3, 1954, ch. 1257, § 523 (a), 68 Stat. 1181; June 30, 1955, ch. 247, § 4 (i) (1) (as applicable to § 523 (a) of the Act of Sept. 3, 1954, ch. 1257), 69 Stat. 220.

[1] Analysis does not conform to section catchline.

The word "Unless" is substituted for the words "who is not".

AMENDMENTS

1960—Pub. L. 86-559 excepted officers covered by section 8845 of this title.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8844. Age 62: reserve major generals, except those covered by section 8845 of this title.

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each commissioned officer whose reserve grade is major general, except an officer covered by section 8845 of this title, shall, on the last day of the month in which he becomes 62 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85-861, § 1 (192), Sept. 2, 1958, 72 Stat. 1535, and amended Pub. L. 86-559, § 1 (68), June 30, 1960, 74 Stat. 279.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8844	50: 1353 (b).	Sept. 3, 1954, ch. 1257, § 523 (b), 68 Stat. 1181; June 30, 1955, ch. 247, § 4 (i) (1) (as applicable to § 523 (b) of the Act of Sept. 3, 1954, ch. 1257), 69 Stat. 220.

The words "except the Chief of the National Guard Bureau" are inserted to reflect section 8845 of this title.

AMENDMENTS

1960—Pub. L. 86-559 substituted "except those covered by section 8845 of this title" for "except Chief of National Guard Bureau" in the catchline, and "an officer covered by section 8845 of this title" for "the Chief of the National Guard Bureau" in the text.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sectons 123, 281 of this title.

§ 8845. Age 64: Chief of National Guard Bureau; adjutants general.

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, a reserve officer of the Air Force who is Chief of the National Guard Bureau or adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia shall, on the last day of the month in which he becomes 64 years of age—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(Added Pub. L. 85-861, § 1 (192), Sept. 2, 1958, 72 Stat. 1535, and amended Pub. L. 86-559, § 1 (69), June 30, 1960, 74 Stat. 279.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8845	50: 1353 (c).	Sept. 3, 1954, ch. 1257, § 523 (c), 68 Stat. 1181; June 30, 1955, ch. 247, § 4 (i) (1) (as applicable to § 523 (c) of the Act of Sept. 3, 1954, ch. 1257), 69 Stat. 220.

The words "Notwithstanding subsections (a) and (b) of this section" are omitted as covered by the words "except the Chief of the National Guard Bureau" in section 8844 of this title.

AMENDMENTS

1960—Pub. L. 86-559 included the adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 8843, 8844 of this title.

§ 8846. Deferred officers.

(a) Except as provided in sections 1005 and 1006 of this title, a deferred officer who is not recommended for promotion under section 8368 (c) (1) of this title shall, one year and 90 days after the date on which he would have been promoted if he had been recommended by the first selection board that considered him—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Except as provided in sections 1005 and 1006 of this title, a deferred officer who is not recommended for promotion or is found to be not qualified for Federal recognition under section 8368 (c) (2), (d), or (e) of this title, shall, within 90 days after the date on which the report of the selection board or Federal recognition board is approved by the Secretary of the Air Force—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor be discharged from his reserve appointment.

(Added Pub. L. 85-861, § 1 (192), Sept. 2, 1958, 72 Stat. 1536.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8846 (a)	50: 1352 (e) (1) (less 1st 44, and 56th through 63d, words).	Sept. 3, 1954, ch. 1257, § 522 (e) (1) (less 1st 44, and 56th through 63d, words), (2) (less 1st 64, and 78th through 85th, words), 68 Stat. 1181.
8846 (b)	50: 1352 (e) (2) (less 1st 64, and 78th through 85th, words).	

In subsection (a), the word "applies" is substituted for the words "makes application".

In subsection (b), the word "applies" is substituted for the words "upon his application".

TRANSFER FROM ACTIVE STATUS OF CERTAIN MEMBERS OF AIR NATIONAL GUARD

Section 28 of Pub. L. 85–861 provided that: "Notwithstanding chapter 863 of title 10, United States Code [this chapter], a reserve officer who became a civilian employee of the Air National Guard before July 1, 1955, may not, before becoming 60 years of age and while so employed and without his consent, be removed from an active status by reason of any provision for mandatory promotion in chapter 837 of title 10, United States Code [this chapter], except for cause or physical disability, or by reason of being twice passed over for promotion to the grade of captain, major, or lieutenant colonel."

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006, 8368, 8377, 8855 of this title.

§ 8847. Repealed. Pub. L. 90–130, § 1(31)(A), Nov. 8, 1967, 81 Stat. 382.

Section, Pub. L. 85–861, § 1(192), Sept. 2, 1958, 72 Stat. 1536; Pub. L. 86–559, § 1(70), June 30, 1960, 74 Stat. 279, provided for the manadatory retirement of female commissioned officers, Air Force nurses, and medical specialists on active duty in a Reserve grade below lieutenant colonel after the completion of 25 years of service computed under section 8853.

§ 8848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels.

(a) After June 30, 1960, each officer in an active status in the reserve grade of first lieutenant, captain, or major, and each officer in an active status in the reserve grade of lieutenant colonel who is not on a recommended list for promotion to the reserve grade of colonel, shall, 30 days after he completes 28 years of service computed under section 8853 of this title—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Notwithstanding subsection (a), an Air Force nurse or medical specialist who is in the reserve grade of lieutenant colonel, or a female officer who is not designated under section 8067 (a)—(d) or (g)—(i) of this title and who is in the reserve grade of lieutenant colonel, may, in the discretion of the Secretary of the Air Force, be retained in an active status if he would otherwise be removed from an active status under subsection (a). An officer may not be retained in an active status under this section later than 30 days after he completes 30 years of service computed under section 8853 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Air Force may authorize the retention in an active status until age 60 of any officer of the Air National Guard of the United States who would otherwise be removed from an active status under this section and who is employed as a technician under section 709 of title 32, United States Code, in a position for which Air National Guard membership is prescribed by the Secretary. (Added Pub. L. 85–861, § 1(192), Sept. 2, 1958, 72 Stat. 1536; and amended Pub. L. 86–559, § 1(71), June 30, 1960, 74 Stat. 279; Pub. L. 90–130, § 1(31)(B), Nov. 8, 1967, 81 Stat. 382; Pub. L. 90–486, § 9(2), Aug. 13, 1968, 82 Stat. 760.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8848	50: 1354 (b).	Sept. 3, 1954, ch. 1257, § 524 (b), 68 Stat. 1182; June 30, 1955, ch. 247, § 4 (j) (as applicable to § 524 (b) of the Act of Sept. 3, 1954, ch. 1257), 69 Stat. 220.

The words "and who is not removed from an active status at an earlier date" are omitted as surplusage. The words "who is not on a recommended list for promotion to the reserve grade of colonel" are substituted for 50: 1354 (b) (last sentence).

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–486 added subsec. (c).

1967—Subsec. (a). Pub. L. 90–130 struck out, "except an officer covered by section 8847 of this title," following "first lieutenant, captain, or major".

1960—Subsec. (a). Pub. L. 86–559 designated existing provisions as subsec. (a) and inserted provisions therein excepting officers covered by section 8847 of this title.

Subsec. (b). Pub. L. 86–559 added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1. 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

CROSS REFERENCES

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 1006 of this title.

§ 8849. Repealed. Pub. L. 86–559, § 1(72), June 30, 1960, 74 Stat. 279.

Section, Pub. L. 85–861, § 1(192), Sept. 2, 1958, 72 Stat. 1536, related to separation or transfer to Retired Reserve of female reserve lieutenant colonels, except those designated under section 8067 of this title, upon completion of 28 years of service.

§ 8850. Thirty years or more: reserved commissioned officers; excessive number.

Whenever the Secretary of the Air Force believes that there are too many commissioned officers in an active status, in any reserve grade, who have at least 30 years of service computed under section 8853 of this title or at least 20 years of service computed under section 1332 of this title, he may convene a board to consider all reserve officers in an active status in that grade who have that amount of service and who are assigned to a unit organized to serve as a unit. The board shall recommend officers by name for removal from an active status, in the number specified by the Secretary. In the case of an officer so recommended, the Secretary may—

(1) transfer him to the Retired Reserve, if he is qualified and applies therefor;

(2) transfer him to an inactive status, if he is qualified; or

(3) discharge him from his reserve appointment.

(Added Pub. L. 85–861, § 1 (192), Sept. 2, 1958, 72

Stat. 1537, and amended Pub. L. 90–168, § 2(22), Dec. 1, 1967, 81 Stat. 525.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8850	50: 1355.	Sept. 3, 1954, ch. 1257, § 525, 68 Stat. 1183.

The words "The board shall * * * in the number specified by the Secretary" are substituted for the words "The Secretary shall direct the board to * * * a specified number". The words before clause (1) of the last sentence are substituted for 50: 1355 (b) (words before clause (1)).

AMENDMENTS

1967—Pub. L. 90–168 excepted from the board's screening authority those officers who are assigned to a unit organized to serve as such.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendent by Pub. L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub. L. 90–168, which was approved on Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 136 of this title.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

§ 8851. Thirty years or five years in grade: reserve colonels and brigadier generals.

(a) After June 30, 1960, except for the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia each officer in an active status in the reserve grade of lieutenant colonel whose name is on a recommended list for promotion to the reserve grade of colonel, each officer in an active status in the reserve grade of colonel whose name is not on a recommended list for promotion to the reserve grade of brigadier general, and each officer in an active status in the reserve grade of brigadier general whose name is not on a recommended list for promotion to the reserve grade of major general, shall, 30 days after he completes 30 years of service computed under section 8853 of this title or on the fifth anniversary of the date of his appointment in the grade in which he is serving, whichever is later—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Notwithstanding subsection (a), an officer in the reserve grade of brigadier general who would otherwise be removed from an active status under this section may, in the discretion of the Secretary of the Air Force, be retained in an active status, but not later than the date on which he becomes 60 years of age. Not more than 10 officers may be retained under this subsection at any one time.

(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Air Force may authorize the retention in an active status until age 60 of any officer of the Air National Guard of the United States who would otherwise be removed from an active status under this section and who is employed as a technician under section 709 of title 32, United States Code, in a position for which Air National Guard membership is prescribed by the Secretary (Added Pub. L. 85–861, § 1(192), Sept. 2, 1958, 72 Stat. 1537, and amended Pub. L. 86–559, § 1(73), June 30, 1960, 74 Stat. 280; Pub. L. 90–83, § 3(6), Sept. 11, 1967, 81 Stat. 220; Pub. L. 90–486, § 9(2), Aug 13, 1968, 82 Stat. 760.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8851 (a)	50: 1354 (a) (1st sentence, less applicability to major generals). 50: 1354 (c) (less applicability to brigadier generals on a recommended list).	Sept. 3, 1954, ch. 1257, § 524 (a) (less applicability to major generals), (c) (less applicability to brigadier generals on a recommended list), 68 Stat. 1182; June 30, 1955, ch. 247, § 4 (j) (as applicable to § 524 (a) (less applicability to major generals), and (c) (less applicability to brigadier generals on a recommended list) of the Act of Sept. 3, 1954, ch. 1257), 69 Stat. 220.
8851 (b)	50: 1354 (a) (less 1st sentence, and less applicability to major generals).	

In subsection (a), the words "After June 30, 1960" are substituted for the words "Effective five years after July 1, 1955". The words "who is not removed from an active status at an earlier date and", in 50: 1354 (a), are omitted as surplusage. Reference to officers whose names are on a recommended list for promotion to the grade of brigadier general, in 50: 1354 (c), is omitted as covered by the word "colonel", since only colonels are on a recommended list for promotion to that grade and, under 50: 1354 (a) and (c), the rule for colonels is the same whether they are on a recommended list or not.

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–486 added subsec. (c).

1967—Subsec. (a). Pub. L. 90–83 inserted "whose name is not on a recommended list for promotion to the reserve grade of brigadier general" after "in the reserve grade of colonel".

1960—Subsec. (a). Pub. L. 86–559 excepted the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

CROSS REFERENCES

Adjutant general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 1006 of this title.

§ 8852. Thirty-five years or five years in grade: reserve major generals.

(a) After June 30, 1960, except for the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia each officer in an active status in the reserve grade of major general, and each officer

in an active status in the reserve grade of brigadier general who is on a recommended list for promotion to the reserve grade of major general, shall, 30 days after he completes 35 years of service computed under section 8853 of this title or on the fifth anniversary of the date of his appointment in the grade in which he is serving, whichever is later—

(1) be transferred to the Retired Reserve, if he is qualified and applies therefor; or

(2) if he is not qualified or does not apply therefor, be discharged from his reserve appointment.

(b) Notwithstanding subsection (a), an officer in the reserve grade of major general who would otherwise be removed from an active status under this section may, in the discretion of the Secretary of the Air Force, be retained in an active status, but not later than the date on which he becomes 62 years of age. Not more than 10 officers may be retained under this subsection at any one time. (Added Pub. L. 85-861, § 1 (192), Sept. 2, 1958, 72 Stat. 1537, and amended Pub. L. 86-559, § 1 (74), June 30, 1960, 74 Stat. 280.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8852 (a)	50: 1354 (a) (1st sentence, as applicable to major generals). 50: 1354 (c) (as applicable to brigadier generals on a recommended list).	Sept. 3, 1954, ch. 1257, § 524 (a) (as applicable to major generals), (c) (as applicable to brigadier generals on a recommended list), 68 Stat. 1182; June 30, 1955, ch. 247, § 4 (j) (as applicable to § 524 (a) (as applicable to major generals), and (c) (as applicable to brigadier generals on a recommended list) of the Act of Sept. 3, 1954, ch. 1257), 69 Stat. 220.
8852 (b)	50: 1354 (a) (less 1st sentence, as applicable to major generals).	

In subsection (a), the words "After June 30, 1960" are substituted for the words "Effective five years after July 1, 1955". The words "who is not removed from an active status at an earlier date and" are omitted as surplusage.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-559 excepted the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 281 of this title.

Retention of reserve officers after completing 18 or more, but less than 20, years of service, see section 1006 of this title.

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 281, 1006 of this title.

§ 8853. Computation of years of service.

For the purpose of determining whether a reserve commissioned officer may be transferred to the Retired Reserve, or discharged, under this chapter, his years of service are computed by adding—

(1) all service as a commissioned officer of any armed force;

(2) all service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States; and

(3) all service credited to him under section 8353 of this title.

No service may be counted more than once. (Added Pub. L. 85-861, § 1 (192), Sept. 2, 1958, 72 Stat. 1538, and amended Pub. L. 86-559, § 1 (75), June 30, 1960, 74 Stat. 280.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8853	50: 1331 (b) (5) (less applicability to promotion).	Sept. 3, 1954, ch. 1257, § 501 (b) (5) (less applicability to promotion), 68 Stat. 1172.

The introductory clause is inserted to confine the applicability of the formula set forth in the revised section to those revised sections which are based on sections of the source statute containing the words "total years of service".

AMENDMENTS

1960—Pub. L. 86-559 included within cl. (2) the years of service in the National Guard after June 14, 1933, if the officer's service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States.

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 8848, 8850, 8851, 8852 of this title.

§ 8855. Retention in active status of certain officers until age 60.

Notwithstanding any other section of this chapter except section 8846, the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer of the Air Force who is designated as a medical officer, dental officer, chaplain, Air Force nurse, or Air Force medical specialist, but not later than the date upon which he becomes 60 years of age. (Added Pub. L. 86-559, § 1(76), June 30, 1960, 74 Stat. 280.)

CROSS REFERENCES

Suspension of operation of provisions of this section in time of war or national emergency, see section 123 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 123 of this title.

Chapter 865.—RETIREMENT FOR AGE

Sec.
8883. Age 60: regular commissioned officers below major general.
8884. Age 60: regular major generals whose retirement has been deferred.
8885. Age 62: regular major generals.
8886. Age 64: regular major generals whose retirement has been deferred.
8888. Computation of years of service: mandatory retirement; regular commissioned officers.
8889. Computation of retired pay: law applicable.

AMENDMENTS

1957—Pub. L. 85–155, title III, § 301 (17), Aug. 21, 1957, 71 Stat. 388, eliminated items 8881, 8882, and 8887.

CROSS REFERENCES

Retirement for age, general military law provisions, see section 1255 et seq. of this title.

§§ 8881, 8882. Repealed. Pub. L. 85–155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section 8881, act Aug. 10, 1956, ch. 1041, 70A Stat. 546, authorized the Secretary of the Air Force to retire Air Force nurses and woman medical specialists whose regular grade is below major.

Section 8882, act Aug. 10, 1956, ch. 1041, 70A Stat. 546, authorized the Secretary of the Air Force to retire Air Force nurses or woman medical specialists whose regular grade is above captain.

§ 8883. Age 60: regular commissioned officers below major general.

Unless retired or separated at an earlier date, each commissioned officer whose Regular grade is below major general, other than a professor or the registrar of the United States Air Force Academy, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 546; Aug. 6, 1958, Pub. L. 85–600, § 1(17), 72 Stat. 523; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8883	10: 941a (a) (1) (less 23 words before 1st proviso).	Aug. 7, 1947, ch. 512, § 514 (a) (1) (less 23 words before 1st proviso), 61 Stat. 902.

10: 941a (a) (1) (1st 19 words and 1st and last provisos) is omitted as executed. The words "below major general" are substituted for the words "if in the * * * grade of brigadier general or in any * * * grade below that of brigadier general". The words "when he becomes 60 years of age" are substituted for the words "on that date upon which he attains the age of sixty years". The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title. The words "under applicable provisions of law" are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

1958—Pub. L. 85–600 excluded the registrar of the Air Force Academy from the retirement provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8888 of this title.

§ 8884. Age 60: regular major generals whose retirement has been deferred.

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 8923 of this title has been deferred under clause (1) of that section, shall be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 547; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8884	No source.	No source.

The rule stated in the revised section is inserted as a necessary implication of the rule stated in clause (1) of section 8923 of this title.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8888 of this title.

§ 8885. Age 62: regular major generals.

Unless retired or separated at an earlier date or unless retained under section 8923(2) of this title, each commissioned officer whose regular grade is major general shall be retired when he becomes 62 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 547; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(42), 72 Stat. 1567; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8885	10: 941a (a) (1) (23 words before 1st proviso).	Aug. 7, 1947, ch. 512, § 514 (a) (1) (23 words before 1st proviso), 61 Stat. 902.

The words "unless retained under section 8923 (2) of this title" are inserted for clarity. The words "when he becomes 62 years of age" are substituted for the words "on that date upon which he attains the age of sixty-two years". The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

1958—Pub. L. 85–861 substituted "section 8923 (2) of this title" for "section 8923 (a) of this title".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8888 of this title.

§ 8886. Age 64: regular major generals whose retirement has been deferred.

Unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 8923 of this title has been deferred under clause (2) of that section, and each permanent professor and the registrar of the United States Air Force Academy, shall be retired when he becomes 64 years of age, except as provided by section 8301 of title 5. (Aug. 10, 1956, ch. 1041, 70A Stat. 547; Aug. 6, 1958, Pub. L. 85–600, § 1(18), 72 Stat. 523; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8886	10: 941a (a) (2); 10: 1079a (c) (less proviso).	Aug. 7, 1947, ch. 512, §§ 514 (a) (2), 520 (c) (less proviso), 61 Stat. 902, 912.

The rule stated in the revised section requiring major generals of the Regular Air Force to retire at age 64 is inserted as a necessary implication of the rule stated in clause (2) of section 8923 of this title. The words "under applicable provisions of law", in 10: 941a (a) (2), are omitted as surplusage. The words "when he becomes 64 years of age" are substituted for the words "on that

date upon which he attains the age of sixty-four years", in 10: 941a (a) (2), and "at the age of sixty-four years", in 10: 1079a (c) (less proviso). The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

AMENDMENTS

1966—Pub. L. 89-718 substituted "8301" for "47a".

1958—Pub. L. 85-600 included the registrar of the Air Force Academy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8888 of this title.

§ 8887. Repealed. Pub. L. 85-155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 547, related to computation of years of service of Air Force nurses or woman medical specialists for the purposes of retirement under former sections 8881 or 8882 of this title, or retirement pay under section 8991 of this title.

§ 8888. Computation of years of service: mandatory retirement; regular commissioned officers.

For the purpose of computing the retired pay of a commissioned officer of the Regular Air Force retired under section 8883, 8884, 8885, or 8886 of this title, his years of service are the greater of—

(1) the years of service that may be credited to him under section 1405 of this title; or

(2) his years of service computed under clause (A), (B), (C), (D), (E), (F), (G), or (H), whichever applies:

(A) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before January 1, 1948, under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

(i) the years of service credited to him under that Act at the time of his appointment;

(ii) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment; and

(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

(B) For an officer appointed in the Regular Air Force under section 308 of the Women's Armed Services Integration Act of 1948 (62 Stat. 373), the sum of—

(i) the years of service credited to her under that section at the time of her appointment;

(ii) her years of active commissioned service in the Regular Air Force after that appointment;

(iii) the years of service credited to her under section 27 of the Act enacting this amended section.

(C) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

(i) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

(ii) the number of days, months, and years by which his age at the time of that appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment, and the years of service credited to him under section 27 of the Act enacting this amended section.

(D) For an Air Force nurse or medical specialist, the period of service credited under the Army-Navy Nurses Act of 1947, as amended, or credited under section 8287(b) of this title at the time of appointment, plus the years of active commissioned service in the Regular Air Force after appointment in the Regular Air Force.

(E) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before December 31, 1947, other than an officer covered by clause (A), (C), or (D), the sum of—

(i) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

(ii) his years of active commissioned service in the Army and the Air Force after becoming 21 years of age and after December 7, 1941, under any earlier appointment; and

(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

(F) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force after December 31, 1947, under section 506 of the Officer Personnel Act of 1947 (61 Stat. 890), the sum of—

(i) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

(ii) his years of active commissioned service in the armed forces after becoming 21 years of age and after December 6, 1941, under any earlier appointment; and

(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

(G) For an officer of the Regular Air Force who was appointed in the Regular Army or the Regular Air Force after December 31, 1947, other than an officer covered by clause (B), (D), (F), or (H), the sum of—

(i) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

(ii) his years of active commissioned service in the Army and the Air Force after December 31, 1947, under any earlier appointment; and

(iii) the years of service credited to him under section 27 of the Act enacting this amended section.

(H) for an officer of the Regular Air Force who was appointed in the Regular Air Force after July 19, 1956, other than an officer who is covered by clause (D) or (F) or who is desig-

nated as a medical or dental officer, the sum of—

(i) his years of active commissioned service in the Regular Air Force after that appointment;

(ii) his years of active commissioned service in the armed forces after becoming 21 years of age and before that appointment; and

(iii) the years of service credited to him under section 8287 (a) (3), (4), or (5) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 547; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (16), 71 Stat. 388; May 20, 1958, Pub. L. 85–422, § 11 (a) (7), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1 (194), 72 Stat. 1538; Sept. 30, 1966, Pub. L. 89–609, § 1(30), 80 Stat. 854.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8888	5: 627b (h) (last proviso, as applicable to 10: 941a (a) (3)); 10: 941a (b) (as applicable to 10: 941a (a) (3)); 10: 941a (e) (59th through 93d words of clause (1), as applicable to 10: 941a (a) (3)).	Aug. 7, 1947, ch. 512, § 514 (b) (as applicable to § 514 (a) (3)), (e) (59th through 93d words of clause (1), as applicable to § 514 (a) (3)), 61 Stat. 903, 905. June 12, 1948, ch. 449, § 303 (h) (last proviso, as applicable to § 514 (a) (3) of the Act of Aug. 7, 1947, ch. 512), 62 Stat. 372.

In clause (2) (A), the words "before January 1, 1948" are substituted for the words "between December 28, 1945, and December 31, 1947".

In clause (2) (A)—(D), the words "plus his [her] years" are substituted for the words "increased by the period of his [her]".

In clause (2) (C), clause (i) is substituted for the words "or the total period of active Federal service performed by him after attaining the age of twenty-one years as a commissioned officer in the Army of the United States or any component thereof from December 7, 1941, to the date of such appointment".

In clause (2) (D), the words "other than an officer covered by clause (A), (B), or (C)" are substituted for the words "any other". 10: 941a (b) (clause (2)) is omitted as inapplicable to the Air Force.

In clause (2) (E), the words "other than an officer covered by clause (B)" are inserted for clarity.

AMENDMENTS

1966—Clause (2) (D). Pub. L. 89–609 substituted "the years" for "her years" and struck out "to her" following "credited" in two instances and "her" preceding "appointment" in two instances.

1958—Pub. L. 85–861 permitted officers covered by clauses (2) (A)—(C), (E) and (F) to credit the years of service credited to them under section 27 of the act enacting this amended section [Pub. L. 85–861], and added clauses (2) (G) and (H).

Subd. (1). Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "credited to him in computing his basic pay".

1957—Clause (2) (C). Pub. L. 85–155, § 301 (16) (A), added clause (2) (C). Former clause (2) (C) redesignated (2) (D).

Clause (2) (D). Pub. L. 85–155, § 301 (16) (D), redesignated former clause (2) (C) as (2) (D). Former clause (2) (D) redesignated (2) (E).

Clause (2) (E). Pub. L. 85–155, § 301 (16) (D), redesignated former clause (2) (D) as (2) (E), and Pub. L. 85–155, § 301 (16) (B), substituted "(A), (C), or (D)" for "(A) or (C)". Former clause (2) (E) redesignated (2) (F).

Clause (2) (E). Pub. L. 85–155, § 301 (16) (D), redesignated former clause (2) (E) as (2) (F), and Pub. L. 85–155, § 301 (16) (C), substituted "clause (B) or (C)" for "clause (B)".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

RETIREMENT OF CERTAIN AIR FORCE NURSES OR MEDICAL SPECIALISTS

Section 303 of Pub. L. 85–155 provided that Air Force nurses or medical specialists promoted to a higher regular grade within one year after August 21, 1957, who would otherwise have been retired under chapter 865 or 867 of title 10, United States Code before a date which was two years after the date she was promoted, would not be retired under either of those chapters until a date which was two years after the date she was promoted.

INCREASE OF SERVICE CREDIT FOR CERTAIN OFFICERS OF REGULAR AIR FORCE

Increase of service credited to an officer for purposes of clauses (2) (A)—(C), (E)—(G) of this section, see section 27 of Pub. L. 85–861, set out as a note under section 8287 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1405 of this title.

§ 8889. Computation of retired pay: law applicable.

A member of the Air Force retired under this chapter is entitled to retired pay computed under chapter 871 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 548.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8889	No source.	No source.

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

Chapter 867.—RETIREMENT FOR LENGTH OF SERVICE

Sec.
8911. Twenty years or more: regular or reserve commissioned officers.
8913. Twenty years or more: deferred officers not recommended for promotion.
8914. Twenty to thirty years: regular enlisted members.
8915. Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major.
8916. Twenty-eight years: promotion-list lieutenant colonels.
8917. Thirty years or more: regular enlisted members.
8918. Thirty years or more: regular commissioned officers.
8919. Thirty years or more: regular commissioned officers; excessive number.
8920. More than thirty years: professors of the United States Air Force Academy.
8921. Thirty years or five years in grade: promotion-list colonels.
8922. Thirty years or five years in grade: regular brigadier generals.
8923. Thirty-five years or five years in grade: regular major generals.
8924. Forty years or more: Air Force officers.
8925. Computation of years of service: voluntary retirement; regular enlisted members.
8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
8927. Computation of years of service: mandatory retirement; regular commissioned officers.
8929. Computation of retired pay: law applicable.

AMENDMENTS

1967—Pub. L. 90–130, § 1(32) (C), Nov. 8, 1967, 81 Stat. 383, substituted "Twenty-eight years: deferred retirement

of nurses and medical specialists in regular grade of major" for "Twenty-five years: female majors except those designated under section 8067 (a)-(d) or (g)-(i) of this title; male majors designated under section 8067 (e) or (f) of this title" in item 8915.

1966—Pub. L. 89-609, § 1(32), Sept. 30, 1966, 80 Stat. 854, added "; male majors designated under section 8067(e) or (f) of this title" to item 8915.

1957—Pub. L. 85-155, title III, § 301 (21), Aug. 21, 1957, 71 Stat. 389, eliminated items 8912 and 8928, and substituted "section 8067 (a)—(d) or (g)—(i)" for "section 8067" in item 8915.

CROSS REFERENCES

Retirement for length of service, general military law provisions, see section 1293 et seq. of this title.

§ 8911. Twenty years or more: regular or reserve commissioned officers.

The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 549.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8911	10: 943a; 10: 971b (1st 100 words).	July 31, 1935, ch. 422, § 5 (1st 101 words); restated June 13, 1940, ch. 344, § 3 (1st 45 words), 54 Stat. 380; June 29, 1948, ch. 708, § 202 (1st 105 words), 62 Stat. 1084; July 16, 1953, ch. 203, 67 Stat. 175.

The words "a regular or reserve commissioned officer of the Air Force" are substituted for the words "any officer on the active list of the * * * Regular Air Force * * * or any officer of the reserve components of the * * * Air Force of the United States". The words "Philippine Scouts" are omitted as obsolete. The words "has at least 20" are substituted for the words "shall have completed not less than twenty". The words "upon his request" are substituted for the words "upon his own application". The words "service computed under section 8926 of this title" are substituted for the words "active Federal service in the armed forces of the United States", since that revised section makes explicit the service covered.

CROSS REFERENCES

Composition of Retired Reserve, see section 274 of this title.

Retention of reserve officers after completing 18 or more, but less than 20 years of service, see section 1006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 274, 1006, 8926 of this title.

§ 8912. Repealed. Pub. L. 85-155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 549, permitted the Secretary of the Air Force, upon the officer's request, to retire an Air Force nurse, or a woman medical specialist, of the Regular Air Force, who has at least 20 years of service computed under former section 8928 of this title.

§ 8913. Twenty years or more: deferred officers not recommended for promotion.

(a) A deferred officer who is not recommended for promotion under section 8303(c) of this title, or an officer who is found disqualified for promotion under section 8302(f) of this title, shall, if he has at least 20 years of service computed under section 8927(a) of this title, be retired, except as provided by section 8301 of title 5, on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned.

(b) Unless sooner retired or separated under another provision of law, a deferred officer who is not recommended for promotion under section 8303(c) of this title, or an officer found disqualified for promotion under section 8302(f) of this title, who is not eligible for retirement under subsection (a) of this section or any other provision of law, but is within two years of becoming entitled to retirement under subsection (a) or some other provision of law, shall be retained on the active list in his regular grade until the date he completes 20 years of service computed under section 8927(a) of this title, or the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later, and then retired. (Aug. 10, 1956, ch. 1041, 70A Stat. 549; July 12, 1960, Pub. L. 86-616, § 9, 74 Stat. 395; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8913 (a)	10: 599c (h) (16th through 53d words of last sentence); 10: 559c (i); 10: 941a (e) (1st 16 words of clause (1)).	Aug. 7, 1947, ch. 512, §§ 509 (h) (16th through 53d words, and proviso, of last sentence), 509 (i), 519 (d) (2d sentence), 514 (e) (1st 16 words of clause (1)), 61 Stat. 896, 903, 905.
8913(b)	10: 559c (h) (proviso of last sentence); 10: 941a (d) (2d sentence).	

In subsection (a), 10: 559c (i) (1st 45 words) and the words "prior to his loss of seniority", in 10: 559c (i), are omitted as surplusage. In clause (2), the words "had his years of service not been reduced under section 8303 (b) of this title" are substituted for the words "had he not suffered loss in years of service", in 10: 559c (i).

In subsections (a) and (b), the words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title. Reference to officers found disqualified for promotion under section 8302 (f) of this title is inserted to conform to that section.

In subsection (b), the words "who is not recommended for promotion under section 8303 (c) of this title" are inserted for clarity. The words "or some other provision of law" are inserted, since 10: 559c (h) (proviso) and 10: 941a (d) (2d sentence) refer to the provisions of 10: 941a (e), which include, as an alternative method of retirement, retirement under any other provision of law. The words "rather than that hereinafter prescribed", in 10: 941a (d), are omitted as surplusage.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-718 substituted "8301" for "47a".

1960—Subsec. (a). Pub. L. 86-616, § 9(1), substituted provisions requiring retirement on such date as may be requested by the officer and approved by the Secretary, but not later than the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend the officer for promotion to the grade concerned for provisions which required retirement one year and 30 days after the date of appointment to the grade concerned of the first officer junior to the officer on the list considered by the first selection board or one year and 30 days after the date

on which he would have completed, for promotion purposes, 7, 14, or 21 years of service, if the officer is in the grade of first lieutenant, captain, or major, had the officer's years of service not been reduced under section 3303(b) of this title, whichever is earlier.

Subsec. (b). Pub. L. 86–616, § 9(2), substituted "the date he completes 20 years of service computed under section 8927(a) of this title, or the first day of the seventh calendar month after the Secretary approves the report of the last board that did not recommend him for promotion to the gade concerned, whichever is later" for "so entitled to retire."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8303, 8927 of this title.

§ 8914. Twenty to thirty years: regular enlisted members.

Under regulations to be prescribed by the Secretary of the Air Force, a regular enlisted member of the Air Force who has at least 20, but less than 30, years of service computed under section 8925 of this title may, upon his request, be retired. He then becomes a member of the Air Force Reserve, and shall perform such active duty as may be prescribed under law, until his service computed under section 8925 of this title, plus his inactive service as a member of the Air Force Reserve, equals 30 years. (Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8914	10: 948 (1st sentence); 10: 948a.	Oct. 6, 1945, ch. 393, § 4 (1st sentence); restated Aug. 10, 1946, ch. 952, § 6 (a) (1st sentence), 60 Stat. 996. Aug. 10, 1946, ch. 952, § 7, 60 Stat. 996.

The words "now or hereafter", in 10: 948a, are omitted as surplusage. The words "computed under section 8925 of this title" are substituted for the words "active Federal service", in 10: 948, and "active Federal military service", in 10: 948a, since that revised section makes explicit the service covered. The words "be retired from" are substituted for the words "will be placed on the retired list of", in 10: 948. The words "completed a minimum", in 10: 948; and "the period of", "be subject to", "period of", and "now or after August 10, 1946", in 10: 948a; are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8925 of this title.

§ 8915. Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major.

The Secretary of the Air Force may defer the retirement of any Air Force nurse or medical specialist in the regular grade of major until the thirtieth day after the officer completes twenty-eight years of service computed under section 8927(a) of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 550; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(18), 71 Stat. 389; Sept. 30, 1966, Pub. L. 89–809, § 1(31), 80 Stat. 854; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90–130, § 1(32) (A), 81 Stat. 383.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
915	5: 627b (h) (5th proviso).	June 12, 1948, ch. 449, § 303 (h) (5th proviso), 62 Stat 372.

The words "That on and after June 30, 1953" are omitted as executed. The word "retired" is substituted for the words "eliminated from the active list". The words "the thirtieth day after" are substituted for the words "that date which is thirty days after the date upon which". The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

The words "under other provisions of law" and "unless she is appointed in the permanent grade of lieutenant colonel in the Regular Air Force before that date" are omitted as surplusage. The words "computed under section 8927 (a) of this title" are inserted for clarity. The words "except an officer designated under section 8067 of this title" are inserted, since 5: 627b (h) (5th proviso), as enacted, was applicable only to women appointed under title III of the Women's Armed Services Integration Act of 1948, of which 5: 627b (h) was a part, and not to those appointed under other provisions of law. Mandatory retirement of nurses and women medical specialists is covered by sections 8881 and 8882 of this title.

AMENDMENTS

1967—Pub. L. 90–130 struck out former subsec. (a) which required the mandatory retirement of female officers of the Air Force in the Regular grade of major, except those designated to perform professional functions under section 8067 of this title, after the completion of 25 years of service, struck out the designation "(b)" preceding former subsec. (b) with the substance thereof thereby becoming the entire section, and substituted "Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major" for "Twenty-five years: female majors except those designated under section 8067 (a)–(d) or (g)–(i) of this title; male majors designated under section 8067 (e) or (f) of this title" in the section catchline.

1966—Pub. L. 89–609, § 1(31)(A), added to section catchline "; male majors designated under section 8067 (e) or (f) of this title".

Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a".

Pub. L. 89–609, § 1(31) (B), (C), inserted "and each male officer of the Air Force, designated under section 8067 (e) or (f) of this title, whose regular grade is major", preceding "shall" and substituted "that officer" for "she", respectively.

Subsec. (b). Pub. L. 89–609, § 1(31)(C), substituted "that officer" for "she".

1957—Subsec. (a). Pub. L. 85–155, § 301 (18) (A), designated existing provisions as subsec. (a), and Pub. L. 85–155, § 301 (18) (B), substituted "section 8067 (a)—(d) or (g)—(i)" for "section 8067."

Subsec. (b). Pub. L. 85–155, § 301 (18) (C), added subsec. (b).

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OF TRANSFER FROM ACTIVE STATUS OF AIR FORCE FEMALE OFFICERS

Section 4(e) of Pub. L. 90–130 provided that: " For five years following the effective date of this Act [Nov. 8, 1967], the Secretary of the Air Force may suspend the operation of any provision of law pertaining to the mandatory retirement, discharge, separation, or transfer from an active status of an Air Force female officer, except an officer designated under section 8067, title 10, United States Code, to perform professional functions other than as an Air Force nurse or as an Air Force medical specialist."

AUTHORITY OF MILITARY DEPARTMENT SECRETARIES TO CONVENE BOARDS TO RECOMMEND DEFERMENT OF RETIREMENT OR SEPARATION OF NURSES

Secretaries authorized until July 1, 1972, to convene boards of officers to consider and recommend deferment of separation or retirement of officers of the Army Nurse Corps, officers of the Navy Nurse Corps, and Air Force nurses, as needs of the service require, see section 4(f) of Pub. L. 90–130, set out as a note under section 3069 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8927 of this title.

§ 8916. Twenty-eight years: promotion-list lieutenant colonels.

(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of lieutenant colonel shall be retired, except as provided by section 8301 of title 5, on the thirtieth day after he completes 28 years of service computed under section 8927(a) of this title. However, if his name is carried on the list of officers recommended for appointment to the regular grade of colonel, he shall be retained on the active list while his name is so carried.

(b) The Secretary of the Air Force may defer the retirement under this section of any promotion list officer in the regular grade of lieutenant colonel who is a medical, dental, veterinary, or medical service officer, a medical specialist, or a chaplain, but not later than the date on which he becomes sixty years of age. (Aug. 10, 1956, ch. 1041, 70A Stat. 550; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(19), 71 Stat. 339; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90–130, § 1(32)(B), 81 Stat. 383.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8916 (a)	10: 941a (d) (clause (4), less 2d, 3d, and last provisos).	Aug. 7, 1947, ch. 512, § 514 (d) (clause (4)), 61 Stat. 905.
8916 (b)	10: 941a (d) (2d, 3d, and last provisos of clause (4)); 5: 627b (h) (1st and 2d provisos).	June 12, 1948, ch. 449, § 303 (h) (1st and 2d provisos), 62 Stat. 372.

In subsection (a), the words "After June 30, 1953" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter appointed", "under other provisions of law", "eliminated from the active list and", "unless he is appointed in the permanent grade of colonel, or any higher permanent grade, in the Regular Army before that date", and "and if appointed in the permanent grade of colonel their elimination from the active list shall be governed by the provisions of paragraph (3) of this subsection" are omitted as surplusage. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after". The words "computed under section 8927 (a) of this title" are inserted for clarity. The words "except an Air Force nurse or a woman medical specialist" are inserted, since such an officer might be a "promotion-list" officer under section 8296 of this title. Mandatory retirement of nurses and women medical specialists is covered by sections 8881 and 8882 of this title. The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

In subsection (b), the words "may defer the retirement under this section of" are substituted for the words "may, in the discretion of * * * be retained on the active list after the date specified for their retirement".

In subsection (b) (2) and (3), the exception as to officers designated under section 8067 of this title is inserted, since 5: 627b (h) (1st proviso), as enacted, was applicable only to women appointed under title III of the Women's Armed Services Integration Act of 1948, of which 5: 627b (h) was a part, and not to those appointed under other provisions of law. 10: 941a (d) (3d and last provisos of clause (4)) is omitted as inapplicable to the Air Force.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–130 removed the permissive authority of the Secretary of the Air Force to defer the mandatory retirement of female promotion-list officers in the Regular grade of lieutenant colonel who were not in critical skill categories, beyond their normal retirement dates, and added medical specialists to the list of officers within critical skill categories whose retirement may be deferred until they are 60 years of age.

1966—Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a".

1957—Subsec. (a). Pub. L. 85–155 eliminated provisions which excepted Air Force nurses and women medical specialists.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8927 of this title.

§ 8917. Thirty years or more: regular enlisted members.

A regular enlisted member of the Air Force who has at least 30 years of service computed under section 8925 of this title shall be retired upon his request. (Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8917	10: 947 (less proviso); 10: 947a (less last 11 words).	Mar. 2, 1907, ch. 2515, § 1 (1st 35 words), 34 Stat. 1217. Feb. 14, 1885, ch. 67 (less 43d through 53d words); restated Sept. 30, 1890, ch. 1125 (less 43d through 53d words), 26 Stat. 504.

The word "regular" is inserted to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/2301, 23 Mar. 1953). The words "upon his request" are substituted for the words "upon making application to the President", in 10: 947, and "by application to the President", in 10: 947a. The words "either as a private or non-commissioned officer, or both", in 10: 947a, are omitted as surplusage. The words "shall be retired" are substituted for the words "be placed upon the retired list", in 10: 947, and "be placed on the retired list heretofore created", in 10: 947a. The words "computed under section 8925 of this title" are inserted for clarity. The 21 words before the proviso and the proviso of the Act of February 14, 1885, as restated, are not contained in 10: 947a. They are also omitted from the revised section, since the proviso is executed and the 21 words before the proviso are omitted as covered by formula E of section 8991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8925 of this title.

§ 8918. Thirty years or more: regular commissioned officers.

A regular commissioned officer of the Air Force who has at least 30 years of service computed under section 8926 of this title may be retired upon his request, in the discretion of the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8918	10: 943.	R. S. 1243; Dec. 16, 1930, ch. 14, § 1 (as applicable to R. S. 1243), 46 Stat. 1028.

The word "commissioned" is inserted, since the retirement of warrant officers for length of service is covered by section 1293 of this title. The word "regular" is inserted, since 10: 943 is applicable historically only to officers of a regular component. The words "and placed on the retired list" are omitted as surplusage. The words "computed under section 8926 of this title" are inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8926 of this title.

§ 8919. Thirty years or more: regular commissioned officers; excessive number.

Whenever the Secretary of the Air Force believes that there are too many commissioned officers on the active list of the Regular Air Force, in any grade, who have at least 30 years of service computed under section 8927 (a) of this title, he may convene a board of at least five general officers of the Regular Air Force. The board shall consider all officers on the active list in that grade and with that service, and shall recommend officers by name for retirement, in the number specified by the Secretary. The Secretary may retire an officer so recommended. (Aug. 10, 1956, ch. 1041, 70A Stat. 551.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8919	10: 941a (c).	Aug. 7, 1947, ch. 512, § 514 (c), 61 Stat. 903.

The words "After August 7, 1947" are omitted as executed. The word "commissioned" is inserted for clarity. The words "are too many" are substituted for the words "is an excessive number of". The words "recommended officers by name for retirement, in the number specified by the Secretary" are substituted for the words "recommend for retirement a specified number thereof", to make it clear that the Secretary specifies the number to be recommended by the board, and that the board names the officers. The words "computed under section 8927 (a) of this title" are inserted for clarity. The word "may" is substituted for the words "in his discretion, is authorized to".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8927 of this title.

§ 8920. More than thirty years: professors of the United States Air Force Academy.

The Secretary of the Air Force may retire any permanent professor of the United States Air Force Academy who has more than 30 years of service as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 551.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8920	10: 1079a (c) (proviso).	Aug. 7, 1947, ch. 512, § 520 (c) (proviso), 61 Stat. 912.

The word "retire" is substituted for the words "direct the retirement of". The words "as a commissioned officer" are substituted for the word "commissioned".

§ 8921. Thirty years or five years in grade: promotion-list colonels.

(a) Unless retired or separated at an earlier date, each promotion-list officer in the regular grade of colonel shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade or on the thirtieth day after he completes 30 years of service computed under section 8927(a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of brigadier general, he shall be retained on the active list while his name is so carried.

(b) The Secretary of the Air Force may defer the retirement under this section of any promotion-list officer in the regular grade of colonel who is a medical, dental, veterinary, or medical service officer, or a chaplain, but not later than the date on which he becomes 60 years of age. The number of deferments in effect under this subsection for any one promotion list at any one time may not be more than 10 percent of the number of colonels authorized for that list. (Aug. 10, 1956, ch. 1041, 70A Stat. 551; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8921 (a)	10: 941a (d) (clause (3), less last proviso).	Aug. 7, 1947, ch. 512, § 514 (d) (clause (3), less 81st through 105th words of last proviso), 61 Stat. 902.
8921 (b)	10: 941a (d) (last proviso of clause (3), less 81st through 105th words).	

In subsection (a), the words "After June 30, 1953" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter", "under other provisions of law", "eliminated from the active list and", "unless he is appointed in the permanent grade of brigadier general, or any higher permanent grade, in the Regular Army before the later of such two dates", and "and if appointed in the permanent grade of brigadier general their elimination from the active list shall be governed by the provisions of paragraph (2) of this subsection" are omitted as surplusage. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after". The words "computed under section 8927 (a) of this title" are inserted for clarity. The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title.

In subsection (b), the words "may defer the retirement under this section" are substituted for the words "may, in the discretion * * * be retained on the active list after the date specified for their retirement". The words "but not later than the date on which he becomes" are substituted for the words "but in no event shall any such officer be so retained after reaching". The last sentence is substituted for the words "not more than 10 per centum of the number authorized in that grade for any such promotion list, respectively".

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8211, 8927 of this title.

§ 8922. Thirty years or five years in grade: regular brigadier generals.

(a) Unless retired or separated at an earlier date, each officer in the regular grade of brigadier general, other than a professor of the United States Air Force Academy, shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 30 years of service computed under section 8927(a) of this title, whichever is later. However, if his name is carried on the list of officers recommended for appointment to the regular grade of major general, he shall be retained on the active list while his name is so carried.

(b) The Secretary of the Air Force may defer the retirement under this section of any brigadier general who is serving in a higher temporary grade, but not later than the date on which he becomes 60 years of age. Not more than five deferments under this subsection may be in effect at any one time. (Aug.

10, 1956, ch. 1041, 70A Stat. 551; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8922 (a)	10: 941a (d) (clause (2), less 2d proviso).	Aug. 7, 1947, ch. 512, § 514 (d) (clause (2)), 61 Stat. 904.
8922 (b)	10: 941a (d) (2d proviso of clause (2)).	

In subsection (a), the words "After that date which is six months after August 7, 1947" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter appointed", "under other provisions of law", "eliminated from the active list and", "unless he is appointed in the permanent grade of major general in the Regular Army before the later of such two dates", and "and if appointed in the permanent grade of major general their elimination from the active list shall be governed by the provisions of paragraph (1) of this subsection" are omitted as surplusage. 10: 941a (d) (last proviso) is omitted as inapplicable to the Air Force. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after". The words "computed under section 8927 (a) of this title" are inserted for clarity. The words "except as provided by section 47a of title 5" are inserted since that act controls the effective date of retirement under this title.

In subsection (b), the words "may defer the retirement under this section" are substituted for the words "may, in the discretion of * * * be retained on the active list". The words "but not later than the date on which he becomes" are substituted for the words "until * * * is reached" to conform to an opinion of the Judge Advocate General of the Army which holds that a brigadier general may not be retained beyond age 60 (see JAGA 1953/3331, 21 Apr. 1953). The word "five" is substituted for the word "ten", since the figure "10" was based on the authorized strength of the Regular Army in general officers before the creation of the Air Force. This reflects the allocation of spaces covered by this subsection, under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). (See revision note for section 8211 of this title.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted "8301" for "47a".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8927 of this title.

§ 8923. Thirty-five years or five years in grade: regular major generals.

Unless retired or separated at an earlier date, each officer in the regular grade of major general shall be retired, except as provided by section 8301 of title 5, on the fifth anniversary of the date of his appointment in that regular grade, or on the thirtieth day after he completes 35 years of service computed under section 8927(a) of this title, whichever is later. However, the Secretary of the Air Force may defer the retirement under this section of—

(1) any such major general, but not later than the date on which he becomes 60 years of age; and

(2) any such major general who is serving in a temporary grade above major general, or who is serving in a position that carries a grade above major general, but not later than the date on which he becomes 64 years of age; and not more than five deferments under this clause may be in effect at any one time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8923	10: 941a (d) (1st sentence and clause (1)).	Aug. 7, 1947, ch. 512, § 514 (d) (1st sentence and clause (1)), 61 Stat. 903, 904.

10: 941a (d) (1st sentence) is omitted as surplusage, since it is merely a statement of the general coverage of 10: 941a (d) and (e). The words "After that date which is six months after August 7, 1947" are omitted as executed. The words "unless provided otherwise by some provision of law", "heretofore or hereafter appointed", "under other provisions of law", "eliminated from the active list and", and "unless he is permanently appointed in a grade above that of major general before the later of such two dates" are omitted as surplusage. The words "the thirtieth day after" are substituted for the words "that date which is thirty days after the date upon which". The words "but not later than the date on which he becomes 60 years of age" are substituted for the words "until age sixty is reached", to make it clear that the Secretary can retire the officer between the time he is deferred and the time he reaches that age. For the same reason, the words "but not later than the date on which he becomes 64 years of age" are substituted for the words "until age sixty-four is reached". The words "computed under section 8927 (a) of this title" are inserted for clarity. The words "may defer the retirement under this section" are substituted for the words "may, in the discretion of * * * be retained on the active list". The words "except as provided by section 47a of title 5" are inserted, since that section controls the effective date of retirement under this title. The word "five" is substituted for the word "ten" to reflect the allocation of spaces covered by this section, between the Army and the Air Force under section 208 (e) of the National Security Act of 1947 (5 U. S. C. 626c (e)). (See revision note for section 8922 of this title.)

AMENDMENTS

1966—Pub. L. 89–718 substituted "8301" for "47a".

CROSS REFERENCES

Retirement of major generals, see also sections 8884—8886 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8884, 8885, 8886, 8927 of this title.

§ 8924. Forty years or more: Air Force officers.

(a) Except as provided in section 8786 of this title, a commissioned officer of the Air Force who has at least 40 years of service computed under section 8926 of this title shall be retired upon his request.

(b) Any warrant officer of the Air Force who has at least 40 years of service computed under section 8926 (a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8924 (a)	10: 942 (as applicable to commissioned officers).	June 30, 1882, ch. 254 (last 21 words of 3d proviso under "Pay Department"), 22 Stat. 118.
8924 (b)	10: 942 (less applicability to commissioned officers).	

In subsection (a), the words "Except as provided in section 8786 of this title" are inserted, since, under that revised section, when board proceedings are pending against a commissioned officer, his right to retire under this revised section, which is otherwise absolute, is discretionary with the Secretary under that revised section.

In subsections (a) and (b), the words "or volunteer service, or both" are omitted as obsolete in accordance with an opinion of the Attorney General, 22 Ops. Atty. Gen. 199, Aug. 30, 1898, holding that such words refer to volunteer service in the Civil War. The words "upon

his request" are substituted for the words "if he make application therefor to the President".

In subsection (b), the applicability of 10: 942 to warrant officers is based on an opinion of the Judge Advocate General of the Army (JAGA 1950/6951, 4 Jan. 1951), which holds that 10: 594 (less provisos) makes 10: 942 applicable to warrant officers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8926 of this title.

§ 8925. Computation of years of service: voluntary retirement; regular enlisted members.

(a) For the purpose of determining whether a regular enlisted member of the Air Force may be retired under section 8914 or 8917 of this title, and of computing his retired pay under section 8991 of this title, his years of service are computed by adding all active service in the armed forces and service computed under section 8683 of this title.

(b) Time required to be made up under section 972 of this title may not be counted in computing years of service under subsection (a). (Aug. 10, 1956, ch. 1041, 70A Stat. 552; Sept. 2, 1958, Pub. L. 85–861, § 1 (195), 72 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8925 (a)	10: 947 (proviso); 10: 958.	Mar. 2, 1907, ch. 2515, § 1 (proviso), 34 Stat. 1218.
8925 (b)	No source.	Aug. 10, 1946, ch. 952, § 6 (b), 60 Stat. 996.

In subsection (a), the words "active service" are substituted for the word "service", in 10: 947, and "active Federal service performed", in 10: 958, for uniformity. The words "service computed under section 8683 of this title" are inserted, since a person entitled to count service under that revised section might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

Subsection (b) is inserted because of section 8638 of this title and in accordance with long standing interpretation of the effect of 10: 629 upon the computation of years of service for retirement.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 substituted "section 972 of this title" for "section 8638 of this title".

CROSS REFERENCES

Active service as an officer to be counted as enlisted service for all purposes, see section 8684 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8914, 8917 of this title.

§ 8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.

(a) For the purpose of determining whether an officer of the Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force;

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement;

(3) all service computed under section 8683 of this title; and

(4) if an officer of the Regular Air Force, all active service performed as an officer of the Philippine Constabulary.

(b) For the purpose of determining whether a medical officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a dental officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) For the purpose of determining whether an Air Force nurse or medical specialist may be retired under section 8911 of this title, all service computed under section 8683 of this title shall be treated as if it was service as a commissioned officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 552; Aug. 25, 1959, Pub. L. 86–197, § 1(8), 73 Stat. 426.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8926 (a)	10: 951 (less applicability to 10: 166g (a)); 10: 951a; 10: 951b (less applicability to 10: 166g (a)); Uncodified June 18, 1878, ch. 263, § 7 (less applicability to 10: 166g (a)), 20 Stat. 150.	June 3, 1916, ch. 134, § 127a (6th par., less 1st 13 words, and less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended); added June 4, 1920, ch. 227, subch. I, § 51 (6th par., less 1st 13 words, and less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended); 41 Stat. 785.
8926 (b)	10: 953a (1st sentence).	May 23, 1928, ch. 716, 45 Stat. 720.
8926 (c)	10: 953a (less 1st sentence).	June 15, 1935, ch. 257 (less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended), 49 Stat. 377.
		June 18, 1878, ch. 263, § 7 (less applicability to § 108 (a) of the Act of Apr. 16, 1949, ch. 38, as amended), 20 Stat. 150.
		May 29, 1928, ch. 902, 45 Stat. 996; Jan. 29, 1938, ch. 12, § 2, 52 Stat. 8.

Subsection (a) consolidates the various service computation provisions applicable to voluntary retirement of commissioned officers. Clause (1) is substituted for 10: 951. Clause (2) is substituted for 10: 951b. The words "pay period and", in 10: 951a, are omitted as superseded by section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U. S. C. 233). The words "longevity pay and", in section 7 of the act of June 18, 1878, ch. 263, 20 Stat. 150, are omitted for the same reason. The last sentence of section 7 of that act is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the act of June 29, 1948, ch. 708, 62 Stat. 1084. Clause (3) is inserted, since a person entitled to count service under section 8683 of this title might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

In subsection (b), the words "as a member of the Medical Reserve Corps", in 10: 953a, are omitted as covered by subsection (a) (1). The words "are computed by adding to his service under subsection (a)" are substituted for the words "shall be credited to the same extent as service under a Regular Army commission".

Subsection (c) is substituted for 10: 953a (less 1st sentence).

AMENDMENTS

1959—Subsec. (d). Pub. L. 86–197 added subsec. (d).

CROSS REFERENCES

Service as cadet at Military or Air Force Academy not counted as service in determining length of service, see section 971 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8911, 8924, 8928 of this title.

§ 8927. Computation of years of service: mandatory retirement; regular commissioned officers.

(a) For the purpose of determining whether a regular commissioned officer may be retired under section 8913, 8915, 8916, 8919, 8921, 8922, or 8923 of this title, his years of service are as follows:

(1) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before January 1, 1948, under the Act of December 28, 1945, ch. 601 (59 Stat. 663), the sum of—

(A) the years of service credited to him under that Act at the time of his appointment;

(B) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment; and

(C) the years of service credited to him under section 27 of the Act enacting this amended section.

(2) For an officer appointed in the Regular Air Force under section 308 of the Women's Armed Services Integration Act of 1948 (62 Stat. 373), the sum of—

(A) the years of service credited to her under that section at the time of her appointment;

(B) her years of active commissioned service in the Regular Air Force after that appointment; and

(C) the years of service credited to her under section 27 of the Act enacting this amended section.

(3) For a reserve judge advocate appointed in the Regular Army in the grade of captain in the Judge Advocate General's Department under section 24e of the National Defense Act, as amended (53 Stat. 558)—

(A) his years of active commissioned service in the Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment; or

(B) the number of days, months, and years by which his age at the time of that appointment exceeded 25 years;

whichever is greater, plus his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment, and the years of service credited to him under section 27 of the Act enacting this amended section.

(4) For an Air Force nurse or medical specialist, the period of service credited under the Army-Navy Nurses Act of 1947, as amended, or credited under section 8287(b) of this title at the time of appointment, plus the years of active commissioned service in the Regular Air Force after appointment in the Regular Air Force.

(5) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force before December 31, 1947, other than an officer covered by clause (1), (3), or (4), the sum of—

(A) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

(B) his years of active commissioned service in the Army and the Air Force after becoming 21 years of age and after December 7, 1941, under any earlier appointment; and

(C) the years of service credited to him under section 27 of the Act enacting this amended section.

(6) For an officer of the Regular Air Force appointed in the Regular Army or the Regular Air Force after December 31, 1947, under section 506 of the Officer Personnel Act of 1947 (61 Stat. 890), the sum of—

(A) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

(B) his years of active commissioned service in the armed forces after becoming 21 years of age and after December 6, 1941, under any earlier appointment; and

(C) the years of service credited to him under section 27 of the Act enacting this amended section.

(7) For an officer of the Regular Air Force who was appointed in the Regular Army or the Regular Air Force after December 31, 1947, other than an officer covered by clause (2), (4), (6), or (8), the sum of—

(A) his years of active commissioned service in the Regular Army and the Regular Air Force after that appointment;

(B) his years of active commissioned service in the Army and the Air Force after becoming 21 years of age and after December 31, 1947, under any earlier appointment; and

(C) the years of service credited to him under section 27 of the Act enacting this amended section.

(8) For an officer of the Regular Air Force who was appointed in the Regular Air Force after July 19, 1956, other than an officer who is covered by clause (4) or (6) or who is designated as a medical or dental officer, the sum of—

(A) his years of active commissioned service in the Regular Air Force after that appointment;

(B) his years of active commissioned service in the armed forces after becoming 21 years of age and before that appointment; and

(C) the years of service credited to him under section 8287 (a) (3), (4), or (5) of this title.

(b) For the purpose of computing the retired pay of a commissioned officer of the Regular Air Force retired under section 8913, 8915, 8916, 8919, 8921, 8922, or 8923 of this title, his years of service are the greater of—

(1) the years of service that may be credited to him under section 1405 of this title; or

(2) his years of service computed under clause (1), (2), (3), (4), (5), (6), (7), or (8) of subsection (a), whichever is applicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 553; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (20), 71 Stat. 389; May 20, 1958, Pub. L. 85–422, § 11 (a) (8), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1 (196), 72 Stat. 1540; Sept. 30, 1966, Pub. L. 89–609, § 1133), 80 Stat. 854.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8927 (a)	5: 627b (h) (last proviso, less applicability to 10: 941a (a) (3)); 10: 941a (b) (less applicability to 10: 941a (a) (3)).	Aug. 7, 1947, ch. 512, § 514 (b) (less applicability to § 514 (a) (3)), (e) (59th through 93d words of clause (1), less applicability to § 514 (a) (3)), 61 Stat. 903.
8927 (b)	10: 941a (e) (59th through 93d words of clause (1), less applicability to 10: 941a (a) (3)).	June 12, 1948, ch. 449, § 303 (h) (last proviso, less applicability to § 514 (a) (3) of Act of Aug. 7, 1947, ch. 512), 62 Stat. 372.

In subsection (a) (1), the words "before January 1, 1948" are substituted for the words "between December 28, 1945, and December 31, 1948".

In subsection (a) (1)—(4), the words "plus his [her] years" are substituted for the words "increased by the period of his [her]".

In subsection (a) (3), clause (A) is substituted for the words "or the total period of active Federal service performed by him after attaining the age of twenty-one years as a commissioned officer in the Army of the United States or any component thereof from December 7, 1941, to the date of such appointment".

In subsection (a) (4), the words "other than an officer covered by clause (1) or (3)" are substituted for the words "any other". 10: 941a (b) (clause (2)) is omitted as inapplicable to the Air Force.

In subsection (a) (5), the words "other than an officer covered by clause (2)" are inserted for clarity.

Subsection (b) is substituted for 10: 941a (e) (59th through 93d words of clause (1), less applicability to 10: 941a (a) (3)).

REFERENCES IN TEXT

The Army-Navy Nurses Act of 1947, as amended, referred to in subsec. (a) (4), means act Apr. 16, 1947, ch. 38, 61 Stat. 41, which was classified to former sections 166—166b, 166c, 166d, 166e—166*l* and 374—377 of this title, and sections 43—43b, 43c, 43d, 43g—431, 348b, 348*o*, 953b, and 858—858c of former Title 34, and which was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

AMENDMENTS

1966—Subsec. (a) (4). Pub. L. 89–609 substituted "the years" for "her years" and struck out "to her" following "credited" in two instances and "her" preceding "appointment" in two instances.

1958—Subsec. (a). Pub. L. 85–861, § 1 (196) (A), permitted officers covered by clauses (1)—(3), (5) and (6) to credit the years of service credited to them under section 27 of the act enacting this amended section [Pub. L. 85–861], and added clauses (7) and (8).

Subsec. (b) (1). Pub. L. 85–422 substituted "that may be credited to him under section 1405 of this title" for "credited to him in computing his basic pay".

Subsec. (b) (2). Pub. L. 85–861, § 1 (196) (B), inserted references to clauses (6), (7) and (8) of subsection (a).

1957—Subsec. (a) (3). Pub. L. 85–155, § 301 (20) (A), added subsec. (a) (3). Former subsec. (a) (3) redesignated (a) (4).

Subsec. (a) (4). Pub. L. 85–155, § 301 (20) (D), redesignated former subsec. (a) (3) as (a) (4). Former subsec. (a) (4) redesignated (a) (5).

Subsec. (a) (5). Pub. L. 85–155, § 301(20) (D), redesignated former subsec. (a) (4) as (a) (5), and Pub. L. 85–155, § 301(20) (B), inserted a reference to clause (4). Former subsec. (a) (5) redesignated (a) (6).

Subsec. (a) (6). Pub. L. 85–155, § 301(20) (D), redesignated former subsec. (a) (5) as (a) (6), and Pub. L. 85–155, § 301 (20) (C), inserted a reference to clause (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–422 effective on June 1, 1958.

INCREASE OF SERVICE CREDIT FOR CERTAIN OFFICERS OF REGULAR AIR FORCE

Increase of service credited to an officer for purposes of subsecs. (a) (1)—(3), (5)—(7) and (b) (2) of this section, see section 27 of Pub. L. 85–861, set out as a note under section 8287 of this title.

RETIREMENT OF CERTAIN AIR FORCE NURSES AND MEDICAL SPECIALISTS

Certain Air Force nurses and medical specialists prohibited from retiring under this chapter until two years after promoted, see section 303 of Pub. L. 85–155, set out as a note under section 8888 of this title.

CROSS REFERENCES

Service as cadet at Military or Air Force Academy not counted as service in determining length of service, see section 971 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1405, 8303, 8913, 8915, 8916, 8919, 8921, 8922, 8923 of this title.

§ 8928. Repealed. Pub. L. 85–155, title IV, § 401 (1), Aug. 21, 1957, 71 Stat. 390.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 554, related to computation of years of service of Air Force Nurses or women medical specialists for the purposes of retirement under former section 8912 of this title, or retirement pay under section 8991 of this title.

§ 8929. Computation of retired pay: law applicable.

A member of the Air Force retired under this chapter is entitled to retired pay computed under chapter 871 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 554.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8929	No source.	No source.

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

Chapter 869.—RETIRED GRADE

Sec.
8961. General rule.
8962. Higher grade for service in special positions: regular commissioned officers.
8963. Higher grade for service during certain periods: regular and reserve commissioned officers.
8964. Higher grade after 30 years of service: Air Force warrant officers; regular enlisted members.
8965. Restoration to former grade: Regular Air Force warrant officers and enlisted members.
8966. Retired lists.

CROSS REFERENCES

Retired grade, general military law provisions, see section 1371 et seq. of this title.

§ 8961. General rule.

Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement. (Aug. 10, 1956, ch. 1041, 70A Stat. 554.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8961	10: 941a (a) (3) (31st through 42d words; and proviso, as applicable to retired grade); 10: 941a (e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade); 10: 947a (last 11 words); 10: 1025.	Aug. 7, 1947, ch. 512, §§ 514 (a) (3) (31st through 42d words; and proviso, as applicable to retired grade), 514 (e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade), 61 Stat. 902, 905. Feb. 14, 1885, ch. 67 (43d through 53d words); restated Sept. 30, 1890, ch. 1125 (43d through 53d words), 26 Stat. 504. R. S. 1254.

The applicability of the rule stated in the revised section to situations not expressly covered by the laws named in the source credits above is necessarily implied from laws providing for retirement in higher grade in those situations.

§ 8962. Higher grade for service in special positions: regular commissioned officers.

(a) Upon retirement, a commissioned officer of the Regular Air Force who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Air Force, (3) as a senior member of the Military Staff Committee of the United Nations, (4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 8066 of this title, or (5) as Surgeon General of the Air Force in the grade of lieutenant general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him at any time on the active list.

(b) Upon retirement, any permanent professor of the United States Air Force Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general. (Aug. 10, 1956, ch. 1041, 70A Stat. 554; Sept. 2, 1958, Pub. L. 85–861, § 1 (197), 72 Stat. 1541; Oct. 22, 1965, Pub. L. 89–288, § 6, 79 Stat. 1050.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8962 (a)	10: 506b (d) (less 1st and last provisos).	Aug. 7, 1947, ch. 512, §§ 504 (d) (less 1st and last provisos), 520 (b) (less proviso), 61 Stat. 888, 912.
8962 (b)	5: 627b (h) (1st 42 words of 3d proviso).	
8962 (c)	10: 1079a (b) (less proviso).	June 12, 1948, ch. 449, § 303 (h) (1st 42 words of 3d proviso), 62 Stat. 372.

In subsection (a), the words "who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Air Force, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 8066 of this title" are substituted for the words "while serving in accordance with the provisions of subsection (b) or (c) of this section".

In subsection (b), the words "in that grade" are substituted for the words "in such higher temporary grade". The words "under section 8071 of this title" are inserted for clarity.

In subsection (c), the words "Upon retirement" are substituted for the words "When * * * is retired". The word "allowances" is omitted, since retired officers are not entitled to allowances. The words "grade is below brigadier general" are inserted, since any permanent professor who has the grade of brigadier general retires in that grade under section 9335 of this title.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–288 added the Surgeon General of the Air Force to the list of commissioned officers who may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him at any time on the active list.

1958—Subsec. (b). Pub. L. 85–861 redesignated former subsec. (c) as (b), and repealed former subsec. (b) which related to retirement grade of a woman Air Force officer who served at least two and one-half years on active duty in the temporary grade of colonel in the Air Force under section 8071 of this title.

RETIRED GRADE FOR CERTAIN GENERAL OFFICERS

Extension of privilege granted by subsec. (a) of this section, to officers, heretofore or hereafter retired, who served in the grade of general or lieutenant general after Dec. 7, 1941, and before July 1, 1946, see section 38 of act Aug. 10, 1956, set out as a note under section 3962 of this title.

CROSS REFERENCES

Chief of Staff, see section 8034 of this title.

Chief of Staff to President, see section 8531 of this title.

Senior member of Military Staff Committee of United Nations, see section 711 of this title.

§ 8963. Higher grade for service during certain periods: regular and reserve commissioned officers.

(a) A regular commissioned officer who is retired, or a reserve commissioned officer who is retired or to whom retired pay is granted, is entitled to a retired grade equal to the highest temporary grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force, for not less than six months.

(b) Upon retirement, an Air Force nurse or medical specialist who was (1) a member of the Army Nurse Corps established by the Act of July 9, 1918, ch. 143 (40 Stat. 879), (2) a dietitian or physical therapist appointed in the Army under the Act of December 22, 1942, ch. 805 (56 Stat. 1072), or (3) an officer appointed in the Army under the Act of June 22, 1944, ch. 272 (58 Stat. 324), is entitled to a retired grade equal to the highest grade or relative rank in which she served on active duty satisfactorily, as determined by the Secretary, after September 8, 1940, and before July 1, 1946. (Aug. 10, 1956, ch. 1041, 70A Stat. 555; Sept. 2, 1958, Pub. L. 85–861, § 1 (156), (198), 72 Stat. 1513, 1541.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8963 (a)	10: 1002 (less 34 words before proviso, and less proviso).	June 29, 1948, ch. 708, §§ 203 (a) (less 34 words before proviso, and less proviso), 203 (d) (less last 40 words), 62 Stat. 1085.
8963 (b)	10: 1003 (less last 40 words).	

In subsection (a), the words "is entitled to a retired grade equal to" are substituted for the words "shall be advanced on the applicable officers' retired list to". The words "after * * * and before" are substituted for the words "during the period * * * to". The words "under any provision of law" are omitted as surplusage.

In subsections (a) and (b), the provisions of 10: 1002 and 1003, applicable to members retired before the enactment of this title, are omitted as executed. Members retired after enactment of this title are entitled to the higher retired grade upon retirement, and are not advanced on the retired list to that grade.

In subsection (b), the provisions of 10: 1003 are limited to nurses and women medical specialists of the Regular

Air Force, since, under section 113 of the Army-Navy Nurses Act of 1947 (10: 166*l*), no further appointments may be made under the acts of July 9, 1918, ch. 143, 40 Stat. 879, December 22, 1942, ch. 805, 56 Stat. 1073, and June 22, 1944, ch. 272, 58 Stat. 324, and appointments previously made thereunder ceased to exist on October 17, 1947, except as to certain retirement and other rights which are now executed. The words "is entitled to a retired grade equal to the highest grade or relative rank" are substituted for the words "shall be advanced on the retired list to a grade with relative rank equal to the highest grade * * * or to the highest relative or commissioned rank".

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861, § 1 (198), eliminated words "in the Army" following "highest temporary grade", and ", after September 8, 1940, and before July 1, 1946" following "six months".

Subsec. (b). Pub. L. 85–861, § 1 (156), eliminated the word "woman" which preceded "medical specialist", and "female" which preceded "dietitian" and "officer appointed in the Army".

§ 8964. Higher grade after 30 years of service: Air Force warrant officers; regular enlisted members.

Each warrant officer of the Air Force, and each enlisted member of the Regular Air Force, who is retired before or after this title is enacted is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the grade that is equal to the highest temporary grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 555; Sept. 2, 1958, Pub. L. 85–861, § 1 (198A), 72 Stat. 1541.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8964	10: 594 (1st proviso, less last 39 words; and last proviso); 10: 1004 (less 30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (1st proviso, less last 39 words; and last proviso); restated June 29, 1948, ch. 708, § 203 (c) (1st proviso, less last 39 words; and last proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19 (f), 68 Stat. 167. June 29, 1948, ch. 708, § 203 (e) (less 30 words before proviso), 62 Stat. 1086.

The words "when his active service plus his service on the retired list totals 30 years" are substituted for the words "upon the completion of thirty years' [years of] service, to include the sum of his active service and his service on the retired list", in 10: 594 and 1004. The words "under any provision of law", in 10: 594 and 1004; "officer, flight officer, or warrant officer", in 10: 594; and "commissioned, warrant, or enlisted", in 10: 1004; are omitted as surplusage. 10: 594 (last proviso) and 1004 (proviso) are omitted as superseded by section 1372 of this title.

AMENDMENTS

1958—Pub. L. 85–861 eliminated words, "after September 8, 1940 and before July 1, 1946" which followed "Secretary of the Air Force".

CROSS REFERENCES

Recomputation of retired pay to reflect advancement on retired list, see section 8992 of this title.

Restoration to former grade, see section 8965 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8965, 8992 of this title.

§ 8965. Restoration to former grade: Regular Air Force warrant officers and enlisted members.

Each retired warrant officer or enlisted member of the Regular Air Force who has been advanced on the retired list to a higher commissioned grade under section 8964 of this title, and who applies to the Secretary of the Air Force within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant-officer or enlisted status, as the case may be. (Aug. 10, 1956, ch. 1041, 70A Stat. 555.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8965	10: 1006.	June 29, 1948, ch. 708, § 204, 62 Stat. 1086.

The words "hereafter", "rank or", and "shall thereafter be deemed to be enlisted or warrant officer personnel, as appropriate, for all purposes" are omitted as surplusage. The words "three months from June 29, 1948" and "whichever is later" are omitted as executed.

§ 8966. Retired lists.

(a) The Secretary of the Air Force shall maintain a retired list containing the name of each retired commissioned officer of the Regular Air Force.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Air Force, other than of the Regular Air Force; and

(2) each retired warrant officer or enlisted member of the Regular Air Force who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Air Force.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 556; Sept. 2, 1958, Pub. L. 85–861, § 1 (199), 72 Stat. 1541.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8966 (a)	10: 1001.	June 29, 1948, ch. 708, §§ 201, 301 (a), 62 Stat. 1084, 1087.
8966 (b)	10: 1036.	
8966 (c)	No source.	
8966 (d)	No source.	

In subsections (a), (b), and (d), the word "maintain" is substituted for the word "establish", and in subsection (c) the word "maintain" is substituted for the word "established", since the lists have been established and are published annually.

In subsection (a), the words "Effective upon June 29, 1948" are omitted as executed. 10: 1001 (last 12 words of 1st sentence, and last sentence) is omitted as no longer required, since, upon enactment of this title, laws referring to the limited or unlimited retired list will be expressly repealed.

In subsection (b), the word "shall" is substituted for the word "may", since 10: 1036 further requires that such a list be published annually in the Register. The requirement as to publication necessarily implies that the list must be maintained.

Subsection (b) (1) is substituted for the words "all commissioned officers and former commissioned officers * * * or the Air Force of the United States, as the case may be * * * or the Regular Air Force, heretofore or hereafter granted retirement pay under sections 456, 456a, and 1036a of this title, or any law hereafter enacted to provide retirement pay for commissioned officers * * * or the Regular Air Force".

In subsection (b) (2), the words "who is advanced to a commissioned grade" are substituted for the words "heretofore or hereafter retired under any provision of law who, by reason of service in temporary commisioned grades * * * or the Air Force of the United States, or in any of the respective components thereof, are entitled to be retired with commissioned rank or grade".

Subsections (c) and (d) are inserted, since sections 8964 and 8965 of this title refer to service on the retired list as a warrant officer or enlisted member.

AMENDMENTS

1958—Pub. L. 85–861 eliminated provisions in subsecs. (a) and (b) which required annual publication in the official Air Force Register of the retired list.

Chapter 871.—COMPUTATION OF RETIRED PAY

Sec.
8991. Computation of retired pay.
8992. Recomputation of retired pay to reflect advancement on retired list.

CROSS REFERENCES

Computation of retired pay, general military law provisions, see section 1401 et seq. of this title.

§ 8991. Computation of retired pay.

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
A	8883 8884 8885 8886 8913 8915 8916 8919 8921 8922 8923	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 8888 or 8927(b), whichever is applicable.[4]	Amount necessary to increase product of colums 1 and 2 to 50% of pay upon which computation is based.	Excess over 75% of pay upon which computation is based.
B	8911 8918 8920 8924	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 1405 of this title.[4]		Excess over 75% of pay upon which computation is based.
C	8914	Monthly basic pay [3] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 8925.[4]	10% of product of columns 1 and 2 for extraordinary heroism in line of duty.[5]	Excess over 75% of pay upon which computation is based.
D	8917	Monthly basic pay [3] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 8925.[4]		Excess over 75% of pay upon which computation is based.

[1] For the purposes of this section, determine member's retired grade as if section 8962(b) did not apply and, for an officer who has served as Chief of Staff, compute at the highest rates of basic pay applicable to him while he served in that office.
[2] Compute at rates applicable on date of retirement.
[3] Compute at rates applicable on date of retirement, or if the member has served as chief master sergeant of the Air Force, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater.
[4] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.
[5] The Secretary of the Air Force's determination as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; Aug. 21, 1957, Pub. L. 85–155, title III, § 301 (22), 71 Stat. 389; May 20, 1958, Pub. L. 85–422, §§ 6 (6), (8), 11 (a) (9), 72 Stat. 129, 131; Sept. 2, 1958, Pub. L. 85–861, § 1 (199A), 72 Stat. 1541; Sept. 7, 1962, Pub. L. 87–651, title I, § 127, 76 Stat. 514; Oct. 2, 1963, Pub. L. 88–132, § 5 (h) (2), 77 Stat. 214; Dec. 16, 1967, Pub. L. 90–207, § 3 (5), 81 Stat. 654.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8991 introductory paragraph.	10: 941a (a) (3) (proviso, less applicability to retired grade); 10: 941a (e) (1st proviso of clause (1), less applicability to retired grade).	R. S. 1274. Mar. 2, 1907, ch. 2515, § 1 (less 1st 35 words, and less proviso), 34 Stat. 1217. July 31, 1935, ch. 422, § 5 (less 1st 101 words, and less 3d proviso); restated June 13, 1940, ch. 344, § 3 (less 1st 45 words, and less 2d proviso), 54 Stat. 380; Aug. 7, 1947, ch. 512, §§ 514 (g), 521 (a), 61 Stat. 906, 912; June 29, 1948, ch. 708, § 202 (less 1st 105 words), 62 Stat. 1084. Oct. 6, 1945, ch. 393, § 4 (less 1st sentence); restated Aug. 10, 1946, ch. 952, § 6 (a) (less 1st sentence), 60 Stat. 996.
8991 (A)	10: 166g (a) (less 1st 49 words; less 1st proviso; and less 1st 84 words of last proviso).	
8991 (B)	10: 941a (a) (3) less 31st through 42d words, and less proviso); 10: 941a (e) (clause (1), less 1st 25, and 59th through 113th, words; and less 1st proviso).	
8991 (C)	10: 971; 10: 971b (less 1st 100 words, and less 1st and 3d proviso).	

HISTORICAL AND REVISION NOTES—Continued

Revised Section	Source (U. S. Code)	Source (Statutes at Large)
8991 (D)	10: 948 less (1st sentence, and less 1st and last provisos of last sentence)	Aug. 10, 1946, ch. 952, § 6 (c), 60 Stat. 996.
8991 (E)	10: 980.	Apr. 16, 1947, ch. 38, § 108 (a) (less 1st 49 words, and less 1st 84 words of last proviso), 61 Stat. 44.
8991 footnote 1.	10: 506b (d) (1st proviso); 10: 1079a (b) (proviso).	Aug. 7, 1947, ch. 512, §§ 504 (d) (1st proviso), 514 (a) (3) (less 31st through 42d words; and less proviso, less applicability to retired grade), 514 (e) (clause (1), less 1s t25, and 59th through 93d, words; and less 1st proviso, as applicable to retired grade), 520 (b) (proviso). 61 Stat. 888, 902, 905, 912.
8991 footnote 2.	5: 627b (h) (3d proviso, less 1st 42, and last 13, words); 10: 1002 (34 words before proviso and proviso); 10: 1003 (last 40 words).	June 12, 1948, ch. 449, § 303 (h) (3d proviso, less 1st 42, and last 13, words), 62 Stat. 372. June 29, 1948, ch. 708, §§ 203 (a) (34 words before proviso, and proviso), 203 (d) (last 40 words), 62 Stat. 1085.
8991 footnote 3.	No source.	
8991 footnote 4.	10: 166g (a) (1st proviso); 10: 941a (e) (94th through 113th words of clause (1)); 10: 948 (last proviso of last sentence); 10: 971b (1st proviso); 37: 272 (d) (1st proviso).	
8991 footnote 5.	10: 948 (1st proviso of last sentence).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source

statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula B, the words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "his retired grade" are substituted for the words "permanent grade held at time of retirement" to reflect the right to higher retired grade when qualified under other provisions of law. 10: 941a (e) (last proviso of clause (1)), is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U. S. C. 233), the active duty pay of all members of the Air Force is based upon years of service.

In formula C, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words "basic pay" are substituted for the words "active duty base and longevity pay", and the words "in determining his basic pay" are substituted for the words "for longevity pay purposes", to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "Monthly basic pay of member's retired grade" are substituted for the words "the rank upon which they are retired", in 10: 971, and "rank with which retired", in 10: 971b, to reflect their right to advancement on the retired list, 10: 971 now applies only when the retiring officer has 30 or more years of service which may be credited in computing his retired pay. 10: 971b (2d proviso) is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U. S. C. 233), the pay of all members is based upon cumulative years of service. 10: 971b (4th proviso) is omitted as executed. 10: 971b (last proviso) is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the act of June 29, 1948, ch. 708, 62 Stat. 1084. Sections 8918, 8920, and 8924 are included under this formula, since it achieves the same result as is reached on a basis of 30 years multiplied by 2½ percent, and simplifies the table.

In formulas D and E the words "credited under section 8925" are substituted for the words "active Federal service", since that revised section makes explicit the service covered. The act of August 10, 1946, ch. 952, § 6 (c), 60 Stat. 996, is not contained in 10: 948. It is also omitted from the revised section as executed. 10: 980 now applies only when the retiring enlisted member has at least 30 years of service which may be credited in computing his retired pay. However, as noted above, 10: 980 is the only provision of law applicable to cases in which the retiring member has at least 30 years of service. The act of June 16, 1942, ch. 413, § 19 (63d through 75th words of 2d par.), 56 Stat. 369, repealed so much of the act of March 2, 1907, ch. 2513, 34 Stat. 1217, as provided allowances for enlisted men on the retired list. The repeal of section 19 of the act of June 16, 1942, by section 531 (b) (34) of the Career Compensation Act of 1949, 63 Stat. 839, did not revive that portion of the Act of March 2, 1907, which had been repealed by the Act of June 16, 1942. Accordingly, the act of March 2, 1907, as thus modified by the act of June 16, 1942, is used as the basis for formula E.

Footnote 2 reflects the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. Except in cases covered by formula C, the pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were themselves enacted after the provisions authorizing higher retired grade. The provisos of 10: 1002 and 1005 are omitted as surplusage, since no formula for the computation of retired pay includes inactive service on the retired list as a credit.

The words "at rates applicable on date of retirement and adjust to reflect later changes in permanent rates", in footnote 2; and all of footnote 4; are based on the source statutes incorporated in the formulas to which footnotes 2 and 4 apply.

In footnote 4, the words "and disregard a part of a year that is less than six months" are made applicable to formulas A—E, although this part of the rule is expressed only as to formula B, in 10: 941a (4) (1). The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H. R. 5007, 81st Congress, first session, p. 313, July 6, 1949) indicates that the provisions, upon which formulas A and C—E are based, should be construed to require that a part of a year that is less than six months be disregarded.

Amendments

1967—Pub. L. 90-207 inserted ", or if the member has served as chief master sergeant of the Air Force, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater" following "retirement" in footnote 3 of the table.

1963—Pub. L. 88-132 substituted in column 1 of Formula A in the table "Monthly basic pay[2] of member's retired grade[1]" for "Monthly basic pay to which member would be entitled if he were on active duty in his retired grade[1]" and eliminated from footnote 2 to such table "and adjust to reflect later changes in applicable permanent rates. However, if member's retired grade is determined under section 3963(a) or 3963(b), use pay to which member would be entitled if he were on active duty in his retired grade" following "date of retirement."

1962—Pub. L. 87-651 substituted "section 8962(b)" for "section 8962(c)" in footnote 1.

1958—Formula B. Pub. L. 85-422, § 11 (a) (9), substituted "credited to him under section 1405 of this title" for "credited to him in determining basic pay" in Column 2.

Formula C. Pub. L. 85-422, § 6 (8), substituted "Monthly basic pay to which member was entitled on day before he retired" for "Monthly basic pay to which member was entitled on date when he applied for retirement" in Column 1.

Formula D. Pub. L. 85-422, § 6 (8), substituted "Monthly basic pay to which member was entitled on day before he retired" for "Monthly basic pay of member's retired grade" in Column 1.

Footnote 1. Pub. L. 85-422, § 6 (6), permitted in the case of an officer who has served as Chief of Staff, computation at the highest rates of basic pay applicable to him while he served in that office.

Footnote 2. Pub. L. 85-861 eliminated a reference to section 8962 (b).

1957—Pub. L. 85-155 redesignated formulas "B"—"E" of the table as formulas "A"—"D". Former formula "A", which related to computation of retirement pay for persons retired under former sections 8881, 8882, and 8912 of this title, was repealed by such Pub. L. 85-155.

Effective Date of 1967 Amendment

Amendment by Pub. L. 90-207 effective Oct. 1, 1967, see section 7 of Pub. L. 90-207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Effective Date of 1963 Amendment

Amendment of section by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

Effective Date of 1958 Amendment

Amendment of section by Pub. L. 85-422 effective on June 1, 1958.

Application of 1958 Amendment to Retired Persons

Amendment by Pub. L. 85-422, as inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see note under section 3991 of this title.

Computation of Retired Pay for Certain Enlisted Members Retired Prior to June 1, 1958

Members retired prior to June 1, 1958, authorized to include active service performed to the date of retirement as creditable service in computation of basic pay upon

which retired pay is based, see Pub. L. 87-537, set out as a note under section 3991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1405, 8925 of this title.

§ 8992. Recomputation of retired pay to reflect advancement on retired list.

A member of the Air Force who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay as follows:

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 8925 of this title.[2]		Excess over 75% of pay upon which computation is based.

[1] Compute at rates applicable on date of retirement.
[2] Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

(Aug. 10, 1956, ch. 1041, 70A Stat. 557.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
8992	10: 594 (last 39 words of 1st proviso); 10: 1004 (30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (last 39 words of 1st proviso); restated June 29, 1948, ch. 708, § 203 (c) (last 39 words of 1st proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19 (f), 68 Stat. 167. June 29, 1948, ch. 708, § 203 (e) (30 words before proviso), 62 Stat. 1086.

The words "basic pay * * * as the case may be" are inserted to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U. S. C. 231 et seq.). The words "at the rate prescribed by law for his length of service", in 10: 1004, are omitted as covered by the words "base and longevity pay". The words "base and longevity pay" are retained to cover the cases of members retired before the enactment of the Career Compensation Act of 1949, and advanced on the retired list after the enactment of that act. The words "and disregard a part of a year that is less than six months" are inserted to conform to footnote 4 of section 8991 of this title.

Chapter 873.—CIVILIAN EMPLOYEES

Sec.
9022. Contract surgeons.
9025. Production of supplies and munitions: hours and pay of laborers and mechanics.

AMENDMENTS

1962—Pub. L. 87-651, title I, § 128(2), Sept. 7, 1962, 76 Stat. 514, eliminated item 9023.

1958—Pub. L. 85-861, § 1 (200), Sept. 2, 1958, 72 Stat. 1541, struck out item 9021.

CROSS REFERENCES

Civilian employees, general military law provisions, see section 1580 et seq. of this title.

§ 9021. Repealed. Pub. L. 85-861, § 36B (30), Sept. 2, 1958, 72 Stat. 1571

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 558, related to appointments in the professional and scientific service and is now covered by section 1581 of this title.

§ 9022. Contract surgeons.

(a) In an emergency the Secretary of the Air Force may employ as many contract surgeons as may be necessary.

(b) When a contract surgeon is in charge of an Air Force hospital, he has the same authority as a medical officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 558.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9022 (a)	10: 107.	Feb. 2, 1901, ch. 192, § 18 (4th proviso), 31 Stat. 752.
9022 (b)	10: 108.	Apr. 23, 1904, ch. 1485 (2d proviso under "Miscellaneous"), 33 Stat. 266.

In subsection (a), the words "the Surgeon General of the Army, with the approval of" are omitted, since the functions which, for the Army, are assigned to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force. The word "employ" is substituted for the word "appoint", since the filling of the positions involved is not appointment to an office in the constitutional sense.

§ 9023. Repealed. Pub. L. 87-651, title I, § 128(1), Sept. 7, 1962, 76 Stat. 514.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 558, related to employment of civilians in service club and library services.

§ 9025. Production of supplies and munitions: hours and pay of laborers and mechanics.

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Air Force producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Air Force these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40. (Aug. 10, 1956, ch. 1041, 70A Stat. 558.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9025	5: 189a.	July 2, 1940, ch. 508, § 4 (b), 54 Stat. 714.

The words "Notwithstanding the provisions of any other law" are omitted as surplusage. The word "producing" is substituted for the words "who are engaged in the manufacture or production". The last sentence is substituted for 5: 189a (last 34 words).

CROSS REFERENCES

Hours of work of Government employees, see section 6101 et seq. of Title 5, Government Organization and Employees.

PART III.—TRAINING

Chap.		Sec.
901.	Training Generally	9301
903.	United States Air Force Academy	9331
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909.	Civil Air Patrol	9441

AMENDMENTS

1964—Pub. L. 88-647, title III, § 301(27), Oct. 13, 1964, 78 Stat. 1073, eliminated chapter 905.

CROSS REFERENCES

Training, general military law provisions, see section 2001 et seq. of this title.

Chapter 901.—TRAINING GENERALLY

Sec.
9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.
9302. Enlisted members of Air Force: schools.
9303. Aviation cadets and aviation students: schools.
9304. Aviation students: detail of enlisted members of Air Force.
9305. Civilian flying school instructors: instruction at Air Force training commands.
9306. Service schools: leaves of absence for instructors.
9314. United States Air Force Institute of Technology: degrees.

§ 9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.

(a) The Secretary of the Air Force may detail members of the Air Force as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force on the active list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail but not longer than four years. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Air Force may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Air National Guard of the United States, without the approval of the governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia of whose Air National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Air Force under subsection (a) during one enlistment period may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Air Force, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Air Force, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 559.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9301 (a)	5: 626q (1st 78 words).	June 3, 1916, ch. 134 § 127a (13th par.); added June 4, 1920, ch. 227, subch. I, § 51 (13th par.); restated June 8, 1926, ch. 495; May 13, 1941, ch. 113; June 30, 1941, ch. 262 (4th proviso under "Finance Department"); restated June 19, 1948, ch. 501, § 1, 62 Stat. 477.
9301 (b)	5: 626q (less 1st 78 words, and less provisos).	
9301 (c)	5: 626q (1st proviso).	
9301 (d)	5: 626q (words of 2d proviso before semicolon).	
9301 (e)	5: 626q (words of 2d proviso after semicolon).	
9301 (f)	5: 626q (last proviso).	
9301 (g)	5: 626r.	June 19, 1948, ch. 501, §§ 2, 3, 62 Stat. 478.

In subsection (a), the words "members of the Air Force" are substituted for the words "personnel of the Air Force of the United States, without regard to component".

In subsection (b), the words "is detailed under subsection (a)" are substituted for the words "receives such instruction". The words "as long as the detail" are substituted for the words "equal to the duration of his period of instruction". The words "However, if the detail is for" are substituted for the words "except that where the duration of such training is". The words "other than one of the Regular Air Force on the active list" are inserted, since members of the Regular Air Force on the active list are on continuous active duty. The word "additional" is inserted, since the detail under this section is active duty. The words "the officer may be ordered to that additional duty" are substituted for the words "such subsequent active duty may * * * the officer concerned".

In subsection (c), the words "of whose Air National Guard he is a member" are substituted for the words "whichever is concerned".

In subsection (d), the words "as a condition of a detail under subsection (a)" are substituted for the words "prior to his detail pursuant to the provisions of this paragraph". The words "accept the discharge" are substituted for the words "be discharged".

In subsection (e), the words "during an enlistment" are inserted for clarity.

In subsection (f), the last sentence is substituted for 5: 626q (words within parentheses of last proviso).

In subsection (g), the words "under this section" are substituted for 5: 626r (9th through 41st words).

§ 9302. Enlisted members of Air Force: schools.

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Air Force with the approval of the President, enlisted members of the Air Force shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be

vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Air Force officers in this instruction.

(b) Schools for the instruction of enlisted members of the Air Force in the common branches of education, including United States history, shall be maintained at all air bases at which members of the Air Force are stationed. The Secretary may detail members of the Air Force to carry out this subsection. The commander of each air base where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes. (Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9302 (a)	10: 1176.	June 3, 1916, ch. 134, § 27 (last par.), 39 Stat. 186. R. S. 1231.
9302 (b)	10: 1172.	

In subsection (a), the first 12 words are substituted for 10: 1176 (1st 5, and last 18, words). The words "and the Secretary of the Army shall have the power at all times to suspend, increase, or decrease the amount of such instruction offered" are omitted as surplusage.

In subsection (b), the words "garrisons, and permanent camps" are omitted as covered by the word "post". The word "including" is substituted for the words "and especially in". The word "members" is substituted for the words "officers and enlisted men". The words "as may be necessary", "It * * * be the duty", and "or garrison" are omitted as surplusage.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (a) of this section delegated to the Secretary of Defense, see section 1(6) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 9303. Aviation cadets and aviation students: schools.

The Secretary of the Air Force shall establish and maintain—

(1) one or more schools for the training and instruction of aviation cadets; and

(2) courses of instruction for aviation students at one or more established flying schools.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9303	10: 296, 10: 296a.	July 11, 1919, ch. 8 (2d par. under "Air Service"), 41 Stat. 109. June 3, 1941, ch. 165, § 2, 55 Stat. 239.

CROSS REFERENCES

Discharge of aviation cadets at any time, see section 8817 of this title.

Subsistence allowance, see section 402 of Title 37, Pay and Allowances of the Uniformed Services.

§ 9304. Aviation students: detail of enlisted members of Air Force.

The Secretary of the Air Force may detail enlisted Regulars of the Air Force, and enlisted Reserves of the Air Force who are on active duty, for training and instruction as aviation students in their respective grades at schools selected by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9304	10: 298a-1.	June 3, 1941, ch. 167, 55 Stat. 241.

The words "under such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. 10: 298a-1 (1st proviso) is omitted as impliedly repealed by section 10 of the Insurance Act of 1951, ch. 39, 65 Stat. 36. 10: 298a-1 (last proviso) is omitted as surplusage. The words "active duty" are substituted for the words "active Federal service".

CROSS REFERENCES

Discharge of aviation cadets at any time, see section 8817 of this title.

§ 9305. Civilian flying school instructors: instruction at Air Force training commands.

(a) The Secretary of the Air Force may provide for the instruction and training, at Air Force training commands, of civilians selected from the instructional staffs of civilian flying schools that are accredited by the Department of the Air Force for the education and training of members of the Air Force.

(b) The training of civilians under subsection (a) shall be without cost to the United States, except for supplies necessary for training purposes.

(c) A civilian undergoing training under subsection (a) may be treated in a Government hospital if he becomes sick or is injured. However, that treatment shall be without cost to the United States except for services of Government medical personnel and the use of hospital equipment other than medicine or supplies.

(d) No civilian who sustains a personal injury, and no dependent of a civilian who dies of disease or injury, while undergoing training under subsection (a), is entitled to any compensation, pension, or gratuity for that injury or death. (Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9305 (a)	10: 292c-1 (less provisos).	Apr. 3, 1939, ch. 35, § 3, 53 Stat. 556.
9305 (b)	10: 292c-1 (1st proviso).	
9305 (c)	10: 292c-1 (2d proviso).	
9305 (d)	10: 292c-1 (last proviso).	

In subsection (a), the words "under such rules and regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "Air Force training commands" are substituted for the words "the Air Corps Training Center", since those commands now perform the functions formerly performed by the Air Corps Training Center. The words "in his discretion", "experience", and "upon their own applications" are omitted as surplusage. The words "and may provide for the instruction and training" are substituted for the words "is authorized to enroll as students * * * for the pursuit of such courses of instruction as may be prescribed therefor".

In subsection (b), the words "the furnishing of such" are omitted as surplusage. The words "matériel, or equipment" are omitted as covered by the word "supplies", as defined in section 101 (26) of this title.

In subsection (c), the word "Government" is substituted for the words "Medical Department" to conform to the first sentence of the revised subsection.

§ 9306. Service schools: leaves of absence for instructors.

The officer in charge of an Air Force service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to any officer on duty exclusively as an instructor at the school. (Aug. 10, 1956, ch. 1041, 70A Stat. 561.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9306	10: 843.	Mar. 23, 1910, ch. 115 (proviso under "United States Service Schools"), 36 Stat. 244.

The words "The provisions of section 1144 of this title, authorizing leaves of absence to certain officers of the Military Academy * * * are hereby extended to include" are omitted as surplusage.

§ 9314. United States Air Force Institute of Technology: degrees.

When the United States Air Force Institute of Technology is accredited by a nationally recognized accreditation association or authority, the Commander of the Air University may, under such regulations as the Secretary of the Air Force may prescribe, confer appropriate degrees upon persons who meet the requirements for those degrees in the Resident College of that Institute. (Aug. 10, 1956, ch. 1041, 70A Stat. 561.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9314	Uncodified.	Aug. 31, 1954, ch. 1151, 68 Stat. 1006.

Chapter 903.—UNITED STATES AIR FORCE ACADEMY

Sec.
9331. Establishment; Superintendent; faculty.
9332. Departments and professors: titles.
9333. Superintendent; faculty: appointment and detail.
9334. Command and supervision.
9335. Dean of the Faculty.
9336. Permanent professors; registrar.
9337. Chaplain.
9341. Faculty and other officers: leaves of absence.
9342. Cadets: appointment; numbers, territorial distribution.
9343. Cadets: appointment; to bring to full strength.
9344. Selection of persons from Canada and American Republics.
9345. Selection of Filipinos.
9346. Cadets: requirements for admission.
9347. Cadets: nominees: effect of redistricting of States.
9348. Cadets: agreement to serve as officer.
9349. Cadets: organization; service; instruction.
9350. Cadets: clothing and equipment.
9351. Cadets: deficiencies in conduct or studies; effect of failure on successor.
9352. Cadets: hazing.
9353. Cadets: degree and commission on graduation.
9354. Buildings and grounds: buildings for religious worship.
9355. Board of Visitors.

AMENDMENTS

1958—Pub. L. 85-600, § 1 (23), Aug. 6, 1958, 72 Stat. 524, included the registrar in item 9336.

§ 9331. Establishment; Superintendent; faculty.

(a) There is in the Department of the Air Force an Air Force Academy, in this chapter called the "Academy", for the instruction and preparation for military service of selected persons called "Air Force cadets". The organization of the Academy shall be prescribed by the Secretary of the Air Force.

(b) There shall be at the Academy the following:

(1) A Superintendent.

(2) A dean of the Faculty, who is a permanent professor.

(3) A Commandant of Cadets.

(4) 21 permanent professors.

(5) A chaplain.

(6) A registrar.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Aug. 6, 1958, Pub. L. 85-600, § 1 (19), 72 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9331 (a)	10: 1851; 10:1854.	R. S. 1309; Feb. 18, 1896, ch. 22 (less proviso), 29 Stat. 8.
9331 (b)	10: 1061; 10:1087; 10:1089 (1st 20 words).	June 26, 1946, ch. 495, §§ 1, 3 (1st 20 words), 60 Stat. 312. Apr. 1, 1954, ch. 127, §§ 2, 5, 68 Stat. 47, 48.

In subsection (b), reference to the senior instructors of artillery, cavalry, and infantry, and the master of the sword, in 10: 1061, are omitted, as obsolete. The names of the other departments are omitted as inapplicable to the Air Force. The departmental names will be established under section 9332 of this title. The words "and one assistant professor", in 10: 1061, are omitted as superseded by section 9333 of this title. 10: 1061 (words before colon) is omitted as inapplicable to the Air Force. 10: 1854 (less last sentence) is omitted as executed by the inclusion in this chapter of the laws applicable to the Air Force Academy. 10: 1087 (proviso) is omitted as inapplicable to the Air Force.

Subsection (b) (3) is based on those laws establishing the various departments at the United States Military Academy (see revision note for section 4331 of this title).

AMENDMENTS

1958—Subsec. (b) (6). Pub. L. 85-600 added subsec. (b) (6).

APPROPRIATIONS FOR THE AIR FORCE ACADEMY AFTER AUGUST 1, 1964; REQUIREMENT OF AUTHORIZATION IN SUBSEQUENT LEGISLATION; APPROPRIATIONS FOR ADVANCE PLANNING AND MINOR CONSTRUCTION

Pub. L. 88-390, title VI, § 608, Aug. 1, 1964, 78 Stat. 364, provided that: "Notwithstanding the provisions of section 9 of the Act of April 1, 1954 (Public Law 325) as amended [set out as a note under this section], no funds may be appropriated after the date of enactment of this Act [Aug. 1, 1964] for construction at the Air Force Academy unless appropriation of such funds has been authorized in this Act [Military Construction Authorization Act, 1965] or any Act enacted after the date of enactment of this Act: *Provided,* That funds are authorized to be appropriated to accomplish advance planning and minor construction at the Air Force Academy in the same manner as for other projects under the Act of September 28, 1951, as amended (31 U.S.C. 723), and title 10, United States Code, section 2674, as amended."

APPROPRIATIONS FOR AIR FORCE ACADEMY

Act Apr. 1, 1954, ch. 127, 68 Stat. 47, which established the Air Force Academy, provided by section 9 of such act, as amended by act Aug. 3, 1956, ch. 939, title IV, § 413(b), 70 Stat. 1018, and by Pub. L. 85-241, title V, § 508, Aug. 30, 1957, 71 Stat. 559; Pub. L. 85-685, title III, § 309, Aug. 20, 1958, 72 Stat. 659; Pub. L. 87-57, title III, § 304, June 27, 1961, 75 Stat. 108; Pub. L. 90-408, title III, § 304, July 21, 1968, 82 Stat. 385, that: "There is authorized

to be appropriated not to exceed the sum of $141,978,000 to carry out the provisions of that Act, of which not to exceed $26,000,000 shall be the amount so appropriated for any such period, not to exceed $1,858,000 may be utilized for the purpose of section 4 of this Act [set out as a note under this section]."

TEMPORARY BUILDINGS AND FACILITIES

Section 4 of act Apr. 1, 1954, ch. 127, 68 Stat. 47, provided that: "For the purpose of providing temporary facilities and enabling early operation of the Academy, the Secretary of the Air Force is authorized to provide for the erection of the minimum additional number of temporary buildings and the modification of existing structures and facilities at an existing Air Force base and to provide for the proper functioning, equipping, maintaining, and repairing thereof; and to contract with civilian institutions for such operation or instruction as he may deem necessary."

CROSS REFERENCES

United States Military Academy, see section 4331 et seq. of this title.

United States Naval Academy, see section 6951 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8204 of this title.

§ 9332. Departments and professors: titles.

The Secretary of the Air Force may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 562.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9332	10: 1061a.	Dec. 14, 1942, ch. 729, 56 Stat. 1049.

The words "now or after December 14, 1942, established at" are omitted as surplusage. The word "precedence" is omitted as covered by the word "rank". The words "pay allowances" are omitted, since they are determined by the grade held. The words "from time to time", "shall be known", and "operate in any case or on any account" are omitted as surplusage.

§ 9333. Superintendent; faculty: appointment and detail.

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from the officers of the Air Force.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The registrar of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 562; Aug. 6, 1958, Pub. L. 85-600, § 1 (20), 72 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9333 (a)	10: 1062.	R. S. 1313.
9333 (b)	10: 1063.	R. S. 1314 (words before semicolon).

In subsection (a), the word "detailed" is substituted for the word "selected", since historically the offices of superintendent and commandant of cadets have been filled by detail. The words "the officers of the Air Force" are substituted for the words "any arm of the service", since the Air Force does not have statutory arms or corps. 10: 1063 (1st sentence and 1st 26 words of last sentence) is omitted as covered by section 8012 of this title.

In subsection (b), the words "by and with the advice and consent of the Senate" are inserted, since many of the statutes establishing particular permanent professorships from time to time have so provided, and historically it has been the uniform practice to make these appointments in this manner. 10: 1063 (last 14 words) is omitted as obsolete and as covered by section 9349 (b) of this title.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-600 added subsec. (c).

§ 9334. Command and supervision.

(a) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post.

(b) The permanent professors and the registrar exercise command only in the academic department of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 562; Aug. 6, 1958, Pub. L. 85-600, § 1 (21), 72 Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9334 (a)	10: 1042.	R. S. 1311.
9334 (b)	10: 1079.	June 28, 1902, ch. 1300 (1st proviso under "Permanent Establishment"), 32 Stat. 409.

In subsection (a), the words "and, in his absence, the next in rank" are omitted as surplusage.

In subsection (b), reference to assimilated rank is omitted as superseded by section 9336 of this title. The words "and the associate professor" are omitted as obsolete.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85-600 included the registrar of the Air Force Academy.

§ 9335. Dean of the Faculty.

(a) The Dean of the Faculty shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) The Dean has the grade of brigadier general while serving as such, with the benefits authorized for regular brigadier generals of the Air Force, except that his retirement age is that of a permanent professor of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 562; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (46) (A), 72 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9335 (a)	10: 1089 (2d sentence).	June 26, 1946, ch. 495, § 3 (less 1st 20 words), 60 Stat. 312.
9335 (b)	10: 1089 (less 1st 20 words, and less 2d sentence).	

In subsection (b), the word "grade" is substituted for the word "rank". The words "pay, allowances" are omitted, since they are determined by the grade held. The words "retirement rights" are omitted as covered by the word "benefits". The words "There is authorized", "from time to time", and "statutory" are omitted as surplusage. So much of 10: 1089 as relates to the duties of

the Dean of the Faculty is omitted as covered by section 8012 (e) of this title.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 substituted "the grade of brigadier general" for "the regular grade of brigadier general".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 9336. Permanent professors; registrar.

(a) A permanent professor of the Academy, other than the Dean of the Faculty, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Air Force has the grade of colonel after the date when he completes six years of service as a professor, or after the date when a promotion-list officer, junior to him on the promotion list on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as registrar of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as registrar, has the regular grade of colonel. However, a person appointed from the Regular Air Force has the regular grade of colonel after the date when he completes six years of service as registrar, or after the date when a promotion-list officer, junior to him on the promotion list on which his name was carried before his appointment as registrar, is promoted to the regular grade of colonel, whichever is earlier.

(c) Unless he is serving in a higher grade, an officer detailed to perform the duties of registrar has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel. (Aug. 10, 1956, ch. 1041, 70A Stat. 562; Aug. 6, 1958, Pub. L. 85–600, § 1 (22), 72 Stat. 524; Sept. 2, 1958, Pub. L. 85–861, § 33 (a) (46) (B), 72 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9336	10: 1079a (a).	Aug. 7, 1947, ch. 512, § 520 (a) 61 Stat. 912.

The word "grade" is substituted for the word "rank". The words "pay, and allowances" are omitted, since they are determined by the grade held. 10: 1079a (a) (last proviso), and the words "Hereafter each of", "who have been or may hereafter be", and "and appointed in" are omitted as surplusage.

AMENDMENTS

1958—Pub. L. 85–600, § 1 (22) (C) included the registrar in the catchline.

Subsec. (a). Pub. L. 85–861 substituted "has the grade of colonel" for "has the regular grade of colonel" in two instances, and "have the grade of lieutenant colonel" for "have the regular grade of lieutenant colonel".

Subsec. (a). Pub. L. 85–600, § 1 (22) (A), designated existing provisions as subsec. (a).

Subsecs. (b) and (c). Pub. L. 85–600, § 1 (22) (B), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective August 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SERVICE PERFORMED AS REGISTRAR PRIOR TO AUGUST 6, 1958

Prohibition against accrual of increase in pay or allowances for service performed prior to Aug. 6, 1958, see note set out under section 4336 of this title.

CROSS REFERENCES

Retirement of permanent professors—

After more than 30 years of service as a commissioned officer, see section 8920 of this title.

At age 64, see section 8886 of this title.

§ 9337. Chaplain.

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed. (Aug. 10, 1956, ch. 1041, 70A Stat. 562; Sept. 7, 1962, Pub. L. 87–651, title I, § 117, 76 Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9337	10: 1083; 10: 1137.	Feb. 18, 1896, ch. 22 (proviso), 29 Stat. 8; May 16, 1928, ch. 579, 45 Stat. 573; June 2, 1945, ch. 172, 59 Stat. 230.

The words "The chaplain may be reappointed" are substituted for the words "and said chaplain shall be eligible for reappointment for an additional term or terms". The figures "$5,482.80" and "$6,714" are substituted for the figures "$4,000" and "$5,000" to reflect increases in the rates of salary of that office effected by Federal Employees Pay Act of 1945, 59 Stat. 295, the Federal Employees Pay Act of 1946, 60 Stat. 216, the Postal Rate Revision and Federal Employees Salary Act of 1948, 62 Stat. 1260, and the Classification Act of 1949, 63 Stat. 954.

AMENDMENTS

1962—Pub. L. 87–651 eliminated provisions which prescribed the salary of the chaplain upon appointment and reappointment.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(5) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 9341. Faculty and other officers: leaves of absence.

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 563.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9341	10: 1144.	R. S. 1330.

The words "under regulations prescribed by the Secretary of the Army" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

CROSS REFERENCES

Leave allowances, see section 501 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

Service schools, leaves of absence for instructors, see section 9306 of this title.

§ 9342. Cadets: appointment; numbers, territorial distribution.

(a) The authorized strength of Air Force Cadets of the Academy is as follows:

(1) 40 cadets selected in order of merit as established by competitive examination from the sons of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service. The determination of the Veterans' Administration as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Air Force.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Five cadets from each Territory, nominated by the Delegate in Congress from that Territory.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) One cadet nominated by the Governor of the Panama Canal from the sons of civilians residing in the Canal Zone or the sons of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama.

(9) One cadet from American Samoa, Guam, or the Virgin Islands nominated by the Secretary of the Air Force upon recommendations of their respective Governors.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the sons of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay, other than those granted retired pay under section 1331 of this title;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Air Force from enlisted members of the Regular Air Force.

(3) 85 nominated by the Secretary of the Air Force from enlisted members of reserve components of the Air Force.

(4) 20 nominated by the Secretary of the Air Force, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Air Force Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Air Force in order of merit (prescribed pursuant to section 9343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy sons of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) All cadets are appointed by the President. An appointment is conditional until the cadet is admitted.

(e) If the annual quota of cadets under subsection (b)(1), (2), or (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3)–(7) and (9) of subsection (a) must be domiciled in the State or Territory, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Air Force may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy as determined by the Secretary after consulting with the Committees on Armed Services of the Senate and House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a) (3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a) (3) or (4), appointments under subsection (b) (1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b) (2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) Effective beginning with the nominations for appointment to the Academy in the calendar year

1964, the Secretary of the Air Force shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 563; Sept. 14, 1962, Pub. L. 87–663, § 1(5), (6), 76 Stat. 547; Mar. 3, 1964, Pub. L. 88–276, § 4(1), 78 Stat. 151; Oct. 13, 1966, Pub. L. 89–650, § 1(1)–(3), (5), 80 Stat. 896; July 5, 1968, Pub. L. 90–374, 82 Stat. 283; Oct. 22, 1968, Pub. L. 90–623, § 2(8), 82 Stat. 1314; Sept. 22, 1970, Pub. L. 91–405, title II, § 204(c), 84 Stat. 852.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9342 (a)	10: 1092a (1st par., less clauses (a) through (e)); 10: 1092a (clauses (a), less 14th through 52d words after 4th semicolon; and less last 32 words); 10: 1092a (1st 13 words of clause (b)); 10: 1092a (1st 26 words of clause (c)); 10: 1092a (clause (d)); 10: 1092a (clause (e), less last 53 words).	R. S. 1317. June 30, 1950, ch. 421, §§ 1, 2 (last proviso), 64 Stat. 303, 304; June 3, 1954, ch. 251, § 2, 68 Stat. 169.
9342 (b)	10: 1092a (last par.); 10: 1098.	
9342 (c)	10: 1092a (14th through 52 words after 4th semicolon of clause (a)); 10: 1092b (last proviso).	
9342 (d)	10: 1092a (last 32 words of clause (a)).	
9342 (e)	10: 1092a (clause (b), less 1st 13 words, and less 1st proviso).	
9342 (f)	10: 1092a (1st proviso of clause (b)).	
9342 (g)	10: 1092a (clause (c), less 1st 26 words).	
9342 (h)	10: 1092a (last 53 words of clause (e)).	

In subsection (a), the words "the authorized strength * * * is as follows—" are substituted for the words "shall be authorized and consist of the following". The words "at large" and "which totals two thousand four hundred and ninety-six", and 10: 1092a (clause (d)) are omitted as surplusage.

In subsection (b), the words "from whatever source of admission", in 10: 1092a, are omitted as surplusage. 10: 1098 (words before last semicolon) is omitted as obsolete.

In subsection (c), the first 15 words are substituted for the words "all of which cadets shall be". The words "domiciled in" are substituted for the words "actual residents of" to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J. A. G. 351.11, Feb. 10, 1925).

In subsection (e) (4), the words "armed forces" are substituted for the description of the land or naval forces. The date February 1, 1955, fixed by Proclamation No. 3080 (Jan. 7, 1955; 20 F. R. 173), is substituted for the words "such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress under section 745 of title 38". The words "including male and female members of * * * and all components thereof" are omitted as surplusage.

In subsection (f), the words "whether a death is service-connected" are substituted for the words "as to the service connection of the cause of death".

In subsection (g), the words "(National Guard of the United States, the Air National Guard of the United States and Army Reserve, and the Air Force Reserve)", "Regular components", "by members of the National Guard of the United States, and the Air National Guard of the United States", and "established at the competitive entrance examination" are omitted as surplusage. The word "grades" is substituted for the words "proficiency averages".

In subsection (h), the words "or shall hereafter be" are omitted as surplusage.

AMENDMENTS

1970—Subsec. (a) (5). Pub. L. 91–405 substituted "Delegate to the House of Representatives from the District of Columbia" for "Commissioner of that District".

1968—Subsec. (a). Pub. L. 90–374 increased from five to nine the number of alternates for each vacancy each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate.

Subsec. (a) (5). Pub. L. 90–623 substituted "Commissioner" for "Commissioners".

1966—Subsec. (a) (1). Pub. L. 89–650, § 1(1), provided for selection of cadets to the Air Force Academy from sons of members of the armed forces who have a 100 per centum service-connected disability and removed the limitation to active service during World War I or World War II or after June 26, 1950, and before Feb. 1, 1955.

Subsec. (a) (2). Pub. L. 89–650, § 1(2), provided for nominations to the Air Force Academy by the President pro tempore of the Senate if there is no Vice President.

Subsec. (b) (1). Pub. L. 89–650, § 1(3), increased the number of Presidential appointments to the Air Force Academy from 75 to 100, provided for selection of eligible persons as stated in items (A) and (B), previously chosen from sons of members of regular components, and declared persons eligible under subsec. (a) (1) ineligible under subsec. (b) (1) of this section.

Subsec. (b) (3). Pub. L. 89–650, § 1(5), substituted "reserve components of the Air Force" for "the Air Force Reserve".

1964—Pub. L. 88–276 amended section generally, and among other changes, in the noncompetitive appointments, increased the number of cadets nominated by the Vice President from three to five, each Senator, Representative and Delegate from 4 to 5, and the Commissioner of Puerto Rico from 4 to 5, authorized the Governor of Puerto Rico to appoint one cadet, each Senator, Representative and Delegate to nominate a principal and five alternates for each vacancy, and, in the competitive appointments, permitted the President to appoint 75 cadets annually from the sons of members of the Regular components, instead of a cumulative total of 89, the Secretary of the Air Force to appoint 85 cadets annually from enlisted members of the Regular Air Force, instead of a cumulative total of 90, 85 annually from enlisted members of the Air Force Reserve, instead of a cumulative total of 90, 20 annually from honor graduates of designated honor schools and the A.F.R.O.T.C., instead of a cumulativet total of 40 from honor schools only, 150 annually, in order of merit, from among the qualified alternates nominated by Members of Congress, and when the quota of cadets selected under subsec. (b) (1), (2), (3) is not filled, to fill the vacancies by appointing those best qualified from any of the three sources, decreased the number of cadets nominated by the Commissioners of the District of Columbia from 6 to 5, and by the Governor of the Panama Canal from 2 to 1, limited appointments to the number that can be adequately accommodated at the Academy, within the limitation that congressional appointments cannot be limited to less than four, and if limited, a priority of selection is established for the other categories, and, beginning in 1964, the Secretary may upon request of a Member of Congress, furnish him the name of any nominating authority responsible for the nomination of any identified person to the Academy.

1962—Subsec. (a). Pub. L. 87–663, § 1(5), added cl. (10).

Subsec. (c). Pub. L. 87–663, § 1(6), added references to American Samoa, Guam, and the Virgin Islands, and substituted "Clauses (1)—(5) and (10)" for "clauses (1)—(5)."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, summarized in a note set out under section 25 of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE; INTERIM SYSTEM FOR APPOINTMENT OF CADETS

Section 52 (b) of act Aug. 10, 1956, as amended by Pub. L. 85–182, Aug. 28, 1957, 71 Stat. 463, provided that:

"Section 9342 (a) of title 10, United States Code [this section], enacted by section 1 of this Act, takes effect four years after the entrance of the initial class at the United States Air Force Academy. However, for the four-year period beginning with the class of cadets entering in July 1959, not more than—

"(1) one quarter of the number of cadets authorized by clause (1), (2), (3), (4), (7), or (8) of that section may be appointed in any one academic year;

"(2) two of the number of cadets authorized by clause (5) of that section may be appointed in the first and third years of that four-year period, and not more than one of the number authorized by it may be appointed in the second and fourth years of that period; and

"(3) one cadet authorized by clause (6) of that section may be appointed in the first two years of that four-year period, and not more than one of the number authorized by it may be appointed in the second two years of that period.

In addition, during that four-year period, the nominating authority named in clauses (1)—(6) of that section may select for each cadet allocated to him for the year concerned a principal candidate and not more than ten alternate candidates, or he may nominate as many candidates as the Secretary may prescribe and authorize the Secretary to select the principal candidates in order of merit as determined by competitive examination. In carrying out section 9343 of title 10, United States Code, during that four-year period, only qualified alternates who are nominated by the authorities named in clauses (1)—(4) of section 9342 (a) may be nominated for appointment as cadets. Not more than one qualified alternate nominated by any one authority named in those classes may be appointed as a cadet, after nomination under section 9343, during each year of that four-year period."

CROSS REFERENCES

Effect upon enlisted status of acceptance of appointment as cadet, see section 516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9343 of this title.

§ 9343. Cadets: appointment; to bring to full strength.

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Air Force may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academy Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2)—(8) of section 9342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law. (Aug. 10, 1956, ch. 1041, 70A Stat. 564; Mar. 3, 1964, Pub. L. 88–276, § 4(2), 78 Stat. 153; Nov. 2, 1966, Pub. L. 89–718, § 46, 80 Stat. 1121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9343	10: 1092d.	June 30, 1950, ch. 421, § 4, 64 Stat. 305.

The words "If it is determined" are substituted for the words "When upon determination". The words "within his discretion" are omitted as covered by the word "may". The words "within the capacity of the Academy", "from the remaining sources of admission authorized by law", and "to be admitted in such class" are omitted as surplusage. The words "by the persons named in clauses (1)—(6) of section 9342 (a), and clause (2) of section 9342 (e), of this title" are substituted for the words "by the Vice President, Members of the Senate and House of Representatives of the United States, Delegates and Resident Commissioners, the Commissioners of the District of Columbia, and the Governor of the Canal Zone". The words "under any other provision of law" are substituted for the words "from sources authorized by law other than those holding such alternate appointments".

AMENDMENTS

1966—Pub. L. 89–718 substituted "Academy Board" for "faculty".

1964—Pub. L. 88–276, among other changes, increased the percentage of nominees to be selected from two-thirds to three-fourths, and deleted "as are necessary to meet the needs of the Air Force, but not more than the authorized strength of Air Force cadets", following "the Faculty."

NUMBER OF ALTERNATE APPOINTEES FROM CONGRESSIONAL SOURCES NOT TO BE REDUCED BECAUSE OF ADDITIONAL PRESIDENTIAL APPOINTMENTS.

Nonreduction of number of appointees from congressional sources under this section because of additional Presidential appointments under section 9342(b)(1) of this title, see section 2 of Pub. L. 89–650, set out as a note under section 4343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9342 of this title.

§ 9344. Selection of persons from Canada and American Republics.

(a) Upon designation by the President, the Secretary of the Air Force may permit not more than 20 persons at any one time from Canada and the American Republics, other than the United States, to receive instruction at the Academy. However, not more than three persons from any one of those republics or from Canada may receive instruction under this section at any one time.

(b) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations. However, the mileage allowance payable to that person for travel to the Academy for initial admission is not limited to mileage for travel within the United States.

(c) Except as the Secretary determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. However, a person receiving instruction under this section is not entitled to appointment in the Air Force by reason of his graduation from the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 564.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9344 (a)	10: 1093c (less 3d and last sentences).	June 26, 1946, ch. 493, § 1, 60 Stat. 311: June 1, 1948, ch. 357, § 2, 62 Stat. 280.
9344 (b)	10: 1093c (3d sentence).	
9344 (c)	10: 1093c (last sentence).	

In subsection (a), the words "at West Point, New York" are omitted as inapplicable to the Air Force.

In subsection (b), the words "is entitled to" are substituted for the words "shall receive". The words "performed in proceeding" are omitted as surplusage. The words "continental limits" are omitted, since section 101 (1) of this title defines the United States to include only the States and the District of Columbia.

In subsection (c), the words "to any office or position" are omitted as surplusage; 10: 1093c (proviso of last sentence) is omitted, since 10: 1099 is inapplicable to the Air Force and section 1321 of the Revised Statutes, previously codified in 10: 1101, was repealed by section 6 (b) of the act of June 30, 1950, ch. 421, 64 Stat. 305.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President, see Ex. Ord. No. 10661, Feb. 27, 1956, 21 F. R. 1315, set out as a note under section 301 of Title 3, The President.

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM: AIR FORCE ACADEMY INSTRUCTION; BENEFITS, LIMITATIONS, RESTRICTIONS, AND REGULATIONS; OATH OF TRAINEES

Air Force Academy instruction of persons from countries assisting U.S. in Vietnam, numerical limitation, prohibition against appointment of graduates to the Armed Forces, exemption from oath, etc., see Pub. L. 89–802, Nov. 9, 1966, 80 Stat. 1518, set out as a note under section 4344 of this title.

§ 9345. Selection of Filipinos.

(a) The Secretary of the Air Force may permit not more than four Filipinos at any one time to receive instruction at the Academy. Of these, one may be designated by the President of the Republic of the Philippines for each entering class.

(b) A Filipino receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations. (Aug. 10, 1956, ch. 1041, 70A Stat. 565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9345 (a)	10: 1093 (less 1st proviso of 1st sentence).	May 28, 1908, ch. 214 (33d par. under "Buildings and Grounds"), 35 Stat. 441; Aug. 11, 1916, ch. 314 (7th proviso under "Permanent Establishment"), 39 Stat. 493.
9345 (b)	10: 1093 (1st proviso of 1st sentence).	

In subsection (a), the words "at any one time" and "entering" are inserted for clarity. The words "President of the Republic of the Philippines" are substituted for the words "Governor General of the Philippine Islands", since the office of Governor General of the Philippine Islands has not existed since the independence of the Philippines was established. Designation of Filipino cadets is now made by the President of the Republic. 10: 1093 (second proviso of first sentence, and last sentence) is omitted as inapplicable to the Air Force.

§ 9346. Cadets: requirements for admission.

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-second birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Air Force, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Air Force. If a candidate for admission refuses to take and subscribe to the prescribed oath, his appointment is terminated. (Aug. 10, 1956, ch. 1041, 70A Stat. 565; Nov. 2, 1966, Pub. L. 89–718, § 47, 80 Stat. 1121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9346 (a)	10: 1092b (less provisos).	June 30, 1950, ch. 421, § 2 (less provisos), 64 Stat. 304.
9346 (b)	10: 1096.	R. S. 1319; restated Mar. 2, 1901, ch. 804 (1st proviso under "Permanent Establishment"), 31 Stat. 911.
9346 (c)	10: 1095.	Aug. 9, 1912, ch. 275 (2d proviso under "Permanent Establishment"), 37 Stat. 252.

In subsection (a), the words "Effective January 1, 1951" are omitted as executed. The word "Calendar" is omitted as surplusage. The words "must not have passed his twenty-second birthday" are substituted for the words "not more than twenty-two years of age", to make it clear that a person whose twenty-second birthday falls on July 1 of the year of admission is eligible (see opinion of the Judge Advocate General of the Army (JAGA 1952/7083, 2 Sept. 1952)).

In subsection (b), the words "is qualified in" are substituted for the words "to be well versed in". The words "To be" are substituted for the words "before they shall be". The words "an appointee must show that he is qualified" are substituted for the words "shall be required to be well versed". The words "from time to time" are omitted as surplusage.

In subsection (c), the word "shall" is substituted for the word "may", since the nominee is required to appear for the examination. The word "appear" is substituted for the words "present himself". The words "at a place" are substituted for the words "at West Point, New York, or other prescribed places".

AMENDMENTS

1966—Subsec. (d). Pub. L. 89–718 added subsec. (d).

§ 9347. Cadets; nominees: effect of redistricting of States.

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy. (Aug. 10, 1956, ch. 1041, 70A Stat. 565.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9347	10: 1091–1.	July 7, 1943, ch. 193, 57 Stat. 383.

The word "domicile" is substituted for the words "place of residence" and "residence" to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J. A. G. 351, 11, Feb. 10, 1925). The words "a * * * other than that from which he was nominated" are substituted for the word "another". The words "were appointed with respect to", "of the former district", "as additional

numbers", "at such academy for the Representative", "temporarily", and "in attendance at such academy under an appointment from such former district" are omitted as surplusage. The words "the district in which his domicile so falls" are substituted for the words "of the latter district". The words "to include him" are substituted for 10: 1091–1 (18 words before proviso). The words "but the number as so increased" are substituted for 10: 1091–1 (1st 13 words of proviso). The words "if he fails to become a cadet" are inserted for clarity.

§ 9348. Cadets: agreement to serve as officer.

(a) Each cadet who is a citizen or national of the United States shall sign an agreement that, unless sooner separated, he will—

(1) complete the course of instruction at the Academy;

(2) accept an appointment and serve as a commissioned officer of the Regular Air Force for at least the five years immediately after graduation; and

(3) accept an appointment as a commissioned officer as a Reserve for service in the Air Force Reserve and remain therein until the sixth anniversary of his graduation, if an appointment in the Regular Air Force is not tendered to him, or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the cadet is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

(b) A cadet who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Air Force to the Air Force Reserve in an appropriate enlisted grade and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade for such period of time as the Secretary prescribes but not for more than four years. (Aug. 10, 1956, ch. 1041, 70A Stat. 565; Mar. 3, 1964, Pub. L. 88–276, § 5(a), 78 Stat. 153; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(25), 78 Stat. 1073.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9348	10: 1092c.	June 30, 1950, ch. 421, § 3, 64 Stat. 304.

The word "agreement" is substituted for the word "articles". The words "Hereafter", "appointed to the United States Military Academy", "engage", and 10: 1092c (1st 25 words of clause (2) are omitted as surplusage. The word "separated" is substituted for the words "discharged by competent authority". The words "if he is permitted to resign" are substituted for the words "in the event of the acceptance of his resignation", since a resignation is effective only when accepted. The first 32 words of clause (3) are substituted for 10: 1092c (last 29 words of clause (3)). The last sentence is substituted for the words "with the consent of his parents or guardian if he be a minor, and if any he have".

AMENDMENTS

1964—Pub. L. 88–647 designated existing provisions as subsec. (a), and added subsec. (b).

Subsec. (a)(2). Pub. L. 88–276 substituted "five" for "three."

EFFECTIVE DATE OF 1964 AMENDMENT; OBLIGATED PERIOD OF SERVICE

Amendment of section by Pub. L. 88–276 effective only with respect to cadets and midshipmen appointed to the service academies and the Coast Guard Academy after Mar. 3, 1964, see section 5(c) of Pub. L. 88–276, set out as a note under section 4348 of this title.

CROSS REFERENCES

Effect upon enlisted status of acceptance of appointment as midshipman, see section 516 of this title.

§ 9349. Cadets: organization; service; instruction.

(a) A cadet shall perform duties at such places and of such type as the President may direct.

(b) The course of instruction at the Academy is four years.

(c) The Secretary of the Air Force shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(d) Cadets shall be trained in the duties of members of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9349 (a)	10: 1102.	R. S. 1322.
9349 (b)	10: 1043.	R. S. 1323.
9349 (c)	10: 1044.	Mar. 30, 1920, ch. 112 (1st par., less provisos, under "Miscellaneous"), 41 Stat. 548.
9349 (d)	10: 1105.	R. S. 1324.

In subsection (a), the word "commissioned" is inserted for clarity. 10: 1105 (2d sentence) is omitted as obsolete.

In subsection (b), the word "perform" is substituted for the words "be subject at all times to do". The words "of such type" are substituted for the words "on such service".

In subsection (e), the words "members of the Air Force" are substituted for the words "private soldier, noncommissioned officer, and officer". The words "taught and" are omitted as surplusage. 10: 1105 (less 1st 18 words of last sentence) is omitted as inapplicable to the Air Force.

§ 9350. Cadets: clothing and equipment.

(a) The Secretary of the Air Force may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request. (Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9350 (a)	10: 1149a.	Aug. 31, 1918, ch. 166, § 9 (17th through 22d words), 40 Stat. 957.
9350 (b)	10: 1106.	Aug. 22, 1951, ch. 340, § 1, 65 Stat. 196.

In subsection (a), the words "while owing the United States for pay advanced for the purpose of" are substituted for the words "who is indebted to the United States on account of advances in pay to purchase". The words "as is necessary to repay the amount advanced" are substituted for the words "to the extent required to discharge such indebtedness".

In subsection (b), the word "accouterments" is omitted as surplusage. The words "by the Government" and "such restrictions and" are omitted as surplusage. The words "at cost" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 9351. Cadets: deficiencies in conduct or studies; effect of failure on successor.

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academy Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Superintendent within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor. (Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9351 (a)	10: 1104.	Aug. 11, 1916, ch. 314 (3d, 4th, and 5th provisos under "Permanent Establishment"), 39 Stat. 493.
9351 (b)	10: 1103.	R. S. 1325.
9351 (c)	10: 1092b (1st proviso).	June 30, 1950, ch. 421, § 2 (1st proviso), 64 Stat. 304.

In subsection (a), 10: 1104 (last 20 words) is omitted as superseded by section 8287 (d) of this title.

In subsection (b), the words "is entitled to" are substituted for the words "shall have the right to apply". The words "of equal scope and difficulty in that subject" are substituted for the words "by compliance with the requirements existing at the time of the first examination".

In subsection (c), the words "by reason of sickness, or deficiency in his studies, or other cause" are omitted as surplusage.

§ 9352. Cadets: hazing.

(a) Subject to the approval of the Secretary of the Air Force, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed as an Air Force cadet, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class. (Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9352 (a)	10: 1163 (1st par.).	Mar. 2, 1901, ch. 804 (2d proviso under "Permanent Establishment"); restated Apr. 19, 1910, ch. 174 (38th par. under "Buildings and Grounds"), 36 Stat. 323.
9352 (b)	10: 1163 (1st 32 words of last par.).	
9352 (c)	10: 1163 (last par., less 1st 32 words).	

In subsection (a), the word "violations" is substituted for the words "infractions of the same". The words "to embody a clear" are omitted as surplusage.

In subsection (b), the words "the penalty for which is or may be" are substituted for the words "which would involve". The words "may not be dismissed for that offense except under sentence of such a court" are substituted for the words "shall be granted".

In subsection (c), the words "a regular component" are inserted, since the source statute historically applied only to the regular components.

§ 9353. Cadets: degree and commission on graduation.

(a) After the date of the accrediting of the Academy, the Superintendent of the Academy may, under such conditions as the Secretary of the Air Force may prescribe, confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 567; Sept. 2, 1958, Pub. L. 85-861, §§ 1 (201), 33 (a) (43), 72 Stat. 1541, 1567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9353 (a)	10: 486a (less last sentence).	May 25, 1933, ch. 37 (less last sentence); restated Aug. 9, 1946, ch. 932 (less last sentence); restated Aug. 4, 1949, ch. 393, § 13; restated Aug. 18, 1949, ch. 476 (less last sentence), 63 Stat. 615.
9353 (b)	10: 506c (f) (1st sentence, less last 43 words).	Aug. 7, 1947, ch. 512, § 506 (f) (1st sentence, less last 43 words), 61 Stat. 892.

In subsection (a), the last 27 words are substituted for 10: 486a (last sentence). The words "rules and" and "from and after the date of the accrediting of said Academy" are omitted as surplusage. The word "conditions" is substituted for the word "regulations".

In subsection (b), the words "except section 541 of this title" are inserted to reflect the authority to appoint graduates of one service academy as officers of another service.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-861, § 33 (a) (43), permitted the conferring of degrees only after the date of the accrediting of the Academy.

Subsec. (b). Pub. L. 85-861, § 1 (201), eliminated "except section 541 of this title" which followed "provision of law".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (a) of this section by section 33 (a) (43) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Rank of graduates of Academy, see section 8574 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8212, 8285 of this title.

§ 9354. Buildings and grounds: buildings for religious worship.

The Secretary of the Air Force may authorize any denomination, sect, or religious body to erect a building for religious worship at the Air Force Academy, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires. (Aug. 10, 1956, ch. 1041, 70A Stat. 567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9354	10: 1126.	July 8, 1898, ch. 636, 30 Stat. 722.

The words "in his discretion" and "Government of" are omitted as surplusage. The words "United States" are substituted for the word "Government".

§ 9355. Board of Visitors.

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) Of the first six persons designated by the President, two shall be designated to serve for one year, two shall be designated to serve for two years, and two shall be designated to serve for three years. Persons designated thereafter serve for three years. Two persons shall be designated by him each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Air Force, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy which the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser is entitled to not more than $5 a day and shall be reimbursed under Government travel regulations for his travel expenses. (Aug. 10, 1956, ch. 1041, 70A Stat. 567.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9355 (a)	10: 1055; 10: 1056 (1st sentence).	June 29, 1948, ch. 714, §§ 1—6, 62 Stat. 1094; June 30, 1954, ch. 432, § 732, 68 Stat. 356.
9355 (b)	10: 1056 (less 1st sentence).	
9355 (c)	10: 1057.	
9355 (d)	10: 1058.	
9355 (e)	10: 1059 (a).	
9355 (f)	10: 1059 (b).	
9355 (g)	10: 1059 (c).	
9355 (h)	10: 1060.	

In subsections (a) and (b), the word "designated" is substituted for the word "appointed" to make it clear that the positions described are not constitutional offices.

Subsection (b) is substituted for 10: 1056 (e) (less 1st sentence).

In subsection (c), the words "during the term for which such member was appointed" and "Such successor shall be appointed * * * who died or resigned" are omitted as surplusage.

In subsection (g), the words "as it may deem necessary or advisable to effectuate the duties imposed upon it by the provisions of sections 1055—1060 of this title" are omitted as surplusage.

In subsection (h), the words "called for consultation by the Board in connection with the business of the Board" are omitted as surplusage.

§§ 9381 to 9387. Repealed. Pub. L. 88-647, title III, § 301(26), Oct. 13, 1964, 78 Stat. 1073.

Sections 9381—9387, act Aug. 10, 1956, ch. 1041, 70A Stat. 568–570, related to the Air Force Officers' Training Corps and defined "advanced training", provided for its establishment and composition, admission and training of medical, dental, pharmacy and veterinary students, set out courses of training, authorized the operation and maintenance of training camps, provided for supplies and uniforms and for advanced training and compensation therefor. See chapter 103 of this title.

Section 9382 was amended by act Sept. 2, 1958, Pub. L. 85-861, § 33(a)(44), 72 Stat. 1567, and section 9384 was amended by act Sept. 2, 1958, Pub. L. 85-861, § 1(202), 72 Stat. 1541.

VALIDATION OF STUDENT PAYMENTS

Section 401 of Pub. L. 88-647 provided that: "All payments made and supplies issued under sections 9385—9387 of title 10, United States Code, in connection with the training of a person at an Air Force Reserve Officers' Training Corps unit while such person was a student at a civil educational institution where a unit of the corps was not established, are hereby validated."

Chapter 907.—SCHOOLS AND CAMPS

Sec.
9411. Establishment: purpose.
9412. Operation.
9413. Transportation and subsistence during travel.
9414. Quartermaster and ordnance property: sales.

§ 9411. Establishment: purpose.

The Secretary of the Air Force may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Air Force and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Air Force Reserve. (Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9411	10: 442 (words before 1st semicolon of 1st sentence).	June 3, 1916, ch. 134, § 47d (words before 1st semicolon of 1st sentence); added June 4, 1920, ch. 227, subch. I, § 34 (words before 1st semicolon of 1st sentence of last par.), 41 Stat. 779.

The words "upon military reservations or elsewhere" are omitted as surplusage. The words "of the Air Force" are inserted for clarity. The words "or enlistment as" are inserted for clarity.

CROSS REFERENCES

Supplies, see section 9654 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8722, 9412, 9413, 9414 of this title.

§ 9412. Operation.

In maintaining camps established under section 9411 of this title, the Secretary of the Air Force may—

(1) prescribe the periods during which they will be operated;

(2) prescribe regulations for their administration;

(3) prescribe the courses to be taught;

(4) detail members of the Regular Air Force to designated duties relating to the camps;

(5) use necessary supplies and transportation;

(6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camp; and

(7) authorize necessary expenditures from proper Air Force funds for—

(A) water;

(B) fuel;

(C) light;

(D) temporary structures, except barracks and officers' quarters;

(E) screening;

(F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9412	10: 442 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence).	June 3, 1916, ch. 134, § 47d (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence); added June 4, 1920, ch. 227, subch. I, § 34 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence of last par.), 41 Stat. 779.

The word "supplies" is substituted for the words "such arms, ammunition, accoutrements, equipments, tentage, field equipage", since, under the definition of the word "supplies", in section 101 (26) of this title, those words are covered by the word "supplies". The words "belonging to the United States", "and imparting military instruction and training thereat", "during the period of their attendance", "theoretical and practical instruction", "persons attending the camps authorized by this section", and "as he may deem" are omitted as surplusage. The word "detail" is substituted for the word "employ". The word "members" is substituted for the words "officers, warrant officers, and enlisted men".

§ 9413. Transportation and subsistence during travel.

(a) There may be furnished to a person attending a school or camp established under section 9411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Air Force may prescribe, from the authorized starting point to the school or camp and return. (Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9413 (a), (b), (c).	10: 442 (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence).	June 3, 1916, ch. 134, § 47d (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence); added June 4, 1920, ch. 227, § 34 (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence of last par.), 41 Stat. 779; Mar. 9, 1928, ch. 161, 45 Stat. 251.

In subsection (a), the introductory clause is inserted for clarity. The words "at the option of the Secretary of the Army" are omitted as surplusage.

In subsection (b), the words "of the actual performance of the same" are omitted as surplusage.

Subsection (c) is substituted for the words "the most usual and direct route within such limits as to territory as the Secretary of the Army may prescribe * * * for the distance by the shortest usually traveled route from the places from which they are authorized to proceed to the camp, and for the return travel thereto".

§ 9414. Quartermaster and ordnance property: sales.

The Secretary of the Air Force may sell to a person attending a school or camp established

under section 9411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash. (Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9414	10: 442 (words after 3d semicolon of 1st sentence; and 2d sentence).	June 3, 1916, ch. 134, § 47d (words after 3d semicolon of 1st sentence; and 2d sentence); added June 4, 1920, ch. 227, § 34 (words after 3d semicolon of 1st sentence; and 2d sentence of last par.), 41 Stat. 779.

10: 442 (2d sentence) is omitted as superseded by section 10 of the act of June 26, 1934, ch. 756, 48 Stat. 1229 (31 U. S. C. 725i), which limits credits to the replacing account to the actual cost of the items sold. The words "quartermaster and ordnance property necessary for his proper equipment" are substituted for 10: 442 (last 26 words of 1st sentence). The words "and at cost price, plus 10 per centum" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

Chapter 909.—CIVIL AIR PATROL

Sec.
9441. Status: support by Air Force; employment.

§ 9441. Status: support by Air Force; employment.

(a) The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force.

(b) To assist the Civil Air Patrol in the fulfillment of its objectives as set forth in section 202 of title 36, the Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense—

(1) give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 471 et seq.)—

(A) major items of equipment, including aircraft, motor vehicles, and communication equipment; and

(B) necessary related supplies and training aids;

that are excess to the military departments;

(2) permit the use of such services and facilities of the Air Force as he considers to be needed by the Civil Air Patrol to carry out its mission;

(3) furnish such quantities of fuel and lubricants to the Civil Air Patrol as are needed by it to carry out any mission assigned to it by the Air Force;

(4) establish, maintain, and supply liaison offices of the Air Force at the National, State, and Territorial headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol;

(5) detail or assign any member of the Air Force or any officer or employee of the Department of the Air Force to any liaison office at the National, State, or Territorial headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol;

(6) detail any member of the Air Force or any officer or employee of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training program of the Civil Air Patrol; and

(7) in time of war, or of national emergency declared after May 27, 1954, by Congress or the President, authorize the payment of travel expenses and allowances, in accordance with the Travel Expense Act of 1949 (5 U. S. C. 835 et seq.), to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force.

(c) The Secretary may use the services of the Civil Air Patrol in fulfilling the noncombat mission of the Department of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9441 (a)	5: 626l (1st sentence).	May 26, 1948, ch. 349, 62 Stat. 274, 275; Oct. 31, 1951, ch. 654, § 2 (5), 65 Stat. 706; May 27, 1954, ch. 225, 68 Stat. 141; July 16, 1954, ch. 531, 68 Stat. 485.
9441 (b)	5: 626l (less 1st sentence).	
9441 (c)	5: 626m.	

In subsection (a), the words "established as" are omitted as executed.

In subsection (b), the words "Materials", "other equipment", and "and equip" are omitted as covered by the definition of the word "supplies" in section 101 (26) of this title. The words "as he considers to be needed" are substituted for the words "as in the opinion of the Secretary of the Air Force are required". The words "any member of the Air Force or any employee of the Department of the Air Force" are substituted for the words "military and civilian personnel of the Air Force". The words "from available stock" and "the requirements of" are omitted as surplusage.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377. Titles I–IV and VI–VIII thereof are classified to chapters 10 and 16 of Title 40, Public Buildings, Property, and Works, and chapter 4 of Title 41, Public Contracts. Title V thereof was classified to former chapter 11 of Title 44, Public Printing and Documents, but was repealed in the revision of Title 44 by Pub. L. 90–620, § 3, Oct. 22, 1968, 82 Stat. 1309. The subject matter of such former title V is now covered by chapters 21, 25, 27, 29, and 31 of Title 44.

The Travel Expense Act of 1949 (5 U.S.C. 835 et seq.), referred to in text, was repealed in the general revision of Title 5, and the provisions are now covered by section 5701 et seq. of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8150.

PART IV.—SERVICE, SUPPLY, AND PROCUREMENT

Chap. Sec.
931. Industrial Mobilization, Research, and Development 9501
933. Procurement 9531
935. Issue of Serviceable Material to Armed Forces 9561
937. Utilities and Services 9591
939. Sale of Serviceable Material 9621
941. Issue of Serviceable Material other than to Armed Forces 9651

Chap. Sec.
943. Disposal of Obsolete or Surplus Material 9681
945. Inquests; Disposition of Effects of Deceased Persons 9711
947. Transportation 9741
949. Real Property 9771
951. Military Claims 9801
953. Accountability and Responsibility 9831

CROSS REFERENCES

Service, supply, and procurement, general military law provisions, see section 2202 et seq. of this title.

Chapter 931.—INDUSTRIAL MOBILIZATION, RESEARCH, AND DEVELOPMENT

Sec.
9501. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.
9502. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.
9503. Research and development programs.
9504. Procurement for experimental purposes.
9505. Procurement of production equipment.
9506. Sale, loan, or gift of samples, drawings, and information to contractors.
9507. Sale of ordnance and ordnance stores to designers.

§ 9501. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.

(a) In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the Secretary of the Air Force is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the Air Force, if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies as ordered by the Secretary; or

(3) to furnish them at a reasonable price as determined by the Secretary.

(d) The President, through the Secretary, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) Each person or industry from whom products or materials are ordered under subsection (a) is entitled to a fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) Whoever fails to comply with this section shall be imprisoned for not more than three years and fined not more than $50,000. (Aug. 10, 1956, ch. 1041, 70A Stat. 573.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9501 (a)	50: 80 (1st par.).	June 3, 1916, ch. 134, § 120 (1st 3 pars.), 39 Stat. 213.
9501 (b)	50: 80 (1st 53 words of 2d par.).	
9501 (c)	50: 80 (2d par., less 1st 53, and last 87, words).	
9501 (d)	50: 80 (282d through 314th words of 2d par.).	
9501 (e)	50: 80 (3d par.).	
9501 (f)	50: 80 (last 56 words of 2d par.).	

In subsections (a), (b), and (e), the word "person" is substituted for the words "individual, firm, association, company, corporation", since the word "person", as defined in section 1 of title 1, covers all of the enumerated entities.

In subsections (a) and (c), the words "in addition to the present authorized methods of purchase or procurement" are omitted as surplusage.

In subsection (b), the words "shall comply" are substituted for the words "Compliance * * * shall be obligatory".

In subsection (c), the words "and in either such case" and "or equipment" are omitted as surplusage. Clause (1) is substituted for the words "give to the United States such preference in the matter of the execution of orders".

In subsection (d), the words "the Secretary" are substituted for the words "the Ordnance Corps", since the functions which, for the Army, are by statute assigned to subordinate organizations of the Army, are, for the Air Force, assigned to the Secretary.

Subsection (f) is restated to conform to the terminology of similar provisions of title 18.

CROSS REFERENCES

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

War contracts, penalties, see section 443 of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9502 of this title.

§ 9502. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.

(a) The Secretary of the Air Force shall maintain a list of all privately owned plants in the United States, and the Territories, Commonwealths, and possessions, that are equipped to manufacture for the Air Force arms or ammunition, or parts thereof, and shall obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) The Secretary shall maintain a list of privately owned plants in the United States, and the Territories, Commonwealths, and possessions, that are capable of being readily transformed into factories for the manufacture of ammunition for the Air Force, and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and shall obtain complete information as to the equipment of each of those plants.

(c) The Secretary shall prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(d) The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary

clerical assistance to organize and coordinate operations under this section and section 9501 of this title. (Aug. 10, 1956, ch. 1041, 70A Stat. 574.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9502 (a)	50: 80 (4th par., less last sentence).	June 3, 1916, ch. 134. § 120 (less 1st 3 pars.), 39. Stat. 213.
9502 (b)	50: 80 (last sentence of 4th par., less last 41 words).	
9502 (c)	50: 80 (last 41 words of last sentence of 4th par.).	
9502 (d)	50: 80 (last par.).	

In subsection (a), the words "the component" are omitted as surplusage. The word "maintain" is substituted for the words "make, or cause to be made". The word "Commonwealths" is inserted to reflect the present status of Puerto Rico. The words "for the Air Force" are inserted for clarity, since, under section 213 of the National Security Act of 1947, as amended by section 1 (a) (as applicable to Munitions Board) of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638, overall responsibility for the function covered by the revised section is vested in the Secretary of Defense.

In subsection (b), the word "maintain" is substituted for the words "also prepare, or cause to be prepared". The words "and the Territories, Commonwealths, and possessions" and "for the manufacture of ammunition for the Air Force" are inserted for clarity.

In subsection (c), the words "as in the opinion of the Secretary of the Army such plant is best adapted" are omitted as surplusage.

In subsection (d), the last 11 words are substituted for the words "the work hereinbefore described".

§ 9503. Research and development programs.

The Secretary of the Air Force may conduct and participate in research and development programs relating to the Air Force, and may procure or contract for the use of facilities, supplies, and services that are needed for those programs. This section does not authorize the design or development of any prototype aircraft intended primarily for commercial use. (Aug. 10, 1956, ch. 1041, 70A Stat. 574.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9503	5: 628a; 10: 20a (less applicability to 5: 235, 235a, and 628).	July 10, 1950, ch. 454, §§ 205, 304 (less applicability to §§ 103, 104, and 204), 64 Stat. 324, 325.

The words "engage", "activities", "equipment", "as may be", and "to effectuate", in 5: 628a, are omitted as surplusage. The words "in this chapter, section 481 of this title", in 10: 20a, are omitted, since nothing contained in those references pertains to the rule stated in 10: 20a. The last sentence is substituted for 10: 20a.

AEROSPACE CORPORATION CONTRACTS

Pub. L. 89-188, title VI, § 609, Sept. 16, 1965, 79 Stat. 818, provided that: "Every contract between the Secretary of the Air Force and the Aerospace Corporation shall prohibit the construction of any facility or the acquisition of any real property by the Aerospace Corporation unless such construction or acquisition has first been authorized to the Air Force by the Congress."

CROSS REFERENCES

General military law provisions, see section 2352 et seq. of this title.

§ 9504. Procurement for experimental purposes.

The Secretary of the Air Force may buy ordnance, signal, and chemical warfare supplies, including parts and accessories, and designs thereof, that he considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense. Purchases under this section may be made inside or outside the United States, with or without competitive bidding, and by contract or otherwise. Chapter 137 of this title applies when such purchases are made in quantity. (Aug. 10, 1956, ch. 1041, 70A Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9504	50: 96.	July 15, 1939, ch. 283, 53 Stat. 1042.

The words "competitive bidding" are substituted for the word "competition". The words "at his discretion" and "equipment" are omitted as surplusage. 50: 96 (last sentence) is omitted as superseded by chapter 137 of this title. Therefore, the last sentence of the revised section, which refers to that chapter, is inserted.

§ 9505. Procurement of production equipment.

The Secretary of the Air Force may make or procure gauges, dies, jigs, tools, fixtures, and other special aids and appliances, and specifications and drawings, necessary for the immediate manufacture of arms, ammunition, or special equipment that are necessary to equip the Air Force and are likely to be needed in time of war. Whenever he considers it in the best interest of the United States, the Secretary may procure any of those items without regard to laws prescribing competition in the procurement of supplies. (Aug. 10, 1956, ch. 1041, 70A Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9505	50: 78.	June 3, 1916, ch. 134, § 123 39 Stat. 215.

The words "Air Force" are substituted for the words "land forces". The words "make or procure" are substituted for the words "prepare or cause to be prepared, to purchase or otherwise procure". The last sentence is substituted for 50: 78 (proviso). The words "by the Government and by private manufacturers" are omitted as surplusage.

§ 9506. Sale, loan, or gift of samples, drawings, and information to contractors.

The Secretary of the Air Force, under regulations to be prescribed by him, may sell, lend, or give such samples, drawings, and manufacturing or other information as he considers best for the national defense—

(1) to any contractor for Air Force supplies under approved production plans; and

(2) to any person likely to manufacture or supply Air Force supplies under such plans.

(Aug. 10, 1956, ch. 1041, 70A Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9506	10: 1192a.	July 27, 1937, ch. 525, 50 Stat. 535.

Clause (1) is substituted for the words "contractors * * * which are * * * manufacturers or furnishers of supplies and equipment for the use of the Department of

the Army or of the Army". Clause (2) is substituted for the words "private firms which * * * may likely be manufacturers or furnishers of supplies and equipment for the use of the Department of the Army or of the Army". The words "in his discretion", "rules", and "and limitations" are omitted as surplusage. The word "equipment" is omitted as covered by the word "supplies", as defined in section 101 (26) of this title.

§ 9507. Sale of ordnance and ordnance stores to designers.

The Secretary of the Air Force may sell to designers who are nationals of the United States serviceable ordnance and ordnance stores necessary in the development of designs for the armed forces. (Aug. 10, 1956, ch. 1041, 70A Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9507	50: 65.	Apr. 23, 1904, ch. 1485 (13th par. under "Ordnance Department"), 33 Stat. 276; Aug. 1, 1953, ch. 305, § 645 (5th clause), 67 Stat. 357.

The words "designers who are nationals of the United States" are substituted for the words "American designers". The first sentence of cited portion of the source statute is not contained in 50: 65. It is also omitted from the revised section as impliedly repealed by the Permanent Appropriation Repeal Act, 1934, § 4 (b) (10), 48 Stat. 1227 (31 U. S. C. 725c (b) (10)). 50: 65 (proviso) is omitted as surplusage. The words "armed forces" are substituted for the words "military service".

Chapter 933.—PROCUREMENT

Sec.
9531. Authorization.
9532. Factories, arsenals, and depots: manufacture at.
9534. Subsistence supplies: contract stipulations; place of delivery on inspection.
9535. Exceptional subsistence supplies: purchases without advertising.
9536. Equipment: bakeries, schools, kitchens, and mess halls.
9537. Military surveys and maps: assistance of United States mapping agencies.
9538. Unserviceable ammunition: exchange and reclamation.
9540. Architectural and engineering services.

CROSS REFERENCES

Miscellaneous procurement provisions, general military law, see section 2381 et seq. of this title.

§ 9531. Authorization.

The Secretary of the Air Force may procure—

(1) the aircraft or airframe tons authorized by section 8062 of this title;

(2) aircraft to replace those which he determines to be unservicable or obsolete;

(3) guided missiles; and

(4) equipment and facilities necessary for the maintenance and operation of the Air Force, including spare equipment, material, and parts.

This section does not authorize the design or development of any prototype aircraft intended primarily for commercial use. (Aug. 10, 1956, ch. 1041, 70A Stat. 575.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9351	5: 628; 10: 20a (as applicable to 5: 628).	July 10, 1950, ch. 454, §§ 204, 304 (as applicable to § 204), 64 Stat. 324, 325.

The words "including spare equipment, material, and parts" are substituted for the words "spares, spare parts". The words "the number of" are omitted as surplusage. The words "in this chapter, section 481 of this title", in 10: 20a, are omitted, since nothing in those references pertains to the rule stated in 10: 20a. The last sentence is substituted for 10: 20a.

§ 9532. Factories, arsenals, and depots: manufacture at.

The Secretary of the Air Force may have supplies needed for the Department of the Air Force made in factories, arsenals, or depots owned by the United States, so far as those factories, arsenals, or depots can make those supplies on an economical basis. (Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9532	5: 626–2 (e).	Sept. 19, 1951, ch. 407, § 101 (e), 65 Stat. 327.

The word "made" is substituted for the words "manufactured or produced". The words "United States" are substituted for the word "Government".

§ 9534. Subsistence supplies: contract stipulations; place of delivery on inspection.

Each contract for subsistence supplies for the Air Force that is made on public notice must provide for complete delivery, on inspection, at a specified place. (Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9534	10: 1198.	R. S. 3715; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.

The words "by the branch, office, or officers of the Army the Secretary of the Army may from time to time designate" are omitted as inapplicable to the Air Force. The words "a specified place" are substituted for the words "such places as shall be stipulated".

§ 9535. Exceptional subsistence supplies: purchases without advertising.

Exceptional articles of subsistence supplies that are for members of the Air Force, and for which they are to pay regardless of condition upon arrival, may, under regulations to be prescribed by the Secretary of the Air Force, be bought on the open market without advertising. (Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9535	10: 1197.	Feb. 12, 1895, ch. 83 (last sentence of 1st par. under "Subsistence Department"), 28 Stat. 658.

The word "supplies" is substituted for the word "stores". The word "members" is substituted for the words "officers and enlisted men".

§ 9536. Equipment: bakeries, schools, kitchens, and mess halls.

Money necessary for the following items for the use of enlisted members of the Air Force may be spent from appropriations for regular supplies:

(1) Equipment for air base bakeries.

(2) Furniture, textbooks, paper, and equipment for air base schools.

(3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9536	10: 1334.	June 13, 1890, ch. 423 (1st proviso under "Quartermaster's Department"), 26 Stat. 152.

The words "Money necessary * * * may be spent" are substituted for the words "There may be expended * * * the amounts required". The word "bakeries" is substituted for the words "bake house to carry on post bakeries". The words "each and all" are omitted as surplusage.

§ 9537. Military surveys and maps: assistance of United States mapping agencies.

The Secretary of the Air Force may obtain the assistance of the United States Geological Survey, the Environmental Science Services Administration, and other mapping agencies of the United States in—

(1) making topographic and other surveys;

(2) obtaining extra topographic data;

(3) making maps needed for military purposes;

(4) research and development of surveying by aerial photography; and

(5) developing methods of field reproduction.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9537	50: 81.	May 14, 1928, ch. 544, 45 Stat. 509.

The words "United States" are substituted for the word "Government". In clause (3), the word "making" is substituted for the words "preparation and printing of". In clause (5), the words "developing methods of" are substituted for the word "methods".

AMENDMENTS

1966—Pub. L. 89–718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 30, 1970, 35 F.R. 15627, 84 Stat. ------, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

CROSS REFERENCES

Coast and Geodetic Survey, see section 851 et seq. of Title 33, Navigation and Navigable Waters.

Geological Survey, see section 31 et seq. of Title 43, Public Lands.

§ 9538. Unserviceable ammunition: exchange and reclamation.

(a) The Secretary of the Air Force may, by contract or otherwise, reclaim deteriorated and unserviceable ammunition and components, not suitable for exchange, by conversion to usable form as complete rounds or serviceable components, and pay all or part of the costs thereof through the exchange of deteriorated and unserviceable components.

(b) Subject to applicable regulations under section 486 of title 40, the Secretary may exchange deteriorated and unserviceable ammunition and components thereof for serviceable ammunition or components. (Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9538 (a)	10: 1210.	June 1, 1926, ch. 435, 44 Stat. 680; Oct. 31, 1951, ch. 654, § 2 (6), 65 Stat. 707.
9538 (b)	10: 1209.	

In subsection (a), the words "by conversion" are substituted for the words "by reworking * * * converting". The words "not suitable for exchange" are substituted for the words "as it may not be advisable to have exchanged". The words "under section 1209 of this title" and "not desired to retain" are omitted as surplusage.

In subsection (b), the word "serviceable" is substituted for the words "in condition for immediate use".

§ 9540. Architectural and engineering services.

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Air Force are inadequate, the Secretary of the Air Force may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, 5101—5115, 5331—5338, 5341, 5342, and 7154 of title 5 do not apply to employment under this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 577; Nov. 2, 1966, Pub. L. 89–718, § 28, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9540 (a)	5: 221 (1st sentence, less last 15 words).	Aug. 7, 1939, ch. 511, § 2, 53 Stat. 1240.
9540 (b)	5: 221 (less 1st sentence).	
9540 (c)	5: 221 (last 15 words of 1st sentence).	

In subsection (a), the words "and providing that in the opinion" are omitted as covered by the words "whenever he considers". The words "needed for" are substituted for the words "required for the accomplishment of".

In subsection (c), reference is made in substance to the Classification Act of 1949, instead of the Classification Act of 1923 referred to in the source statute. since section 1106 (a) of the Classification Act of 1949, 63 Stat. 972, provides that all references in other acts to the Classification Act of 1923 should be considered to refer to the Classification Act of 1949.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-718 substituted "Sections 305, 3324, 5101—5115, 5331—5338, 5341, 5342, and 7154 of title 5" for "Sections 1071—1153 of title 5".

Chapter 935.—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.
9561. Rations.
9562. Clothing.
9563. Clothing: replacement when destroyed to prevent contagion.
9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force.
9565. Colors, standards, and guidons of demobilized organizations: disposition.

CROSS REFERENCES

Property records, see section 2701 of this title.

§ 9561. Rations.

(a) The President may prescribe the components, and the quantities thereof, of the Air Force ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Air Force so require.

(b) An enlisted member of the Air Force on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations approved by the Secretary. (Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9561 (a)	10: 724.	Feb. 2, 1901, ch. 192 § 40, 31 Stat. 758.
9561 (b)	10: 716b; 10: 725.	R. S. 1293; July 16, 1892, ch. 195 (last 15 words before proviso under "Subsistence of the Army"), 27 Stat. 178.
9561 (c)	10: 726.	Mar. 2, 1907, ch. 2511 (1st proviso under "Subsistence Department"), 34 Stat. 1165. R. S. 1175.

In subsection (a), the words "the components, and the quantities thereof" are substituted for the words "the kinds and quantities of the component articles". The words "substitutive" and "a due regard" are omitted as surplusage.

In subsection (b), the words "on active duty" are inserted for clarity. The words "under such regulations as may be prescribed by the Secretary of the Army", in 10: 725, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "or reserve", "prescribed for use on emergent occasions", and "furnished", in 10: 725, are omitted as surplusage.

In subsection (c), the words "as the Surgeon General" are omitted, since the Air Force does not have the statutory office of Surgeon General, and functions which, for the Army, are assigned by statute to subordinate officers of the Army are, for the Air Force, assigned to the Secretary of the Air Force. The words "Such quantities of" and "may be allowed" are omitted as surplusage.

§ 9562. Clothing.

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9562	10: 831.	R. S. 1296 (less 1st 9 words).

The words "members of the Air Force" are substituted for the words "troops of the United States".

CROSS REFERENCES

Uniforms, general military law provisions, see section 771 et seq. of this title.

§ 9563. Clothing: replacement when destroyed to prevent contagion.

The Secretary of the Air Force may order a gratuitous issue of clothing to any enlisted member of the Air Force who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of a medical officer to prevent contagion. (Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9563	10: 834	R. S. 1298.

The words "enlisted member" are substituted for the word "soldiers". The words "any articles of their" are omitted as surplusage. The words "while he had that disease" are inserted for clarity. The words "a medical officer" are substituted for the words "proper medical officers". The words "on the recommendation of the Surgeon General" are omitted, since the Air Force does not have the statutory office of Surgeon General, and functions which, for the Army, are assigned by statute to subordinate officers of the Army are, for the Air Force, assigned to the Secretary of the Air Force.

CROSS REFERENCES

Uniforms, general military law provisions, see section 771 et seq. of this title.

§ 9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force.

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Air Force, the Secretary of the Air Force shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment. (Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9564	10: 1259d; 10: 1259e; 34:541.	R. S. 1143; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272. R. S. 1135; June 28, 1950, ch. 383, § 402 (a), 64 Stat. 272.

The words "While * * * on shore duty" are substituted for the words "under orders to act on shore", in 10: 1259d and 1259e, and 34: 541. The words "the Secretary of the Air Force" are substituted for the words "the branch, office, or officers of the Army the Secretary of the Army may from time to time designate", in 10: 1259d and 1259e, and 34: 541, since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary

of the Air Force. The words "during the time such detachment is so acting or proceeding to act", in 10: 1259d and 1259e, and 34: 541, are omitted as surplusage. The words "their baggage, provisions, and cannon", in 10: 1259e and 34: 541, are omitted as surplusage. The words "and shall furnish the naval officer commanding any such detachment, and his necessary aides, with horses, accouterments, and forage", in 10: 1259e and 34: 541, are omitted as obsolete.

§ 9565. Colors, standards, and guidons of demobilized organizations: disposition.

(a) The Secretary of the Air Force may dispose of colors, standards, and guidons of demobilized organizations of the Air Force, as follows:

(1) Those brought into Federal service by the Air National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary, for such national use as he may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Air Force remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care. (Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9565 (a)	5: 202 (less 3d and last sentences).	Mar. 4, 1921, ch. 166, § 2, 41 Stat. 1438.
9565 (b)	5: 202 (3d sentence).	
9565 (c)	5: 202 (last sentence).	

In subsection (a), the words "Any which were used during their service by such organizations and" are omitted as surplusage. The first 15 words of the last sentence are substituted for 5: 202 (1st 45 words of 2d sentence). The words "the Quartermaster General" are omitted, since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force.

Chapter 937.—UTILITIES AND SERVICES

Sec.
9591. Utilities: proceeds from overseas operations.
9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
9593. Quarters: heat and light.

CROSS REFERENCES

General military law provisions, see section 2481 of this title.

Property records, see section 2701 of this title.

§ 9591. Utilities: proceeds from overseas operations.

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Air Force in the field overseas are available for that utility until the close of the fiscal year following that in which they are received. (Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9591	10: 1287.	July 9, 1918, ch. 143, subch. XX (1st par.), 40 Stat. 893; May 29, 1928, ch. 901 (par. 37), 45 Stat. 989; Aug. 1, 1953, ch. 305, § 645 (7th clause), 67 Stat. 357.

The words "Air Force" are substituted for the word "Engineer", since the Air Force does not have organic corps created by statute.

§ 9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.

In the operation of telegraph lines, cables, or radio stations, members of the Air Force may, in the discretion of the Secretary of the Air Force, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing officer for payment, or may file a claim with the General Accounting Office for the forwarding charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9592	10: 1319.	May 12, 1917, ch. 12 (proviso under "Washington-Alaska Military Cable and Telegraph System"), 40 Stat. 43.

The words "members of the Air Force" are substituted for the words "Signal Corps", since the Air Force does not have organic corps created by statute. The words "Government", "and to this end", "as may be", and "amount of such" are omitted as surplusage.

§ 9593. Quarters: heat and light.

The heat and light necessary for the authorized quarters of members of the Air Force shall be furnished at the expense of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9593	10: 723.	Mar. 2, 1907, ch. 2511 (1st proviso under "Quartermaster's Department"), 34 Stat. 1167.

The words "members" is substituted for the words "officers and enlisted men". The words "under such regulations as the Secretary of the Army may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

Chapter 939.—SALE OF SERVICEABLE MATERIAL

Sec.
9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.
9622. Rations: commissioned officers in field.
9623. Tobacco: enlisted members of Air Force.
9624. Medical supplies: civilian employees of Air Force; American National Red Cross; Soldiers' Home.

Sec.
9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans.
9626. Aircraft supplies and services: foreign military or air attaché.
9627. Supplies: educational institutions.
9628. Airplane parts and accessories: civilian flying schools.
9629. Proceeds: disposition.

CROSS REFERENCES

Property records, see section 2701 of this title.

§ 9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.

(a) The Secretary of the Air Force shall procure and sell, for cash or credit—

(1) articles designated by him, to members of the Air Force; and

(2) items of individual clothing and equipment, to officers of the Air Force, under such restrictions as the Secretary may prescribe.

An account of sales on credit shall be kept and the amount due reported to the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) Subsistence supplies may be sold to members of the Air Force. The selling price of each article sold under this subsection is the invoice price of the last lot of that article that the officer making the sale received before the first day of the month in which the sale is made. Activities conducted under this subsection shall be consistent with section 2208 of this title.

(c) The Air Force shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Air Force.

(d) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Air Force.

(e) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Veterans' Administration may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Air Force.

(f) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Air Force honorably or under honorable conditions, at the prices at which like articles are sold to members of the Air Force. This subsection does not modify section 772, 773, or 8612 of this title.

(g) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any organization of the Air Force or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash.

(h) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to those officers and employees inside the United States may be made only to those residing within military installations.

(i) Appropriations for subsistence of the Air Force may be applied to the purchase of subsistence supplies for sale to members of the Air Force on active duty for the use of themselves and their families. (Aug. 10, 1956, ch. 1041, 70A Stat. 579; Sept. 7, 1962, Pub. L. 87-651, title I, § 118, 76 Stat. 513.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9621 (a)	10: 904; 10: 1231; 10: 1237; 32: 156.	Aug. 31, 1918, ch. 166, § 9 (less 17th through 22d words), 40 Stat. 957.
9621 (b)	10: 1238.	R. S. 1144; June 28, 1950, ch; 383, § 402 (a), 64 Stat. 272.
9621 (c)	10: 1233.	June 3, 1916, ch. 134, § 109; restated June 4, 1920, ch. 227, subch. I, § 47; restated June 3, 1924, ch. 244, § 3; restated Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136; Mar. 25, 1948, ch. 157, § 5 (b), 62 Stat. 91; Oct. 12, 1949, ch. 681, § 501 (f) (2) and (3) (as applicable to § 109 of the Act of June 3, 1916, ch. 134), 63 Stat. 827; July 9, 1952, ch. 608, § 803 (12th par.), 66 Stat. 505.
9621 (d)	10: 1234; 34: 539.	
9621 (e)	10: 1235.	
9621 (f)	10: 1395 (less last sentence).	
9621 (g)	10: 1253.	
9621 (h)	10: 1241.	June 30, 1942, ch. 253, title I (last proviso under "Clothing and Equipage"), 42 Stat. 729.
9621 (i)	10: 1196.	July 5, 1884, ch. 217 (proviso under "Subsistence of the Army") 23 Stat. 108.
		Aug. 29, 1916, ch. 418 (words before semicolon of 3d proviso under "Subsistence of the Army"), 39 Stat. 630.
		Mar. 4, 1915, ch. 143 (last proviso under "Clothing, and Camp and Garrison Equipage"), 38 Stat. 1079; June 28, 1950, ch. 383, § 402 (k), 64 Stat. 273.
		June 5, 1920, ch. 240 (par. under "Purchase of Army Stores by Discharged Receiving Treatment from the Public Health Service"), 41 Stat. 976.
		Feb. 14, 1927, ch. 134 (less last sentence), 44 Stat. 1096.
		Mar. 3, 1911, ch. 209 (last par. under "Subsistence Department"), 36 Stat. 1047.
		Aug. 8, 1953, ch. 390, § 1, 67 Stat. 499.
		Mar. 3, 1875, ch. 131 (proviso of 1st sentence of 1st par. under "War Department"), 18 Stat. 410.

In subsection (a), the word "members" is substituted for the words "officers and enlisted men", in 10: 1237. Clause (2) is substituted for 10: 904. Reference to the Secretary of the Air Force is substituted for reference to branch, office, or officers of the Army, in 10: 1237, since

the functions which, for the Army are assigned to subordinate officers, are, for the Air Force assigned to the Secretary of the Air Force. 32: 156 is omitted as covered by 10: 904, since the words "officers of the Air Force" necessarily cover all persons named in 32: 156. The words "Except for articles and items acquired through the use of working capital funds under sections 172—172j of title 5" are inserted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (b), the first sentence states expressly the rule which is implicit in 10: 1238. The word "members" is substituted for the words "officers and enlisted men". The words "shall be understood, in all cases of such sales" are omitted as surplusage. The last sentence is inserted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Deputy General Counsel of the Office of the Secretary of Defense, March 28, 1956.)

In subsection (c), the word "members" is substituted for the words "officers and enlisted men". The words "prices at which like property is sold to" are substituted for the words "same price as is charged the".

In subsections (c) and (d), the words "other armed forces" are substituted for the words "Navy and Marine Corps", since such sales are authorized to members of the Coast Guard by section 144 (b) of Title 14.

In subsection (d), the words "other than subsistence supplies" are inserted, since the sale of subsistence supplies is covered by subsection (c).

In subsection (e), the words "a person who has been discharged" are substituted for the words "discharged officers and enlisted men". The words "Navy * * * or Marine Corps", omitted from the 1952 edition of the United States Code, are inserted to conform to the source statute. The words "may buy" are substituted for the words "shall * * * be permitted to purchase". The words "at the prices at which like property is sold" are substituted for the words "at the same price as charged". The word "member" is substituted for the words "officers and enlisted men". The words "while undergoing such care and treatment" are omitted as surplusage.

In subsection (f), the words "person who has been discharged" are substituted for the words "former members * * * who have been separated therefrom". The words "at the prices at which like articles are sold to members" are inserted to conform to the last sentence of subsection (a) and subsection (e).

In subsection (g), the words "regulations to be prescribed by the Secretary" are substituted for the words "Army Regulations". The words "of the Government" are omitted as surplusage. 10: 1253 (last 22 words of 1st sentence) is omitted as surplusage. The words "or to another executive department of the Government" are omitted as superseded by section 7 of the act of May 21, 1920, ch. 194, as amended (31 U. S. C. 686). The provisions of 10: 1253 relating to the computation of cost are omitted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (h), the word "outside" is substituted for the words "beyond the continental limitations". The words "or in Alaska" are omitted, since, under section 101 (1) of this title, the words "United States" are defined to include only the States and the District of Columbia. The word "continental", after the words "within the", is omitted for the same reason. The last sentence is substituted for 10: 1241 (proviso).

In subsection (i), 10: 1196 (last 30 words) is omitted as superseded by the act of April 27, 1914, ch. 72 (last proviso under "Subsistence of the Army"), 38 Stat. 361. The words "So much of the" and "as may be necessary" are omitted as surplusage. The words "members * * * on active duty, for the use of themselves and their families" are substituted for the words "officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations", to conform to 10: 1237 and 1238. Those sections provide the basic authority for procurement and sale of subsistence supplies to all members. This interpretation conforms to established administrative practice under those sections. The word "supplies" is substituted for the word "stores".

REFERENCES IN TEXT

Section 8612 of this title, referred to in text, was repealed by Pub. L. 90-235, § 8(2), Jan. 2, 1968, 81 Stat. 764.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87-651 substituted "section 2208 of this title for "sections 172-172j of title 5."

Subsec. (b). Pub. L. 87-651 substituted "section 2208 of this title" for "sections 172-172j of title 5."

CROSS REFERENCES

Settlement of accounts, deductions from pay, see section 9837 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title; title 37 section 1007.

§ 9622. Rations: commissioned officers in field.

Commissioned officers of the Air Force serving in the field may buy rations for their own use, on credit. Amounts due for these purchases shall be reported monthly to the Secretary of the Air Force. (Aug. 10. 1956, ch. 1041. 70A Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9622	10: 1232.	R. S. 1145.

The words "at cost prices" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

CROSS REFERENCES

Settlement of accounts, deductions from pay, see section 9837 of this title.

§ 9623. Tobacco: enlisted members of Air Force.

The Air Force shall sell not more than 16 ounces of tobacco a month to an enlisted member of the Air Force on active duty who requests it. (Aug. 10, (Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9623	10: 1239.	R. S. 1149.

The words "Air Force" are substituted for the words "Quartermaster Corps", since the Air Force does not have organic corps created by statute. The words "on active duty" are inserted for clarity. The words "shall sell" are substituted for the words "shall be furnished by". The words "in such quantities as they may require" are omitted as surplusage. The words "at cost prices, excluding the cost of transportation" are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative

expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense January 4, 1955.)

CROSS REFERENCES

Settlement of accounts, deductions from pay, see section 9837 of this title; title 37 section 1007.

§ 9624. Medical supplies: civilian employees of Air Force; American National Red Cross; Soldiers' Home.

(a) Under regulations to be prescribed by the Secretary of the Air Force, a civilian employee of the Department of the Air Force who is stationed at an air base may buy necessary medical supplies from the Air Force when they are prescribed by a medical officer on active duty.

(b) The Secretary may sell medical supplies to the American National Red Cross for cash.

(c) The Secretary may sell medical and hospital supplies to the Soldiers' Home. (Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9624 (a)	10: 1236.	Apr. 23, 1904, ch. 1485 (last proviso under "Medical Department"), 33 Stat. 273; Mar. 2, 1905, ch. 1307 (last proviso under "Medical Department"), 33 Stat. 839.
9624 (b)	10: 1254.	Mar. 4, 1915, ch. 143 (2d proviso under "Medical Department"), 38 Stat. 1080.
9624 (c)	24: 58.	June 4, 1897, ch. 2 (par. under "Soldiers' Home, District of Columbia"), 30 Stat. 54; June 28, 1950, ch. 383, § 402 (d), 64 Stat. 272.

In subsection (a), the words "on active duty" are inserted for clarity.

In subsection (b), the words "rates of charge", "to cover the cost of purchase, inspection, and so forth", and "as can be spared without detriment to the military service" are omitted as surplusage. The words "the contract prices paid therefor" are omitted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories, at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.) The word "equipments" is omitted as covered by the word "supplies".

In subsections (b) and (c), the words "The Secretary" are substituted for the words "Medical Department of the Army", since the functions which, for the Army, are assigned by statute to subordinate organizational units of the Army, are, for the Air Force, assigned to the Secretary of the Air Force.

In subsection (c), the words "in the District of Columbia" are omitted as surplusage, since there is only one Soldiers' Home. The words "Upon proper application therefor" are omitted as surplusage. The words "its contract prices" are omitted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

CROSS REFERENCES

American National Red Cross—

Generally, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Equipment for instruction and practice, see section 2542 of this title.

§ 9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans.

(a) The Secretary of the Air Force may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as these articles are sold to officers of the Air Force.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Air Force and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes. (Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9625 (a)	34: 540; 50: 70.	Mar. 3, 1909, ch. 252 (5th par. under "National Trophy and Medals for Rifle Contests"), 35 Stat. 750.
9625 (b)	50: 71.	Mar. 3, 1909, ch. 252 (8th par. under "National Trophy and Medals for Rifle Contests"), 35 Stat. 751; June 28, 1950, ch. 383, § 402 (h), 64 Stat. 273.
9625 (c)	50: 63.	May 11, 1908, ch. 163 (4th par. under "National Trophy and Medals for Rifle Contests"), 35 Stat. 125.

In subsection (a), the words "Secretary of the Air Force" are substituted for the words "Chief of Ordnance", since the functions which, for the Army, are assigned to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force. The words "other armed forces" are substituted for the words "the Navy and Marine Corps", in 34: 540 and 50: 70, since those sales may be made to officers of the Coast Guard under section 114 (c) of Title 14.

CROSS REFERENCES

American National Red Cross, equipment for instruction and practice, see section 2542 of this title.

§ 9626. Aircraft supplies and services: foreign military or air attaché.

Under such conditions as he may prescribe, the Secretary of the Air Force may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge. (Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9626	22: 259 (less last sentence).	May 31, 1939, ch. 161 (less last sentence), 53 Stat. 795.

The last sentence is substituted for the words "except for shelter for which no charge shall be made". The words "and equipment" are omitted as covered by the word "supplies". 22: 259 (last 22 words of 2d sentence) is omitted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized

the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title.

§ 9627. Supplies: educational institutions.

Under such regulations as the Secretary of the Air Force may prescribe, supplies and military publications procured for the Air Force may be sold to any educational institution to which an officer of the Air Force is detailed as professor of air science and tactics, for the use of its military students. Sales under this section shall be for cash. (Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9627	10: 1179 (less proviso).	July 17, 1914, ch. 149 (less proviso), 38 Stat. 512.

The words "procured for" are substituted for the words "as are furnished to". The words "stores * * * matériel of war" are omitted as covered by the word "supplies". The words "the price listed to the Army" are omitted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title.

§ 9628. Airplane parts and accessories: civilian flying schools.

The Secretary of the Air Force may sell, to civilian flying schools at which personnel of the Department of the Air Force or the Department of the Army are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Air Force furnished to them for flight training, the spare parts and accessories needed for those repairs. (Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9628	10: 298c.	Feb. 12, 1940, ch. 27, Title I (proviso under "Air Corps"), 54 Stat. 25.

The words "under the provisions of the act of Apr. 3, 1939, ch. 35, 53 Stat. 555", are omitted as obsolete, since training formerly performed under that act is now performed under section 9301 of this title. The words "personnel of the Departments" are substituted for the words "flying cadets", since the authority is reciprocal, and to conform to section 9656 of this title. The words "flying cadet" are omitted as obsolete. 10: 298c (last 28 words) is omitted to reflect title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.

CROSS REFERENCES

Issuance of aircraft and equipment to civilian aviation schools, see section 9656 of this title.

§ 9629. Proceeds: disposition.

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

(1) Exterior articles of uniform sold under section 9621 of this title.

(2) Supplies, war material, and military publications sold to educational institutions under section 9627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attaché sold under section 9626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9629	10: 1179 (proviso); 10: 1395 (last sentence); 22: 259 (last sentence).	Feb. 14, 1927, ch. 134 (last sentence), 44 Stat. 1096. July 17, 1914, ch. 149 (proviso), 38 Stat. 512. May 31, 1939, ch. 161 (last sentence), 53 Stat. 796.

Chapter 941.—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
9651. Arms, tentage, and equipment: educational institutions not maintaining units of A. F. R. O. T. C.
9652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
9653. Ordnance and ordnance stores: District of Columbia high schools.
9654. Supplies: military instruction camps.
9655. Arms and ammunition: agencies and departments of United States.
9656. Aircraft and equipment: civilian aviation schools.

CROSS REFERENCES

General military law provisions, see section 2541 et seq. of this title.

Property records, see section 2701 of this title.

§ 9651. Arms, tentage, and equipment: educational institutions not maintaining units of A. F. R. O. T. C.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Air Force Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit male students over 14 years of age. (Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9651	10: 1180.	June 3, 1916, ch. 134, § 55c (words before semicolon); added June 4, 1920, ch. 227, subch. I, § 35 (words of last par. before semicolon), 41 Stat. 780.

The reference to schools "other than those provided for in section 381 of this title" is omitted as covered by the descriptions of the educational institutions.

§ 9652. Rifles and ammunition for target practice: educational institutions having corps of cadets.

(a) The Secretary of the Air Force may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time, and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it, and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States. (Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9652 (a)	10: 1185 (1st par.).	Apr. 27, 1914, ch. 72 (last proviso and last par. under "Manufacture of Arms"), 38 Stat. 370.
9652 (b)	10: 1185 (last par., less 1st 22, and last 19, words).	
9652 (c)	10: 1185 (1st 22, and last 19, words of last par.).	

In subsection (a), the words, "and carrying on military training" and "the maintenance of" are omitted as surplusage. In clause (2), the words "suitable to said arm" are omitted as surplusage.

In subsection (b), the words "shall use it for target practice" are substituted for the words "insuring the designed use of the property issued". The words "take proper care of it" are substituted for the words "providing against loss to the United States through lack of proper care".

§ 9653. Ordnance and ordnance stores: District of Columbia high schools.

The Secretary of the Air Force, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. The Secretary shall require a bond in double the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9653	10: 1183.	Feb. 5, 1891, J. Res. 9, 26 Stat. 1113.

The words "at his discretion and", "belonging to the Government, and which can be spared for that purpose", and "in each case" are omitted as surplusage. The words "high schools of the" are substituted for the words "High School of Washington", since the various high schools of the District of Columbia have succeeded the Washington High School that existed at the time the statute was enacted. The words "except for property properly expended" are inserted for clarity.

§ 9654. Supplies: military instruction camps.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue, to any educational institution at which an Air Force officer is detailed as professor of air science and tactics, such supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9654	10: 1182.	May 18, 1910, ch. 124, 39 Stat. 123.

The words "at his discretion and" and "belonging to the Government, and which can be spared for that purpose, as may appear to be" are omitted as surplusage. The words "except for property properly expended" are inserted for clarity. The word "stores" is omitted as covered by the word "supplies".

§ 9655. Arms and ammunition: agencies and departments of United States.

(a) Whenever required for the protection of public money and property, the Secretary of the Air Force may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Air Force. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Air Force to cover the costs of—

(1) ammunition issued;

(2) replacing arms and accouterments that have been lost or destroyed or cannot be repaired;

(3) repairing arms and accouterments returned to the Department of the Air Force; and

(4) making and receiving shipments by the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9655 (a)	50: 61 (less proviso).	Mar. 3, 1879, ch. 183 (2d par. under "Miscellaneous"); restated Apr. 14, 1937, ch. 79, 50 Stat. 63.
9655 (b)	50: 61 (proviso).	

In subsection (a), the word "lend" is substituted for the word "issue", with respect to arms and accouterments, since the property must be returned when the necessity for its use has expired. The words "and not properly expended" are inserted for clarity. The words "United States" are substituted for the word "Government". The

word "their" is substituted for the words "suitable * * * for use therewith". The words "it is no longer needed" are substituted for the words "the necessity for their use has expired".

In subsection (b), the words "hereafter", "borrowed", and "under the authority of this section" are omitted as surplusage.

§ 9656. Aircraft and equipment: civilian aviation schools.

The Secretary of the Air Force, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Air Force or the Department of the Army are pursuing a course of instruction and training under detail by competent orders, and at least one of which is designated by the Civil Aeronautics Authority for the training of Negro air pilots. (Aug. 10, 1956, ch. 1041, 70A Stat. 583.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9656	10: 298b.	Apr. 3, 1939, ch. 35, § 4, 53 Stat. 556.

The words "in his discretion and", "rules", "limitations", and "on hand and belonging to the Government such articles as may appear to be" are omitted as surplusage. The words "Department of the Air Force or the Department of the Army" are substituted for the words "Military Establishment", since the authority is reciprocal.

Chapter 943.—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
9681. Surplus war material: sale to States and foreign governments.
9682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
9684. Surplus obsolete ordnance: sale to patriotic organizations.
9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes.
9686. Obsolete ordnance: gift to State homes for soldiers and sailors.

CROSS REFERENCES

General military law provisions, see section 2571 et seq. of this title.

Management and disposal of Government property, see section 471 et seq. of Title 40, Public Buildings, Property, and Works.

Property records, see section 2701 of this title.

§ 9681. Surplus war material: sale to States and foreign governments.

Subject to regulations under section 486 of title 40, the Secretary of the Air Force may sell surplus war material and supplies, except food, of the Department of the Air Force, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient. (Aug. 10, 1956, ch. 1041, 70A Stat. 583.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9681	10: 1262.	June 5, 1920, ch. 240 (2d proviso under "Contingencies of the Army"), 41 Stat. 949; Oct. 31, 1951, ch. 654, § 2 (8), 65 Stat. 707.

The word "may" is substituted for the words "is authorized in his discretion, to". The words "war material" are substituted for the word "matériel". The words "or equipment" are omitted as covered by the word "supplies". The words "of the Department of the Air Force" are substituted for the words "pertaining to the Military Establishment". The words "which are not needed for military purposes" are omitted as covered by the word "surplus". The words "as or may be found to be" are omitted as surplusage.

§ 9682. Obsolete or excess material: sale to National Council of Boy Scouts of America.

Subject to regulations under section 486 of title 40, the Secretary of the Air Force, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Air Force, including packing, handling, and transportation. (Aug. 10, 1956, ch. 1041, 70A Stat. 583.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9682	10: 1259.	May 15, 1937, ch. 193, 50 Stat. 167; Oct. 31, 1951, ch. 654, § 2 (7), 65 Stat. 707.

The words "obsolete or excess material" are substituted for the words "such obsolete material as may not be needed by the Department of the Army, and such other material as may be spared" to conform to the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 471 et seq.). The words "in his discretion" are omitted as surplusage.

§ 9684. Surplus obsolete ordnance: sale to patriotic organizations.

Subject to regulations under section 486 of title 40, the Secretary of the Air Force may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9684	50: 64; 50: 68.	May 28, 1908, ch. 215, § 14, 35 Stat. 443; June 28, 1950, ch. 383, § 402 (g), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2 (26), 65 Stat. 707. Mar. 4, 1909, ch. 319, § 47, 35 Stat. 1075; June 28, 1950, ch. 383, § 402 (i), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2 (28), 65 Stat. 707.

50: 64 (proviso) and 50: 68 (proviso) are omitted as surplusage.

The words "the Chief of Ordnance" are omitted, since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force.

§ 9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes.

(a) Upon the recommendation of the Governor of the State or Territory concerned, the Secretary of the Air Force, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State and Territorial educational institutions and to State soldiers' and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required. (Aug. 10, 1956, ch. 1041, 70A Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9685 (a)	50: 62a (1st par. and proviso of last par.).	June 30, 1906, ch. 3938, 34 Stat. 817.
9685 (b)	50: 62a (last par., less proviso).	

In subsection (a), the words "at his discretion" and "as may be available" are omitted as surplusage. The word "lend" is substituted for the word "issue" to reflect the intent of the section. 50: 62a (1st 13 words of proviso) is omitted as surplusage. The words "and which is still in effect" are inserted for clarity.

In subsection (b), the words "to the United States" are omitted as surplusage. The words "except property properly expended" are inserted for clarity.

§ 9686. Obsolete ordnance: gift to State homes for soldiers and sailors.

Subject to regulations under section 486 of title 40, the Secretary of the Air Force may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority. (Aug. 10, 1956, ch. 1041, 70A Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9686	50: 66.	Feb. 8, 1889, ch. 116, 25 Stat. 657; Oct. 31, 1951, ch. 654, § 2 (27) 65 Stat. 707. Mar. 3, 1899, ch. 423 (1st proviso under "Ordnance Department"). 30 Stat. 1073; May 26, 1900, ch. 586 (1st proviso under "Ordnance Department"), 31 Stat. 216; June 28, 1950, ch. 383, § 402 (e), 64 Stat. 273.

The words "subject to such regulations as he may prescribe" are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words "to any of the 'National Homes for Disabled Volunteer Soldiers' already established or hereafter established and", in the act of February 8, 1889, ch. 116, 25 Stat. 657, are not contained in 50: 66 (2d sentence). They are also omitted from the revised section, since the National Homes for Disabled Volunteer Soldiers were dissolved by the Act of July 3, 1930, ch. 863, 46 Stat. 1016. The acts of March 3, 1899, ch. 643 (1st proviso under "Ordnance Department"), 30 Stat. 1073; and May 26, 1900, ch. 586 (1st proviso under "Ordnance Department"), 31 Stat. 216, as amended, relating to disposal of ordnance to "Homes for Disabled Volunteer Soldiers" by the Chief of Ordnance of the Army, became inoperative when the Homes were dissolved. Although section 402 (e) of the Army Organization Act of 1950, ch. 383, 64 Stat. 273, amended the act of May 26, 1900, it did not have the effect of reviving that act. The word "give" is substituted for the word "deliver" to express more clearly the intent of the section. The words "serviceable" and "as may be on hand undisposed of" are omitted as surplusage. The word "may" is substituted for the words "is authorized and directed", since section 9684 of this title provides an alternative method for the disposal of obsolete cannon.

Chapter 945.—INQUESTS; DISPOSITION OF EFFECTS OF DECEASED PERSONS

Sec.
9711. Inquests.
9712. Disposition of effects of deceased persons by summary court-martial.
9713. Disposition of effects of deceased persons by Soldiers' Home.

CROSS REFERENCES

General military law provisions respecting death benefits, see section 1475 et seq. of this title.

§ 9711. Inquests.

(a) When a person is found dead under circumstances that require investigation, at a place garrisoned by the Air Force and under the exclusive jurisdiction of the United States, the commanding officer shall direct a summary court-martial to investigate the circumstances of the death.

(b) In conducting an investigation under subsection (a), the summary court-martial may summon witnesses and examine them upon oath.

(c) The summary court-martial shall promptly submit to the commanding officer a report of the investigation and findings as to the cause of death. (Aug. 10, 1956, ch. 1041, 70A Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9711 (a)	10: 15a (words before semicolon of 1st sentence).	June 4, 1920, ch. 227, subch. II, § 1 (Art. 113), 41 Stat. 810; May 5, 1950, ch. 169, § 6 (d), 64 Stat. 145.
9711 (b)	10: 15a (1st sentence, less words before semicolon).	
9711 (c)	10: 15a (less 1st sentence).	

In subsection (a), the words "post, fort, camp, or other" are omitted as surplusage.

In subsection (b), the words "In conducting an investigation under subsection (a)" are substituted for the words "for this purpose". The word "may" is substituted for the words "shall have power to". The words "or affirmation" are omitted, since the word "oath", as defined in section 1 of title 1, includes "affirmation".

In subsection (c), the words "commanding officer" are substituted for the words "post or other commander" to conform to subsection (a).

CROSS REFERENCES

Summary courts-martial—

Jurisdiction, see section 820 of this title.

Persons authorized to convene, see section 824 of this title.

§ 9712. Disposition of effects of deceased persons by summary court-martial.

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Air Force; or

(2) an inmate of the Soldiers' Home who dies in an Air Force hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then at the air base or in quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then at the air base or in quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Air Force.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) Surviving spouse or legal representative.

(2) Son.

(3) Daughter.

(4) Father, if he has not abandoned the support of his family.

(5) Mother.

(6) Brother.

(7) Sister.

(8) Next of kin.

(9) Beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects and articles not permitted to be sold, to the executive part of the Department of the Air Force for transmission to the Soldiers' Home.

(g) The summary court-martial shall make a full report of the transactions under this section, with respect to the deceased, to the Department of the Air Force for transmission to the General Accounting Office for action authorized in the settlement of accounts of deceased members of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 585; Nov. 2, 1966, Pub. L. 89–718, § 48, 80 Stat. 1121.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9712 (a)	5: 150j (words before 1st semicolon of 1st par.; and last par.).	June 4, 1920, ch. 227, subch. II, § 1 (Art. 112), 41 Stat. 809; May 5, 1950, ch. 169, § 6 (c), 64 Stat. 145.
9712 (b)	5: 150j (22 words after 1st semicolon of 1st par.).	
9712 (c)	5: 150j (words between 1st and 2d semicolons of 1st par., less 1st 22 words).	
9712 (d)	5: 150j (words between 2d and 3d semicolons of 1st par.).	
9712 (e)	5: 150j (words between 3d and 4th semicolons of 1st par.).	
9712 (f)	5: 150j (1st par., less words before 4th semicolon, and less last 40 words).	
9712 (g)	5: 150j (last 40 words of 1st par.).	

In subsection (a), the words "the court-martial jurisdiction of the Air Force or the Army at a place or command under the jurisdiction of the Air Force" are substituted for the words "military law", to reflect the creation of a separate Air Force. Clause (2) is substituted for 5: 150j (last par.).

In subsections (a), (b), and (c), the words "surviving spouse" are substituted for the word "widow".

In subsection (c), the word "may" is substituted for the words "shall have authority to". The words "to the extent permitted" are substituted for the words "in so far as * * * will permit". The words "under this article" and "upon its transactions" are omitted as surplusage.

In subsection (d), the words "through the Quartermaster Corps" are omitted, since the Air Force does not have organic corps created by statute. The words "if such be found by said court" are omitted as surplusage. The words "United States" are substituted for the word "Government". 5: 150j (19 words before 3d semicolon of 1st par.) is omitted as covered by subsection (g).

In subsection (e), the first 37 words are substituted for 5: 150j (33 words after 3d semicolon of 1st par.). The word "may" is substituted for the word "shall have the authority".

In subsection (f), the words "Soldiers' Home" are inserted, since, as provided in section 9713 of this title, the Home is now the place where the mentioned articles are sent.

AMENDMENTS

1966—Subsec. (a)(1). Pub. L. 89–718 substituted "military law" for "the court-martial jurisdiction of the Air Force or the Army".

CROSS REFERENCES

General military law provisions respecting—

Disposition of unclaimed property, see section 2575 of this title.

Final settlement of accounts of deceased members, see section 2771 of this title.

Summary courts-martial—

Jurisdiction, see section 820 of this title.

Persons authorized to convene, see section 824 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2575, 9713 of this title; title 5 section 5564; title 37 section 554.

§ 9713. Disposition of effects of deceased persons by Soldiers' Home.

(a) The effects of a deceased person that the Department of the Air Force receives under section 9712 (f) of this title shall be delivered to the Soldiers'

Home. The Home shall dispose of the effects as follows:

(1) A will or other paper involving property rights shall be promptly delivered to the proper court of record.

(2) If the heirs or legal representative of the deceased cannot sooner be ascertained, the Home shall retain the remaining effects until three years after the death of the deceased, and then, upon establishment of a right thereto to the satisfaction of the Home, it shall deliver them to the living person highest on the following list who can be found:

(A) Surviving spouse or legal representative.

(B) Son.

(C) Daughter.

(D) Father, if he has not abandoned the support of his family.

(E) Mother.

(F) Brother.

(G) Sister.

(H) Next of kin.

(I) Beneficiary named in the will of the deceased.

(b) After three years from the date of death, the Home may sell the effects to which a right has not been established by the heirs or legal representative, except decorations, medals, and citations, by public or private sale, as it considers most advantageous.

(c) After five years from the date of death, the Home shall dispose of effects that are not sold under subsection (b) and to which a right has not been established by the heirs or legal representative of the deceased, including decorations, medals, and citations, in the manner that it considers most appropriate in the public interest. It may retain them; deliver them to the Veterans' Administration, a State or other military home, a museum, or other appropriate institution, or destroy them if the Board of Commissioners of the Home determines that they are valueless.

(d) The net proceeds received by the Home from the sale of the deceased's effects shall be covered into the Treasury to the credit of the fund called the "Soldiers' Home permanent fund (trust fund)", and the principal of the fund so increased shall draw interest at 3 percent a year, payable quarterly to the treasurer of the Home.

(e) A claim for the net proceeds of the sale of the deceased's effects may be filed with the General Accounting Office at any time within six years after the date of his death, for action under section 2771 of this title. If not so filed, such a claim may not be considered by a court or the General Accounting Office.

(f) A claim allowed by the General Accounting Office under subsection (e) shall be certified to the treasurer of the Home for payment from the Soldiers' Home permanent fund (trust fund) in the amount found due, including accrued interest. No claim may be allowed or paid in excess of the net proceeds, including accrued interest, of the estate covered into the Treasury under subsection (d). (Aug. 10, 1956, ch. 1041, 70A Stat. 586.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9713 (a)	5: 150j-1.	Feb. 21, 1931, ch. 268, §§ 1–3, 46 Stat. 1203, 1204.
9713 (b)	5: 150j-2 (a).	
9713 (c)	5: 150j-2 (b).	
9713 (d)	5: 150j-2 (c).	
9713 (e)	5: 150j-3 (a).	
9713 (f)	5: 150j-3 (b).	

In subsection (a), the first sentence is substituted for 5: 150j-1 (words before 1st semicolon), since the reference to the effects in the possession of the General Accounting Office was only to those in its possession on the effective date of that act, and all such effects were transferred to the Soldiers' Home. The words "The Home shall dispose of the effects as follows" are inserted for clarity. The words "after the death" are substituted for the words "from the date of the death * * * shall have expired". The words "the deceased" are substituted for the words "the person on whose behalf they were received". The words "(in the event said period shall not have already elapsed)" are omitted as surplusage.

In subsection (b), the words "except decorations, medals, and citations" are substituted for 5: 150j-2 (a) (proviso). The words "of said deceased" are omitted as surplusage.

In subsection (c), the words "are valueless" are substituted for the words "no longer possess any value". The words "fitting, helpful, and" are omitted as surplusage.

In subsection (e), the words "General Accounting Office" are substituted for the words "accounting officers", since the General Accounting Office has replaced them. The word "within" is substituted for the words "prior to the expiration of". The words "may not be considered" are substituted for the words "are barred from being acted upon either". The words "in the settlement of the accounts of deceased officers and enlisted men of the Army" are omitted as surplusage.

In subsection (f), the words "under subsection (e)" are substituted for the words "for the net proceeds of such effects". The words "by check" are omitted as surplusage.

CROSS REFERENCES

General military law provisions respecting disposition of unclaimed property, see section 2575 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2575 of this title; title 5 section 5564; title 37 section 554.

Chapter 947.—TRANSPORTATION

Sec.
9741. Control and supervision.
9742. Control of transportation systems in time of war.
9743. Officers: use of transportation.
9746. Civilian personnel in Alaska.

AMENDMENTS

1962—Pub. L. 87–651, title I, § 129(2), Sept. 7, 1962, 76 Stat. 514, eliminated item 9748.

CROSS REFERENCES

General military law provisions, see section 2631 et seq. of this title.

Property records, see section 2701 of this title.

§ 9741. Control and supervision.

The transportation of members, munitions of war, equipment, military property, and stores of the Air Force throughout the United States shall be under the immediate control and supervision of the Secretary of the Air Force and agents appointed or designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9741	10: 1363.	R. S. 220.

§ 9742. Control of transportation systems in time of war.

In time of war, the President, through the Secretary of the Air Force, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic. (Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9742	10: 1361.	Aug. 29, 1916, ch. 418 (last par. under "Ordnance Department"), 39 Stat. 645.

The words "as may be needful or desirable" are omitted as surplusage.

§ 9743. Officers: use of transportation.

Under such conditions as the Secretary of the Air Force may prescribe, officers of the Air Force may, in the performance of their duties, use means of transportation provided for the Air Force and its supplies. (Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9743	10: 749.	Mar. 3, 1911, ch. 209 (5th proviso under "Transportation of The Army and Its Supplies"), 36 Stat. 1051.

Since its legislative history shows that it was enacted because the Comptroller of the Treasury had disallowed certain accounts for travel expenses (46 Congressional Record, pp. 905—913, 4643—4645), the source statute is restated to preclude future disallowances. The words "official and military" are omitted as surplage.

§ 9746. Civilian personnel in Alaska.

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on airplanes operated by Air Force transport agencies or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Air Force considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air—

(A) the Civil Aeronautics Board has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
9746	10: 1371a.	Nov. 21, 1941, ch. 483; restated July 25, 1947, ch. 321, 61 Stat. 423.

Before the enactment of the National Security Act of 1947, the transport functions covered by this section were performed only by the Army. Under Transfer Order 26, 15 Oct. 1948, JAAF Bull. 42, 1948; JAAFAR 4-55-1, par. 2a (1) (f), 29 Oct. 1948; AR 96-15, AFR 76-7, 5 June 1951; AR 96-20, AFR 76-6, 11 June 1953, these transport functions also became the responsibility of the Secretary of the Air Force.

Under section 2 (a) (3) of the National Security Act (as it existed before August 10, 1949), the sea transportation functions of the Army and Navy, and the air transportation functions of the Army, Navy, and Air Force were respectively consolidated into the "Military Sea Transportation Service", under the Department of the Navy, and the "Military Air Transport Service", under the Department of the Air Force. Instead of having space on transport vessels and airplanes operated by it for its sole use, the Air Force is allotted bulk space on vessels and airplanes operated by military transport agencies operating for the benefit of the Department of Defense as a whole. The words "or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense" are inserted, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1953/5885, 22 July 1953), concurred in by the Judge Advocate General of the Air Force, to make clear that the rule applicable to vessels and airplanes applies to the bulk space allocated to the Air Force. Since the authority to perform transportation functions could again be transferred as between the military departments, the references to airplanes of Air Force transport agencies (as distinct from bulk space allocations thereon) is retained.

The word "considers" is substituted for the words "in the opinion of". The words "Persons residing in Alaska who are and have been employed there by the United States", are substituted for the words "employees of the United States, residing in Alaska, who have been in such employment". The word "commercial" is substituted for the word "civil" for clarity. The words "from and after November 21, 1941", "and the carriage of all such air traffic shall be terminated", "dire", "the privilege herein granted", and "as to each eligible individual" are omitted as surplusage. The words "the continental" are omitted, since section 101 (1) of this title defines the United States as "the States and the District of Columbia".

§ 9748. Repealed. Pub. L. 87-651, title I, § 129(1), Sept. 7, 1962, 76 Stat. 514.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 588, related to transportation of motor vehicles for members on permanent change of station, and is now covered by section 2634 of this title.

Chapter 949.—REAL PROPERTY

Sec.
9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
9772. Reservation and use for air base or testing field.
9773. Acquisition and construction: air bases and depots.
9774. Construction of quarters: limitations on space and cost.
9775. Quarters: officers.
9776. Emergency construction: fortifications.

Sec.
9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
9779. Use of public property.
9780. Acquisition of buildings in District of Columbia.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (203) (B), Sept. 2, 1958, 72 Stat. 1542, added item 9780.

CROSS REFERENCES

General military law provisions, see section 2661 et seq. of this title.

Property records, see section 2701 of this title.

§ 9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.

The Secretary of the Air Force may accept for the United States a gift of—

(1) land that he considers suitable and desirable for a permanent mobilization, training, or supply base; and

(2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
771	10: 1342; 10: 1344.	Aug. 29, 1916, ch. 418 (6th and 8th pars. under "Office of the Chief Signal Officer"), 39 Stat. 622, 623.

10: 1344 (last 40 words) is omitted as executed. The words "tract or tracts", in 10: 1342 and 1344, are omitted as surplusage. The words "and remount station", in 10: 1342, are omitted, since the property and civilan personnel of the Remount Service of the Quartermaster Corps were transferred to the Department of Agriculture by the act of April 21, 1948, ch. 224, 62 Stat. 197 (7 U. S. C. 436-438). The words "by the United States for any purpose" are substituted for the words "for any other service of the United States which may hereafter appear desirable", in 10: 1342. The words "from any person", in 10: 1344, are omitted as surplusage.

§ 9772. Reservation and use for air base or testing field.

When ordered by the President—

(1) unappropriated public land may be reserved from entry for an air base, or a field for tests and experiments, for the Air Force; and

(2) such land and other property of the United States may be designated and used for either of those purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9772	10: 1341.	July 9, 1918, ch. 143 (1st proviso under "Office of the Chief Signal Officer"), 40 Stat. 848.

The words "other property of the United States" are substituted for the words "any Government property". Clause (1) relates only to "public lands", since only they may be "reserved from entry".

§ 9773. Acquisition and construction: air bases and depots.

(a) The Secretary of the Air Force shall determine the sites of such additional permanent air bases and depots in all strategic areas of the United States and the Territories, Commonwealths, possessions, and holdings as he considers necessary. He shall determine when the enlargement of existing air bases and depots is necessary for the effective peacetime training of the Air Force.

(b) In determining the sites of new air bases and depots, the Secretary shall consider the following regions for the purposes indicated—

(1) the Atlantic northeast, for training in cold weather and in fog;

(2) the Atlantic southeast and Caribbean areas, for training in long-range operations, especially those incident to reinforcing the defenses of the Panama Canal;

(3) the southeastern United States, to provide a depot necessary to maintain the Air Force;

(4) the Pacific northwest, to establish and maintain air communication with Alaska;

(5) Alaska, for training under conditions of extreme cold;

(6) the Rocky Mountain area, to provide a depot necessary to maintain the Air Force, and for training in operations from fields in high altitudes; and

(7) other regions, for the establishment of intermediate air bases to provide for transcontinental movements of the Air Force for maneuvers.

(c) In selecting sites for air bases and depots covered by this section and in determining the alteration or enlargement of existing air bases or depots, the Secretary shall consider the need—

(1) to form the nucleus for concentration of Air Force units in time of war;

(2) to permit, in time of peace, training and effective planning in each strategic area for the use and expansion of commercial, municipal, and private flying installations in time of war;

(3) to locate, in each strategic area in which it is considered necessary, adequate storage facilities for munitions and other articles necessary to facilitate the movement, concentration, maintenance, and operation of the Air Force; and

(4) to afford the maximum warning against surprise attack by enemy aircraft upon aviation of the United States and its necessary installations consistent with maintaining, in connection with existing or contemplated landing fields, the full power of the Air Force for operations necessary in the defense of the United States, and in the defense and reinforcement of the Territories, Commonwealths, possessions, and holdings.

(d) In carrying out this section, the Secretary, on behalf of the United States, may acquire title, in fee simple and free of encumbrance, to any land that he considers necessary—

(1) by accepting title without cost to the United States;

(2) by exchanging military reservations or parts thereof for that land, upon the written approval of the President; or

(3) by purchase or condemnation, if acquisition by gift or exchange is impracticable.

(e) The Secretary may, by purchase, gift, lease, or otherwise, acquire at desired locations bombing and machine gun ranges necessary for practice by, and the training of, tactical units.

(f) At each air base or depot established under this section, the Secretary shall remove or remodel existing structures as necessary; do necessary grading; and provide buildings, utilities, communication systems, landing fields and mats, roads, walks, aprons, docks, runways, facilities for the storage and distribution of ammunition, fuel, oil, necessary protection against bombs, and all appurtenances to the foregoing.

(g) The Secretary may direct the transportation of personnel, and the purchase, renovation, and transportation of material, that he considers necessary to carry out this section. (Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9773 (a)	10: 1143a (1st sentence).	Aug. 12, 1935, ch. 511, §§ 1-3, 49 Stat. 610.
9773 (b)	10: 1343a (2d sentence).	
9773 (c)	10: 1343a (less 1st and 2d sentences).	
9773 (d)	10: 1343b.	
9773 (e)	10: 1343c (last sentence).	
9773 (f)	10: 1343c (1st sentence).	
9773 (g)	10: 1343c (2d sentence).	

In subsection (a), the word "shall" is substituted for the words "is authorized and directed to". The words "Territories, Commonwealths," are substituted for the word "Alaska" to make it clear that the section covers all territory of the United States. The words "Air Force" are substituted for the words "General Headquarters Air Force and the Air Corps components of our overseas garrisons".

In subsection (b), the words "to provide", "to permit", "in addition", and "incident to the concentration of" are omitted as surplusage.

In subsection (c), the introductory clause is substituted for 10: 1343a (1st 41 words of 3d sentence). The words "to locate" are substituted for the words "there shall be provided". The words "aviation of the United States" are substituted for the words "our own aviation". The words, "Territories, Commonwealths," are inserted to conform to subsection (a). The words "The stations shall be suitably located", "of the set-up", "by responsible personnel", "there shall be provided", "General Headquarters", "in peace and war", "such close and distant * * * over land and sea", and "The stations and depots shall be located with a view", and 10: 1343a (4th clause of 3d sentence) are omitted as surplusage.

In subsection (d), clause (3) is substituted for 10: 1343b (last 26 words). 10: 1043b (24 words before 1st proviso) is omitted as surplusage.

In subsection (f), the word "shall" is substituted for the words "is further authorized and directed to". The word "provide" is substituted for the words "construct, install, and equip, or complete the construction, installation, and equipment". The words "technical buildings and utilities" are omitted as covered by the words "buildings" and "utilities". The words "sewer, water, power, station and aerodrome lighting" are omitted as covered by the word "utilities". The words "communication systems" are substituted for the words "telephone and signal communications". The words "appurtenances to the foregoing" are substituted for the words "other essentials".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9774 of this title.

§ 9774. Construction of quarters: limitations on space and cost.

(a) In the construction of family quarters from appropriated funds for members of the Air Force, the following are the maximum limitations on net floor area for each unit:

Grade	*Square feet*
General officer	2,100
Colonel	1,670
Major or lieutenant colonel	1,400
Officer below major	1,250
Enlisted member	1,080

In this section, "net floor area" means the space inside the exterior walls, excluding basement, service space instead of basement, attic, garage, and porches.

(b) The maximum limitations prescribed by subsection (a) are increased 10 percent for quarters of the commanding officer of any station, air base, or other installation, based on the grade authorized for that position.

(c) The maximum limitations for family quarters constructed from appropriated funds for civilians are the same as those for members of the Air Force of comparable responsibility, grade, and pay, as determined by the Secretary of the Air Force.

(d) Except when built by members of the Air Force, no permanent barrack, quarters, building, or other permanent structure may be built unless a detailed estimate of its cost has been submitted to Congress and a specific appropriation has been made therefor. No one may build such a structure without specific authority of Congress if the cost is more than $100,000.

(e) A limitation upon the cost of quarters built for members of the Air Force does not apply to expenditures for work and equipment outside those quarters, including expenditures for—

(1) the furnishing of electricity, gas, water, and sewage disposal;

(2) roads and walks;

(3) grading and drainage; and

(4) the construction of air bases or depots under section 9773 of this title.

(f) If the Secretary of Defense, or his designee, determines, on the basis of a survey of the family housing needs at any installations where the construction of family housing is authorized, that the construction of four-bedroom units for enlisted men is required, such units may be constructed with a net floor area of one thousand two hundred and fifty square feet or less.

(g) If the Secretary of Defense, or his designee, determines, on the basis of a survey of the family housing needs at an installation where the construction of family housing is authorized, that the construction of four-bedroom units for officers holding grades below major is required, such units may be constructed with a net floor area of one thousand four hundred square feet or less.

(h) The maximum limitations prescribed by subsections (a), (f), and (g) may be increased up to 15 per centum if the Secretary of Defense, or his designee, determines that such increase is in the best interest of the Government to permit award of a turnkey construction contract for family housing to the contractor offering the most satisfactory pro-

posal. (Aug. 10, 1956, ch. 1041, 70A Stat. 590; Aug. 30, 1957, Pub. L. 85–241, title IV, § 404(c), 71 Stat. 556; Aug. 10, 1959, Pub. L. 86–149, title IV, § 410(c), 73 Stat. 322; July 27, 1962, Pub. L. 87–554, title V, § 504 (a), (c), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91–142, title V, § 510(b), 83 Stat. 312.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9774 (a)	5: 626p; [uncodified: June 12, 1948, ch. 450, § 3 (last par., less provisos), 62 Stat. 380].	June 12, 1948, ch. 450, § 3 (last proviso of 1st par., and last par., less last 3 provisos), 62 Stat. 379, 380.
9774 (b)	[Uncodified: June 12, 1948, ch. 450, § 3 (1st proviso of last par.), 62 Stat. 380].	R. S. 1136; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 242; June 12, 1948, ch. 450, § 4 (2d sentence), 62 Stat. 380.
9774 (c)	[Uncodified: June 12, 1948, ch. 450, § 3 (2d proviso of last par.), 62 Stat. 380].	Oct. 6, 1942, ch. 580, 56 Stat. 769.
9774 (d)	10: 1339.	Aug. 12, 1935, ch. 511, § 4, 49 Stat. 611.
9774 (e)	10: 1337a; 10: 1343d.	

In subsection (a), the introductory clause is substituted for 5: 626p (introductory clause). The words "Officer below major" are substituted for the words "warrant officers, flight officers, and commissioned officers of and below the rank of captain".

In subsection (b) (2), the words "grade authorized for that position" are substituted for the words "normal rank of such officers".

In subsection (c), the words "are the same as those" are substituted for the words "shall be limited to conform to the allowances". The words "responsibility, grade, and pay" are substituted for the words "status according to responsibility, rating, and pay".

In subsection (d), 10: 1339 (last 2 sentences) is omitted as covered by section 355 of the Revised Statutes (50 U. S. C. 175). The word "members" is substituted for the word "troops". The words "a specific appropriation has been made therefor" are substituted for the words "approved by special appropriation for the same". The last sentence is substituted for 10: 1339 (last 20 words of 1st sentence).

In subsection (e), the word "members" is substituted for the words "commissioned officers, commissioned warrant or warrant officers, and enlisted men". The words "does not apply" are substituted for the words "shall not be construed to prohibit or exclude". 10: 1343d (1st 60 words) is omitted as being in part surplusage and in part superseded. The words "which appropriation shall continue available until expended" are omitted as superseded by section 303 (b) of the Army and Air Force Authorization Act of 1949 (10: 20 (note)).

AMENDMENTS

1969—Subsec. (h). Pub. L. 91–142 added subsec. (h).

1963—Subsec. (b). Pub. L. 88–174 eliminated provisions which provided for a 10-percent increase in the prescribed maximum limitations for quarters outside the United States and authorized an increase for quarters of the commanding officer of an airbase.

1962—Subsec. (f). Pub. L. 87–554, § 504(a), removed the limitation of four-bedrom units for enlisted men to 15 percent of family homes constructed from appropriated funds for enlisted men.

Subsec. (g). Pub. L. 87–554, § 504(c), removed the limitation on four-bedroom units for officers holding grades below major to 10 percent of family homes constructed from appropriated funds for officers.

1959—Subsec. (g). Pub. L. 86–149 added subsec. (g).

1957—Subsec. (f). Pub. L. 85–241 added subsec. (f).

FOUR-BEDROOM HOUSING UNITS

Construction cost limitations on four-bedroom units for enlisted men and officers holding grades below major, see note set out under section 1594h–1 of Title 42, The Public Health and Welfare.

NET FLOOR LIMITATIONS FOR UNITS OF HOUSING

Act Aug. 3, 1956, ch. 939, title IV, § 413(a), 70 Stat. 1017, provided that: "The net floor limitations prescribed by section 3 of the Act of June 12, 1948 do not apply to forty-seven units of the housing authorized to be constructed at the United States Air Force Academy by the Act of April 1, 1954 (68 Stat. 47). The net floor area limitations for those forty-seven units are as follows: five thousand square feet for one unit for the Superintendent; three thousand square feet for each of two units for deans; and one thousand seven hundred and fifty square feet for each of forty-four units for department heads."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2388 of this title.

§ 9775. Quarters: officers.

If there are quarters belonging to the United States at an air base or other Air Force installation, they may be assigned as follows:

Grade	*Number of rooms*
Lieutenant general	10
Major general	9
Brigadier general	8
Colonel	7
Lieutenant colonel	6
Major	5
Captain	4
First lieutenant	3
Second lieutenant	2

If such quarters exist, no other quarters may be assigned to commissioned officers. (Aug. 10, 1956, ch. 1041, 70A Stat. 590.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9775	10: 728.	June 18, 1878, ch. 263, § 9; restated Mar. 2, 1907, ch. 2511 (2d proviso under "Barracks and Quarters"), 34 Stat. 1168.

The words "air base or other Air Force installation" are substituted for the words "posts and stations". The words "by the Quartermaster Corps" are omitted, since the Air Force does not have organic corps created by statute. The words "as follows" are substituted for 10: 728 (19 words before colon). The words "in such public quarters" are omitted as surplusage. The last sentence is substituted for the words "and not elsewhere". The act of June 18, 1878, ch. 263, § 9 (proviso), as restated, is not contained in 10: 728. It is also omitted from the revised section as superseded by the Career Compensation Act of 1949, § 302, 63 Stat. 812 (37 U. S. C. 252).

CROSS REFERENCES

Basic allowances for quarters, see section 403 of Title 37, Pay and Allowances of the Uniformed Services.

§ 9776. Emergency construction: fortifications.

If in an emergency the President considers it urgent, a temporary air base or fortification may be built on private land if the owner consents in writing. (Aug. 10, 1956, ch. 1041, 70A Stat. 591; Sept. 1, 1970, Pub. L. 91–393, § 5, 84 Stat. 835.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9776	50: 178.	Apr. 11, 1898, J. Res. 21, 30 Stat. 737.

The word "important" is omitted as covered by the word "urgent". The words "upon which such work is to be placed" are omitted as surplusage.

AMENDMENTS

1970—Pub. L. 91–393 eliminated sentence which provided: "In such a case, section 175 of title 50 does not apply."

§ 9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.

Whenever the Secretary of the Air Force considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

(1) the landing of ferries at a military reservation;

(2) the erection of bridges on a military reservation; and

(3) the driving of livestock across a military reservation.

(Aug 10, 1956, ch 1041, 70A Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9777	10: 1348.	July 5, 1884, ch. 214, § 6, 23 Stat. 104.

The words "may permit" are substituted for the words "shall have authority, in his discretion, to permit". The words "to permit the extension of State, county, and Territorial roads across military reservations" are omitted as superseded by section 2668 of this title. In clause (3), the word "livestock" is substituted for the words "cattle, sheep or other stock animals".

§ 9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain, on military reservations within the United States and the Territories, Commonwealths, and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Air Force on those reservations. (Aug. 10, 1956, ch. 1041, 70A Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9778	10: 1346.	May 31, 1902, ch. 943, 32 Stat. 282.

The words "may issue" are substituted for the words "Authority is given to * * * in his discretion, to grant permission". The words "Under such conditions as he may prescribe" are substituted for the words "under such regulations as the Secretary of the Army may impose". The words "members of the Air Force" are substituted for the word "garrisons". The words "the Territories, Commonwealths, and possessions" are substituted for the words "or its island possessions", for clarity.

§ 9779. Use of public property.

(a) When the economy of the Air Force so requires, the Secretary of the Air Force shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) The Secretary shall assign suitable space for postal purposes at each air base where there is a post office.

(c) No money appropriated for the support of the Air Force may be spent for base gardens or Air Force exchanges. However, this does not prevent Air Force exchanges from using public buildings or public transportation that, in the opinion of the Secretary, are not needed for other purposes. (Aug. 10, 1956, ch 1041, 70A Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9779 (a)	10: 1332.	June 23, 1879, ch. 35, § 8, 21 Stat. 35.
9779 (b)	10: 1345.	Aug. 1, 1914, ch. 223 (2d par. under "Quartermaster Corps"), 38 Stat. 629.
9779 (c)	10: 1335.	July 16, 1892, ch. 195 (last proviso under "Quarter master's Department"), 27 Stat. 178; June 28, 1950, ch. 383, § 402 (c), 64 Stat. 272.

In subsection (a), the words "United States" are substituted for the word "Government".

In subsection (b), the words "suitable space" are substituted for the words "proper and suitable room or rooms". The words "there is a" are substituted for the words "have been established".

In subsection (c), the words "the Secretary" are substituted for the words "the Quartermaster General", since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary.

§ 9780. Acquisition of buildings in District of Columbia.

(a) In time of war or when war is imminent, the Secretary of the Air Force may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Air Force, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

(1) a dwelling house occupied as such;

(2) a building occupied by any other agency of the United States; or

(3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Air Force, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use. (Added Pub. L. 85-861, § 1 (203) (A), Sept. 2, 1958, 72 Stat. 1542.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9780 (a)	40: 37.	July 9, 1918, ch. 143 (3d proviso under "Barracks and Quarters"), 40 Stat. 861.
9780 (b)	40 41.	July 8, 1918, ch. 139 (2d par. under "War Department"), 40 Stat. 826.

In subsection (a), the words "may acquire by lease" are substituted for the words "is authorized, in his dis-

cretion, to rent or lease". The word "needed" is substituted for the word "required".

In subsection (b), the words "At any time" are inserted for clarity. The word "may" is substituted for the words "is authorized". The word "agency" is substituted for the word "branch". Clause (3) is inserted for clarity. The word "determine" is substituted for the word "ascertain". The words "out of funds appropriated for the payment of rent by" are substituted for the words "within the limits of the appropriations for rent made by any act making appropriations for". The word "is" is substituted for the word "be". The words "so ascertained" and "in the manner provided by sections 41 (20) and 250 of Title 28" are omitted as surplusage, since those sections were repealed in 1948 and replaced by sections 1346, 1491, 1496, 1501, 1503, 2401, 2402, and 2501 of that title.

Chapter 951.—MILITARY CLAIMS

Sec.
9801. Definition.
9802. Damage by United States vessels; towage and salvage of United States vessels.
9803. Admiralty claims by United States.
9804. Salvage claims by United States.
9806. Settlement or compromise: final and conclusive.

AMENDMENTS

1960—Pub. L. 86-533, § 1(7)(B), June 29, 1960, 74 Stat. 247, eliminated item 9805.

CROSS REFERENCES

General military law provisions, see section 2731 et seq. of this title.

§ 9801. Definition.

In this chapter, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance. (Aug. 10, 1956, ch. 1041, 70A Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9801	No source.	No source.

The revised section is inserted for clarity, and is based on usage in the source laws for this revised chapter.

§ 9802. Damage by United States vessels; towage and salvage of United States vessels.

(a) Under the direction of the Secretary of Defense, the Secretary of the Air Force may settle or compromise a claim against the United States for—

(1) damage caused by a vessel of, or in the service of the Department of the Air Force; or

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Air Force.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Air Force may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $10,000, the Secretary of the Air Force may delegate his authority under subsection (a) to any person in the Department of the Air Force designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 592; July 7, 1965, Pub. L. 89-67, 79 Stat. 212.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9802 (a)	10: 1861 (less 35 words before 1st proviso, and less last proviso).	Oct. 20, 1951, ch. 524, §§ 1 (less 35 words before 1st proviso), 6 (as applicable to § 1), 65 Stat. 572, 573.
9802 (b)	10: 1861 (last proviso).	
9802 (c)	10: 1866 (as applicable to 10: 1861).	

In subsection (a), the words "consider, ascertain, adjust, determine, compromise" are omitted as covered by the word "settle", as defined in section 9801 of this title. 10: 1861 (1st proviso) is omitted as unnecessary, since other applicable claims laws are restated in this title. 10: 1861 (2d proviso) is omitted as surplusage.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-67 substituted "$10,000" for "$1,000."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9806 of this title.

§ 9803. Admiralty claims by United States.

(a) Under the direction of the Secretary of Defense, the Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Air Force or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Air Force may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Air Force may delegate his authority under subsections (a) and (b) to any person in the Department of the Air Force designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 592; July 7, 1965, Pub. L. 89-67, 79 Stat. 212.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9803 (a)	10: 1862 (1st sentence; 2d sentence, less last 32 words; and provisos of last sentence).	Oct. 20, 1951, ch. 524, §§ 2 (less last 32 words of 2d sentence), 6 (less applicability to § 1), 65 Stat. 572, 573.
9803 (b)	10: 1862 (3d sentence; and last sentence, less provisos).	
9803 (c)	10: 1866 (less applicability to 10: 1861).	

In subsection (a), the words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 9801 of this title. The words "receive payment" are substituted for 10: 1862 (2d sentence, less last 32 words). The words "of a kind that is

within the admiralty jurisdiction" are substituted for the words "cognizable in admiralty". Clause (2) is substituted for 10: 1862 (last proviso of last sentence). 10: 1862 (1st proviso of last sentence) is omitted as unnecessary, since other applicable claims laws are restated in this title. The words "by contract or otherwise" are omitted as surplusage.

In subsection (b), the words "of the United States as miscellaneous receipts" and "to deliver" are omitted as surplusage.

AMENDMENTS

1965—Subsec. (c). Pub. L. 89-67 substituted "$10,000" for "$1,000."

CROSS REFERENCES

Admiralty and maritime jurisdiction, see Const. Art. 3, § 2, cl. 1; section 1333 of Title 28, Judiciary and Judicial Procedure, and section 740 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9806 of this title.

§ 9804. Salvage claims by United States.

Under the direction of the Secretary of Defense, the Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Air Force for any vessel. Amounts received under this section shall be covered into the Treasury. (Aug. 10, 1956, ch. 1041, 70A Stat. 592.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9804	10: 1863.	Oct. 20, 1951, ch. 524, § 3, 65 Stat. 573.

The words "under this section" are substituted for the words "for salvage services rendered". The words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 9801 of this title. The words "and receive payment of" are inserted for clarity and to conform to section 9803 of this title. The words "as miscellaneous receipts" are omitted as surplusage.

§ 9805. Repealed. Pub. L. 86-533, § 1(7)(A), June 29, 1960, 74 Stat. 246.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 592, related to reports to the Congress with respect to claims under sections 9802, 9803, and 9804 of this title.

§ 9806. Settlement or compromise: final and conclusive.

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 9802 or 9803 of this title is final and conclusive. (Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9806	10: 861 (35 words before 1st proviso); 10: 862 (last 32 words of 2d sentence).	Oct. 20, 1951, ch. 524, §§ 1 (35 words before 1st proviso), 2 (last 32 words of 2d sentence), 65 Stat. 572, 573.

The words "for all purposes" and "to the contrary", in 10: 1861 and 1862; "by the claimant and not until then", in 10: 1861; and "but not until then", in 10: 1862; are omitted as surplusage.

Chapter 953.—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
9831. Custody of departmental records and property.
9832. Property accountability: regulations.
9835. Reports of survey.
9836. Individual equipment: unauthorized disposition.
9837. Settlement of accounts: deductions from pay.
9838. Settlement of accounts: affidavit of squadron commander.
9839. Settlement of accounts: oaths.
9840. Final settlement of officer's accounts.

AMENDMENTS

1962—Pub. L. 87-480, § 1(5), June 8, 1962, 76 Stat. 94, struck out item 9833.

CROSS REFERENCES

Audit and settlement of accounts, see section 71 et seq. of Title 31, Money and Finance.

Federal records, maintenance of, see section 2101 et seq. of Title 44, Public Printing and Documents.

General Accounting Office, see section 41 et seq. of Title 31.

General military law provisions, see sections 2771, 2773 of this title.

Property records, see section 2701 of this title.

§ 9831. Custody of departmental records and property.

The Secretary of the Air Force has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Air Force. (Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9831	5: 191.	R. S. 217.

The words "under the lawful control of the executive part of the Department of the Air Force" are substituted for the words "appertaining to the Department".

CROSS REFERENCES

Federal records, maintenance of, see section 2101 et seq. of Title 44, Public Printing and Documents.

§ 9832. Property accountability: regulations.

The Secretary of the Air Force may prescribe regulations for the accounting for Air Force property and the fixing of responsibility for that property. (Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9832	10: 1301.	Aug. 29, 1916, ch. 418 (3d proviso under "Clothing and Camp and Garrison Equipage"), 39 Stat. 635.

The word "supplies" is omitted as covered by the word "property".

§ 9833. Repealed. Pub. L. 87-480, § 1(4), June 8, 1962, 76 Stat. 94.

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 593, related to the accountability of Air Force officers for public money, and is now covered by section 2773 of this title.

§ 9835. Reports of survey.

(a) Under such regulations as the Secretary of the Air Force may prescribe, any officer of the Air Force designated by him may act upon reports of

surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of or damage to property of the United States under the control of the Department of the Air Force.

(b) Action taken under subsection (a) is final, except that action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary or an officer of the Air Force designated by him. (Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9835 (a)	10: 1305 (less 16 words before proviso, and less proviso).	Oct. 11, 1951, ch. 484, 65 Stat. 387.
9835 (b)	10: 1305 (16 words before proviso and proviso).	

In subsection (b), the words "or concern" are omitted as covered by the definition of "person", in section 1 of title 1.

§ 9836. Individual equipment: unauthorized disposition.

(a) No enlisted member of the Air Force may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished him by the United States to any person other than a member of the Air Force, or an officer of the United States, authorized to receive it.

(b) If a member of the Air Force has disposed of property in violation of subsection (a) and it is in the possession of a person who is neither a member of the Air Force, nor an officer of the United States, authorized to receive it, that person has no right to or interest in the property, and any civil or military officer of the United States may seize it, wherever found. Possession of such property furnished by the United States to a member of the Air Force, by a person who is neither a member of the Air Force nor an officer of the United States, is prima facie evidence that it has been disposed of in violation of subsection (a).

(c) If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, he shall deliver it to a person who is authorized to retain it. (Aug. 10, 1956, ch. 1041, 70A Stat. 594.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9836 (a)	10: 1316 (words before semicolon of 1st sentence); 10: 1317 (words before semicolon of 1st sentence).	R. S. 1242. R. S. 3748.
9836 (b)	10: 1316 (less words before semicolon, and less last 16 words of 1st sentence); 10: 1317 (less words before semicolon of 1st sentence, and less last 16 words of last sentence).	
9836 (c)	10: 1316 (last 16 words of 1st sentence); 10: 1317 (last 16 words of last sentence).	

In subsection (a), the word "equipment" is substituted for the words "military outfits, and accouterments", in 10: 1316 and 1317. The word "exchanged" is omitted as surplusage. The last 22 words are inserted to reflect various provisions authorizing transfer of the enumerated items of property.

In subsections (a) and (b), the words "enlisted member" and "member" are substituted for the word "soldier", in 10: 1316 and 1317.

In subsection (b), the first 16 words of the first sentence are inserted for clarity. The words "authorized to receive it" are substituted for the words "duly authorized", in 10: 1316. The words "such property furnished by the United States" are substituted for the words "any such clothes, arms, military outfits, or accouterments", in 10: 1316.

In subsection (c), the first 19 words are inserted for clarity. The words "person who is authorized to retain it" are substituted for the words "quartermaster [,] or other officer authorized to receive the same", in 10: 1316 and 1317.

CROSS REFERENCES

Federal offenses—

Embezzlement and theft of public property, see section 641 of Title 18, Crimes and Criminal Procedure.

Malicious mischief, government property, see section 1361 of Title 18.

Purchase or receipt of military property, see section 1024 of Title 18.

§ 9837. Settlement of accounts: deductions from pay.

(a)—(c) Repealed. Pub. L. 87-649, § 14c(58), Sept. 7, 1962, 76 Stat. 502.

(d) If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge. (Aug. 10, 1956, ch. 1041, 70A Stat. 594; Sept. 2, 1958, Pub. L. 85-861, § 33 (a) (45), 72 Stat. 1567; Sept. 7, 1962, Pub. L. 87-649, § 14c (58), 76 Stat. 502.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9837 (a)	10: 875; 10: 875b.	R. S. 1300.
9837 (b)	10: 875a (less 3d and last provisos).	R. S. 1301.
9837 (c)	10: 875a (last proviso).	May 22, 1928, ch. 676, 45 Stat. 698; June 26, 1934, ch. 751, 48 Stat. 1222.
9837 (d)	10: 875a (3d proviso).	
9837 (e)	10: 871.	R. S. 1303.
9837 (f)	10: 872.	R. S. 1304.
9837 (g)	10: 875c.	R. S. 1299.

In subsection (a), the words "sold to the member on credit under section 9621 (a) (1) of this title" are substituted for the words "articles designated by the inspectors general of the Army, and sold to him on credit by officers of the Quartermaster Corps", in 10: 875. The words "at cost prices" are omitted to reflect section 9623 of this title.

In subsection (b), the last sentence is substituted for 10: 875a (1st and 2d provisos). The words "on current payrolls" are omitted as surplusage.

In subsection (c), the words "Subject to subsection (b)" are substituted for the words "in the proportions hereinbefore indicated".

In subsection (d), the words "If he considers it in the best interests of the United States" are substituted for the words "when in his opinion the interests of the Government are best served by such action". The words "before, or at the time of" are substituted for the words "either on * * * or prior thereto".

In subsection (e), the words "member" and "his" are substituted for the words "officer or soldier". The words "or implement" are omitted as surplusage.

In subsection (f), the words "or if an article of military supply with whose issue a commissioned officer is charged is damaged" are substituted for 10: 872 (last sentence). The words "that he was not at fault" are substituted for the words "that said deficiency [such damage] was not occasioned by any fault on his part".

In subsection (g), the words "bought on credit under section 9621 (a) (1) of this title" are substituted for the words "designated by the officers of the Inspector-General's Department of the Army and purchased on credit from commissaries of subsistence".

AMENDMENTS

1962—Pub. L. 87-649 repealed subsecs. (a)—(c) and (e)—(g), which related to deductions from pay, and are now covered by subsecs. (b)—(g), respectively, of section 1007 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (b). Pub. L. 85-861, § 33 (a) (45) (A), substituted "his pay for that month" for "his basic pay for that month".

Subsec. (f). Pub. L. 85-861, § 33 (a) (45) (B), substituted "an officer" for "a commissioned officer" in two instances.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85-861, set out as a note under section 101 of this title.

CROSS REFERENCES

Military property of United States; loss, damage, destruction, or wrongful disposition, punishment, see secton 908 of this title.

Property returns by officers, see sections 89-92 of Title 31, Money and Finance.

Public accounts to be settled in General Accounting Office, rendition of current accounts, see sections 72 and 78 of Title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5514.

§ 9838. Settlement of accounts: affidavit of squadron commander.

In the settlement of the accounts of the commanding officer of a squadron for clothing and other military supplies, his affidavit may be received to show—

(1) that vouchers or squadron books were lost;

(2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or

(3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Air Force to be just and proper under the circumstances. (Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9838	10: 1302.	R. S. 225 (less 1st sentence); added Feb. 27, 1877, ch. 69 (3d par.), 19 Stat. 241.

The word "anything" is substituted for the words "any matter or circumstance". The words "properly used" are substituted for the words "legally used and appropriated". The words "of the case" are omitted as surplusage.

§ 9839. Settlement of accounts: oaths.

The Secretary of the Air Force may detail any employee of the Department of the Air Force to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered. (Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9839	10: 1303.	R. S. 225 (1st sentence).

The words "and other military supplies" are substituted for the words "camp and garrison equipage, quartermaster's stores, and ordnance" to conform to section 9838 of this title. The words "person to whom administered" are substituted for the words "parties taking them." The words "for the purpose of" are omitted as surplusage.

CROSS REFERENCES

Administration of oaths by employee of Executive department, see section 303 of Title 5, Government Organization and Employees.

Authority to administer oaths, see section 936 of this title.

§ 9840. Final settlement of officer's accounts.

Before final payment upon discharge may be made to an officer of the Air Force who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned. (Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U. S. Code)	Source (Statutes at Large)
9840	10: 878.	Jan. 12, 1899, ch. 46, § 2, 30 Stat. 784.

The words "Before final payment upon discharge may be made" are substituted for the words "shall warrant their final payment". The words "at any time" are omitted as surplusage. The word "must" is substituted for the words "shall be required * * * to". The words "He must also make" are substituted for the words "accompanied by". The words "from each officer to whom he was accountable or responsible for property" are substituted for the words "from only such of the bureaus of the Department of the Army to which the property for which they were accountable or responsible pertains", since the Air Force does not have organic bureaus created by statute. The words "that he is not accountable or responsible for property to any other officer" are substituted for the words "accompanied by the affidavits of officers, of nonaccountability, or nonresponsibility to other bureaus of the Department of the Army" for the same reason. The reference to certificates from the General Accounting Office is omitted as obsolete. The last sentence is substituted for 10: 878 (last 18 words). The last proviso of section 2 of the act of January 12, 1899, ch. 46, 30 Stat. 784, is not contained in 10: 878. It is also omitted from the revised section, since it related to authority of mustering officers to administer oaths, and the general authority to administer oaths is now contained in section 936 of this title (article 136 of the Uniform Code of Military Justice).

APPENDIX

UNITED STATES COURT OF MILITARY APPEALS

RULES OF PRACTICE AND PROCEDURE

As revised January 1, 1971

GENERAL

Rule
1. Name.
2. Seal.
3. Jurisdiction.
4. Scope of Review.
5. Quorum.
6. Process.
7. Parties.

CLERK'S OFFICE

8. Clerk.
9. Docket.

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10. Professional Requirements.
11. Application form.
12. Certificate.
13. Oath.
14. Motions.

APPEARANCE AND ASSIGNMENT OF COUNSEL

15. Entry of appearance by counsel.
16. Assignment of counsel.

APPEALS

17. Methods of appeal.
18. Form of petition for grant of review.
19. Form of certificate for review.
20. Form of assignment of errors in mandatory cases.
21. Reply to petition for grant of review.
22. Reply to certificate for review.
23. Reply to assignment of errors in mandatory cases.

TIME REQUIREMENTS FOR FILING APPEALS, PLEADINGS OR OTHER PAPERS

24. Petition for grant of review (Article 67(b)(3) cases).
25. Certificate for review (Article 67(b)(2) cases).
26. Assignment of errors (Article 67(b)(1) cases).
27. Pleadings or other papers.
28. Computation of time.
29. Enlargement.
30. Motions.
31. Additional time when service is by mail.
32. Continuances and interlocutory matters.

PROVISIONS APPLICABLE TO PLEADINGS OR OTHER PAPERS FILED

33. Filing.
34. Copies.
35. Style.
36. Record references.
37. Signature.
38. Service.

BRIEFS

39. Form of brief.
40. Brief in support of petition for grant of review (Article 67(h)(3) cases).
41. Brief in support of certificate for review (Article 67(b)(2) cases).
42. Brief in Support of assignment of errors (Article 67(b)(1) cases).
43. Brief in support of petition granted.
44. Amicus curiae brief.

HEARINGS

45. Petition for grant of review.
46. Motions.
47. Oral argument.
48. Notice of hearing.

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49. Filing.
50. Contents.
51. Oral argument.

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52. Filing.
53. Notice of reference.
54. Additional investigation.
55. Answer.
56. Briefs.
57. Oral argument.

MANDATES

58. Issuance.
59. Petition denied.

OPINIONS

60. Filing.
61. Reproduction and distribution.

GENERAL

RULE 1. NAME

The Court adopts "United States Court of Military Appeals" as the title of the Court.

RULE 2. SEAL

The seal of the Court is of the following description: In front of a silver sword, point up, a gold and silver balance supporting a pair of silver scales, encircled by an open wreath of oak leaves, green with gold acorns; all on a grey blue background and within a dark blue band edged in gold and inscribed "UNITED STATES COURT OF MILITARY APPEALS" in gold letters. (E.O. 10295, September 28, 1951, 16 F.R. 10011; 3 CFR 1951 Supp.)

RULE 3. JURISDICTION

The Court will review the record in the following cases:

(a) General or flag officers; death sentences.

All cases in which the sentence, as affirmed by a board of review, affects a general or flag officer, or extends to death;

(b) Certified by The Judge Advocate General.

All cases reviewed by a board of review which The Judge Advocate General forwards by Certificate for Review to the Court; and,

(c) Petitioned by the accused.

All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court has granted a review, except those reviewed under Article 69.

RULE 4. SCOPE OF REVIEW

The Court will act only with respect to the findings and sentence as approved by the convening or reviewing authority, and as affirmed or as set aside as incorrect in law by a board of review. In those cases which The Judge Advocate General forwards to the Court by Certificate For Review, action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, action need be taken only with respect to issues specified by the Court in the grant of review. The Court may, in any case, however, review other matters of law which materially affect the rights of the parties. The points raised in the Court will involve only errors in law.

RULE 5. QUORUM

Two of the judges shall constitute a quorum. The concurrence of two judges shall be required for the rendition of a final decision or the allowance or denial of a Petition for Grant of Review. In the absence of a quorum, any judge may make all necessary orders relating to any matter pending before the Court relative to the filing of papers or preparatory to a hearing or decision thereon. If, at any time, a quorum is not present on any day appointed for holding a hearing, any judge present may adjourn the Court from time to time, or, if no judge is present, the Clerk may adjourn the Court from day to day.

RULE 6. PROCESS

All process of the Court, except mandates, shall be in the name of the President of the United States, and shall contain the given names as well as the surname of the parties.

RULE 7. PARTIES

The accused will be deemed to be the appellant in all cases except those in which The Judge Advocate General has certified a decision of a board of review in which a finding of guilty is set aside. In such cases, the United States shall be deemed the appellant.

CLERK'S OFFICE

RULE 8. CLERK

(a) Location of office.

The Clerk of the Court shall keep the office at the seat of the National Government, Washington, D.C.

(b) Restriction on incumbent.

He shall not practice as attorney or counsellor in any court while he continues in office.

(c) Oath of office.

Before he enters on the execution of his office, he shall take an oath in the form prescribed by 28 U.S.C. 951, which reads:

"I, * * *, having been appointed * * *, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments, and proceedings of such Court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."

(d) Custodian of records.

He shall not permit an original record, pleading, or other paper relative to a case to be taken from the courtroom or from the office without an order from a judge of the Court.

(e) Hours.

The office of the Clerk will be open from 9 a.m. to 5 p.m. every week-day except holidays and Saturdays.

RULE 9. DOCKET

(a) Maintenance of docket.

The Clerk shall maintain in his office a docket, in which shall be entered the receipt of all pleadings or other papers filed, and any action by the Court relative to a case. Entries in the docket shall be noted chronologically on the page or pages assigned to the case, showing briefly the date, the nature of each pleading or other paper filed, and the substance of any action by the Court.

(b) Docket number.

Upon receipt of either the Petition for Grant of Review, the Certificate for Review, or the Assignment of Errors, the case shall be assigned a docket number. All pleadings or other papers subsequently filed in the case shall bear this number.

(c) Notice of docketing.

The Clerk shall promptly notify The Judge Advocate General of the service concerned, and the accused or his appellate counsel, of the receipt and docketing of the case, including the docket number assigned.

ADMISSIONS

RULE 10. PROFESSIONAL REQUIREMENTS

It shall be requisite to the admission of an attorney or counsellor to practice in this Court that he be a member of the bar of a Federal court or of the highest court of a State, Territory, Commonwealth, or Possession.

RULE 11. APPLICATION FORM

In order to appear before the Court, an application shall be filed with the Clerk on a form supplied by him, which form shall be available upon request.

RULE 12. CERTIFICATE

(a) Of good standing.

Together with the application form the applicant shall file a certificate from the presiding judge or clerk of the proper court that the applicant is a member of the bar and that his private and professional character appear to be good.

(b) Original and current.

The certificate of good standing must be an original and current, dated within 1 year of the date of application.

(c) Member of an Armed Service.

A member of an Armed Service need not submit a certificate of good standing if the application form is certified by the Judge Advocate General of his respective service.

RULE 13. OATH

Upon being admitted, each applicant shall take in open court the following oath or affirmation, viz:

"I, * * *, do solemnly swear (or affirm) that I will support the Constitution of the United States; and, that I will demean myself, as an attorney and counsellor of this Court, uprightly, and according to law."

RULE 14. MOTIONS

Admissions will be granted upon motion of the Court or upon oral motion by a person admitted to practice before the Court, on any day the Court holds a regular session. No motion for admission in absentia will be entertained.

APPEARANCE AND ASSIGNMENT OF COUNSEL

RULE 15. ENTRY OF APPEARANCE BY COUNSEL

(a) In writing.

Civilian and military appellate counsel shall file an entry of appearance in writing before participating in a case.

(b) Filing of pleading or other paper.

The filing of any pleading or other paper relative to a case which contains the signature of counsel will constitute an entry of appearance for such counsel.

RULE 16. ASSIGNMENT OF COUNSEL

Whenever a record of trial is forwarded by The Judge Advocate General for review, he shall immediately designate appellate Government counsel, and shall immediately designate appellate defense counsel, unless he has been notified that the accused desires to be represented before the Court by civilian counsel.

APPEALS

RULE 17. METHODS OF APPEAL

Cases shall be appealed to the Court by one of the following methods:

(a) Cases under Article 67(b)(3).

All cases under Article 67(b)(3) shall be appealed by a Petition for Grant of Review, and such petition shall be substantially in the form provided in Rule 18.

(b) Cases under Article 67(b)(2).

All cases under Article 67(b)(2) shall be forwarded by The Judge Advocate General by a Certificate for Review, and such certificate shall be substantially in the form provided in Rule 19.

(c) Cases under Article 67(b)(1).

All cases under Article 67(b)(1) shall be forwarded by The Judge Advocate General accompanied by an Assignment of Errors urged by appellate counsel for the accused substantially in the form provided in Rule 20.

RULE 18. FORM OF PETITION FOR GRANT OF REVIEW

The Petition for Grant of Review under Article 67(b)(3) shall be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, Appellee
v.
_____, Appellant

PETITION FOR GRANT OF REVIEW

Board of Review No. _____
Docket No. _____

To the Honorable, the Judges of the United States Court of Military Appeals:

1. The accused having been found guilty of a violation of the Uniform Code of Military Justice, Article _____, and having been sentenced to _____, on _____, at _____, by _____, and said sentence having been approved by the convening authority and affirmed by a Board of Review on _____, hereby petitions the United States Court of Military Appeals for a grant of review of the decision of the Board of Review, pursuant to the provisions of the Uniform Code of Military Justice, Article 67(*b*)(3).

2. Insert either (A) or (B), whichever is applicable:

(A) *If accused desires counsel appointed by The Judge Advocate General*)

"The accused requests appellate defense counsel be designated by The Judge Advocate General to represent him in processing this Petition for Grant of Review, and during the review, if the same be granted by the United States Court of Military Appeals."

(B) (*If accused desires to retain other counsel*)

"The accused requests appellate defense counsel be designated by The Judge Advocate General to represent him, in association with his privately retained counsel, named below, to the extent such privately retained counsel may desire. Name and address of privately retained counsel _____."

3. The accused claims error on the following questions of law: (Here set forth separately and particularly each error assigned upon which accused relies, including such points and authorities as may be desired).

NOTE:

Claim of "insufficiency of the evidence" as an assigned error shall set out with particularity exactly in what respect the evidence is lacking with record references, if available.

4. The accused was notified of the decision of the Board of Review on the _____ day of _____, 19__, and placed his request to petition the Court in military channels or in the mail on the _____ day of _____, 19__.

_____
(Accused) or (Appellate Counsel for Accused)

_____
Address

Petition was received in the Office of The Judge Advocate General of the _____, on the _____ day of _____, 19__.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to Appellate Government Counsel on the _____ day of _____, 19__.

_____
Name

_____
Address

RULE 19. FORM OF CERTIFICATE FOR REVIEW

The Certificate for Review under Article 67(b)(2) shall be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES (Appellee) (Appellant)
v.
_____ (Appellant) (Appellee)

CERTIFICATE OF REVIEW

Board of Review No. _____
Docket No. _____

To the Honorable, the Judges of the United States Court of Military Appeals:

1. Pursuant to the Uniform Code of Military Justice, Article 67(b)(2), the record of trial, and decision of the Board of Review, United States _____, in the above-entitled case, are forwarded for review.

2. The accused was found guilty of a violation of the Uniform Code of Military Justice, Article _____, was sentenced to _____, on _____, at _____, by _____. The sentence was approved by the convening authority and affirmed by a Board of Review on the _____ days of _____, 19__.

3. It is requested that action be taken with respect to the following issues:

_____
The Judge Advocate General

Received a copy of the foregoing Certificate for Review this _____ day of _____, 19__.

_____
Appellate Government Counsel

_____
Address

_____
Appellate Defense Counsel

_____
Address

RULE 20. FORM OF ASSIGNMENT OF ERRORS IN MANDATORY CASES

The Assignment of Errors under Article 67(b)(1) shall be substantially in the following form.

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, Appellee
v.
_____, Appellant

ASSIGNMENT OF ERRORS

Board of Review No. _____
Docket No. _____

To the Honorable, the Judges of the United States Court of Military Appeals:

1. The accused having been found guilty of a violation of the Uniform Code of Military Justice, Article _____, and having been sentenced to _____, on _____, at _____, by _____, and said sentence having been approved by the convening authority and affirmed by a Board of Review on _____, hereby presents an Assignment of Errors directed to the decision of the Board of Review, pursuant to the provisions of the Uniform Code of Military Justice, Article 67(b)(1).

2. The accused claims error on the following questions of law: (Here set forth separately and particularly each error assigned upon which accused relies; includes such points and authorities as may be desired.)

Note. Claim of "insufficiency of the evidence" as an assigned error shall set out with particularity exactly in what respect the evidence is lacking with record references, if available.

3. The accused was notified of the decision of the Board of Review on the _____ day of _____, 19__.

_____
(Appellate Counsel for Accused) or Accused

_____
Address

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to Appellate Government Counsel on the _____ day of _____, 19__.

_____
Name

_____
Address

RULE 21. REPLY TO PETITION FOR GRANT OF REVIEW

(a) Time requirement.

Within 15 days after the filing of a Petition for Grant of Review by an accused under Article 67(b)(3), appellate Government counsel shall file a reply to the Petition stating his views with respect to the merits of the errors of law raised in the Petition and why he believes the Petition should not be granted.

(b) Form.

This reply shall be similar in form to the Petition, and brief of the accused, should one be filed, except that if the appellate Government counsel disagrees with the statement of facts, or desires to supplement it with additional facts, he shall start his reply with new information. If a claim of insufficiency of evidence is contested, the reply shall set forth affirmatively, with particularity, wherein it is claimed the evidence is sufficient, with record references. See also Rule 40.

RULE 22. REPLY TO CERTIFICATE FOR REVIEW

See Rule 41.

RULE 23. REPLY TO ASSIGNMENT OF ERRORS IN MANDATORY CASES

See Rule 42.

TIME REQUIREMENTS FOR FILING APPEALS, PLEADINGS OR OTHER PAPERS

RULE 24. PETITION FOR GRANT OF REVIEW (ARTICLE 67 (b) (3) CASES)

(a) Time requirement.

The accused shall file a Petition for Grant of Review within 30 days after receipt of the decision of a board of review in cases appealed to the Court under Article 67(b)(3).

(b) Postmark; deposit in military channels.

A petition or Grant of Review shall be deemed to have been filed upon the date postmarked on the envelope containing the petition, or upon the date when the petition is deposited in military channels for transmittal.

(c) Forwarded through The Judge Advocate General.

A Petition for Grant of Review may be forwarded through The Judge Advocate General of the service concerned, and such Judge Advocate General will thereafter cause the same to be filed with the Court within 30 days of receipt thereof.

RULE 25. CERTIFICATE FOR REVIEW (ARTICLE 67(b)(2) CASES)

The Judge Advocate General shall file a Certificate for Review within 30 days after receipt of the decision of a board of review in cases forwarded to the Court under Article 67(b)2).

RULE 26. ASSIGNMENT OF ERRORS (ARTICLE 67(b)(1) CASES)

The accused or his appellate counsel shall file an Assignment of Errors within 30 days after receipt of the decision of a board of review in cases forwarded to the Court under Article 67(b)(1).

RULE 27. PLEADINGS OR OTHER PAPERS

All pleadings or other papers relative to a case, transmitted by mail or other means for filing in the office of the Clerk, shall not be deemed to have been filed until received in his office. (For exception relative to the filing of a Petition for Grant of Review see Rule 24.)

RULE 28. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these Rules, by order of Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

RULE 29. ENLARGEMENT

When by these Rules or by notice given thereunder, or by order of Court, an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion:

(a) Before expiration of period prescribed or extended.

With or without motion or notice, order the period extended if request therefor is made before the expiration of the period as originally prescribed or as extended by previous order, or

(b) After expiration of specified period.

Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but the time for filing a Petition for Grant of Review as prescribed in Article 67(c) and Rule 24 will not be extended.

RULE 30. MOTIONS

(a) Must state relief sought and grounds therefor.

All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor.

(b) Opposition.

Any opposition to a motion shall be filed within 5 days after receipt by the opposing party of service of the motion.

(c) For leave to file.

Any pleading not required by these Rules shall be accompanied by a motion for leave to file such pleading.

RULE 31. ADDITIONAL TIME WHEN SERVICE IS BY MAIL

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice, pleading, or other paper relative to a case when such service is made upon him by mail, 3 days shall be added to the prescribed period if the party upon whom the service is made is within the continental limits of the United States, and 15 days shall be added thereto if the party is located outside those limits.

RULE 32. CONTINUANCES AND INTERLOCUTORY MATTERS

The Court may extend any times prescribed by these Rules, may grant continuances and postponements from time to time, and may take such other action the Court considers necessary for a full, fair, and expeditious disposition of a case.

PROVISIONS APPLICABLE TO PLEADINGS OR OTHER PAPERS FILED

RULE 33. FILING

All pleadings or other papers relative to a case shall be filed in the office of the Clerk.

RULE 34. COPIES

An original and four legible copies of all pleadings or other papers relative to a case shall be filed.

RULE 35. STYLE

All pleadings or other papers relative to a case shall be printed or typewritten.

(a) If printed.

They shall be in such form and size that they can be conveniently bound together.

(b) If typewritten.

They shall be double-spaced on legal cap white paper securely fastened at the top.

RULE 36. RECORD REFERENCES

All record references shall show page numbers and any exhibit designations.

RULE 37. SIGNATURE

All pleadings or other papers relative to a case shall bear an original signature and shall show the name and address of the person signing, together with his military rank, if any, and the capacity in which he signs the paper. Such signature shall constitute a certificate that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person signing the pleading or paper, and that the pleading or paper is filed in good faith and not for the purpose of unnecessary delay.

RULE 38. SERVICE

(a) In general.

Prior to the filing of any pleading or other paper relative to a case in the office of the Clerk, service of a copy of the same shall be made on all counsel of record. In the case of a Certificate for Review, service of a copy thereof shall be made on appellate Government counsel and the accused or his appellate counsel.

(b) By mail.

Any pleading or other paper filed relative to a case may be served on all counsel of record by mail. When service by mail is used a certificate shall be included in the original pleading or other paper filed substantially in the following form:

CERTIFICATE OF SERVICE ON ALL COUNSEL OF RECORD

I certify that a copy of the foregoing was mailed to all counsel of record on the _____ day of _____, 19__.

_____
Name

_____
Address

BRIEFS

RULE 39. FORM OF BRIEF

All briefs shall be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, (Appellant) (Appellee)
v.
_____, (Appellee) (Appellant)

BRIEF ON BEHALF OF (ACCUSED) (UNITED STATES)

Board of Review No. _____

Docket No. _____

Index of Brief

(Omit index if brief is less than ten pages)

Statement of Facts

(Set forth a concise statement of the facts of the case material to the issues concerning which any error is assigned. Portions of the record of trial and other matters of evidentiary nature shall not be included in this statement. Pertinent portions of the statement of facts in briefs of appellate counsel or the decision of the Board of Review may be quoted.)

Assignment of Errors

(Here set forth each error assigned in the Petition for Grant of Review, or each issue raised in the Certificate for Review, or each error assigned in the Assignment of Errors, or each issue specified by the Court.)

Argument

(Discuss briefly the points of law presented, citing and quoting such authorities as are deemed pertinent.)

Conclusion

Insert (A), (B) or (C), whichever is applicable:

(A) "For the reasons stated the accused is entitled to a grant of review under the provisions of the Uniform Code of Military Justice, Article 67(*b*)(3)."

(B) "This brief is submitted under the provisions of the Uniform Code of Military Justice, Article 67(*b*)(2)."

(C) "This brief is submitted under the provisions of the Uniform Code of Military Justice, Article 67(*b*)(1)."

_____
Signature of Counsel

_____
Address

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to appellate (Defense) (Government) counsel on the _____ day of _____, 19__.

_____
Name

_____
Address

RULE 40. BRIEF IN SUPPORT OF PETITION FOR GRANT OF REVIEW (ARTICLE 67(b)(3) CASES)

(a) By appellant.

If desired, a brief may be filed in support of a Petition for Grant of Review. If a brief is to be filed, it shall accompany the Petition.

(b) By appellee.

Appellee's brief shall be filed within 15 days of the filing of appellant's brief.

RULE 41. BRIEF IN SUPPORT OF CERTIFICATE FOR REVIEW (ARTICLE 67(b)(2) CASES)

(a) By appellant.

A brief shall be filed by appellant in support of a Certificate for Review within 20 days of the filing of such certificate.

(b) By appellee.

Appellee's brief shall be filed within 20 days of the filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 20 days after expiration of the time allowed for the filing of appellant's brief.

RULE 42. BRIEF IN SUPPORT OF ASSIGNMENT OF ERRORS (ARTICLE 67(b)(1) CASES)

(a) By appellant.

A brief shall be filed by appellant in support of an Assignment of Errors within 30 days of the filing of such Assignment.

(b) By appellee.

Appellee's brief shall be filed within 20 days of filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 20 days after expiration of the time allowed for the filing of appellants brief.

RULE 43. BRIEF IN SUPPORT OF PETITION GRANTED

A brief in support of a petition granted shall be filed on issues raised by parties or specified by the Court, unless said brief is waived by the Court.

(a) By appellant.

A brief shall be filed by appellant within 30 days of the entry of the order of the Court granting review.

(b) By appellee.

Appellee's brief shall be filed within 20 days of filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 20 days after expiration of the time allowed for the filing of appellant's brief.

RULE 44. AMICUS CURIAE BRIEF

A brief of an amicus curiae may be filed only by permission of the Court.

HEARINGS

RULE 45. PETITION FOR GRANT OF REVIEW

Except when ordered by the Court, oral argument will not be permitted on a Petition for Grant of Review.

RULE 46. MOTIONS

Except when ordered by the Court, oral argument will not be permitted on motions.

RULE 47. ORAL ARGUMENT

Oral argument will be heard after briefs have been filed in accordance with Rules 41, 42 or 43.

(a) Presentation.

The appellant shall be entitled to open and close the argument; in the event both parties desire a review of a decision of a board of review, the accused shall be entitled to open and close.

(b) Number of counsel.

Not more than two counsel for each side shall be heard in oral argument unless the Court otherwise orders.

(c) Time.

Not more than 30 minutes on each side shall be allowed for oral argument unless the time is extended by leave of Court.

(d) Failure of counsel to appear.

If counsel fail to appear at the time set for oral argument the Court may consider the case as having been submitted without argument or, in its discretion, continue the case until a later date.

(e) Failure of counsel for one party to appear.

If counsel for one party fails to appear the Court may hear oral argument from the counsel appearing or, in its discretion, continue the case until a later date.

(f) Waiver of oral argument.

A case may be submitted on briefs without oral argument with permission of the Court.

RULE 48. NOTICE OF HEARING

The Clerk shall give at least 10 days' notice in writing of the time and place for any hearing.

PETITION FOR REHEARING, MODIFICATION, OR RECONSIDERATION

RULE 49. FILING

(a) Time requirement.

A petition for rehearing, modification, or reconsideration shall be filed within 5 days from receipt of notice of entry of an order, decision, or opinion by the Court.

(b) Reply.

Any reply to a petition shall be filed by the opposing party within 5 days after receipt of service of the petition.

RULE 50. CONTENTS

The petition for rehearing, modification, or reconsideration shall state briefly and directly its grounds and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay.

RULE 51. ORAL ARGUMENT

Except when ordered by the Court, oral argument will not be permitted on a petition for rehearing, modification, or reconsideration.

PETITION FOR NEW TRIAL

RULE 52. FILING

A petition for new trial shall be filed with The Judge Advocate General of the service concerned.

RULE 53. NOTICE OF REFERENCE

Upon receipt from The Judge Advocate General of a petition for new trial (original and four copies) in a case pending before the Court, the Clerk shall notify all counsel of record of such receipt.

RULE 54. ADDITIONAL INVESTIGATION

The Court on considering a petition for new trial may refer the matter to referee to make further investigation, to take evidence and to make such recommendations to the Court as he deems appropriate.

RULE 55. ANSWER

Appellee shall file an answer to a petition for new trial within 10 days after receipt of notification by the Clerk of the docketing of the petition.

RULE 56. BRIEFS

(a) By appellant.

Any brief in support of a petition for new trial shall be filed within 10 days of appellee's answer. If appellee fails to file an answer, appellant may file a brief within 10 days after the expiration of the time allowed for the filing of appellee's answer.

(b) By appellee.

Appellee's brief shall be filed within 10 days of filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 10 days after the expiration of the time allowed for the filing of appellant's brief.

RULE 57. ORAL ARGUMENT

Except when ordered by the Court oral argument will not be permitted on a petition for new trial.

MANDATES

RULE 58. ISSUANCE

Mandates shall issue after the expiration of 12 days from the day the opinion of the Court is filed with the Clerk, unless a petition for rehearing, modification or reconsideration is filed, or the time is shortened or enlarged by order of the Court, or unless the parties stipulate that it be issued sooner.

RULE 59. PETITION DENIED

No mandate shall issue upon the denial of a Petition for Grant of Review. Whenever a Petition for Grant of Review is denied, the Clerk shall enter an order to that effect and shall forthwith notify The Judge Advocate General of the service concerned and counsel of record.

OPINIONS

RULE 60. FILING

All opinions of the Court shall be filed with the Clerk for preservation.

RULE 61. REPRODUCTION AND DISTRIBUTION

The reproduction, printing and distribution of all opinions shall be pursuant to the direction of and under the supervision of the Clerk.

TITLE 11.—BANKRUPTCY

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History of Bankruptcy Acts

This title is composed of the Bankruptcy Act of July 1, 1898, ch. 541, 30 Stat. 544, as amended, sometimes called the Nelson Act.

Special attention is directed to the Chandler Act of June 22, 1938, ch. 575, 52 Stat. 883, which revised this title generally and materially amended the provisions covering corporate reorganizations. See note under section 1 of this title.

Earlier bankruptcy laws included the following acts:

Apr. 4, 1800, ch. 19, 2 Stat. 19, repealed Dec. 19, 1803, ch. 6, 2 Stat. 248;

Aug. 19, 1841, ch. 9, 5 Stat. 440, repealed Mar. 3, 1843, ch. 82, 5 Stat. 614;

Mar. 2, 1867, ch. 176, 14 Stat. 517, the provisions of which were incorporated in Rev. Stat. Title LXI, §§ 4972—5132, were materially amended June 22, 1874, ch. 390, 18 Stat. 178, and were repealed June 7, 1878, ch. 160, 20 Stat. 99.

Commission on the Bankruptcy Laws of the United States

Pub. L. 91-354, July 24, 1970, 84 Stat. 468, provided:

"Sec. 1. [*Establishment; Purpose; Report; Termination*] (a) There is hereby established a commission to be known as the Commission on the Bankruptcy Laws of the United States (hereinafter referred to as the Commission).

"(b) The Commission shall study, analyze, evaluate, and recommend changes to the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898 (30 Stat. 544), as amended (title 11, United States Code) [this title], in order for such Act [this title] to reflect and adequately meet the demands of present technical, financial, and commercial activities. The Commission's study, analysis, and evaluation shall include a consideration of the basic philosophy of bankruptcy, the causes of bankruptcy, the possible alternatives to the present system of bankruptcy administration, the applicability of advanced management techniques to achieve economies in the administration of the Act [this title], and all other matters which the Commission shall deem relevant.

"(c) The Commission shall submit a comprehensive report of its activities, including its recommendations, to the President, the Chief Justice of the United States, and the Congress within two years after the date of enactment of the joint resolution [July 24, 1970]. Upon the filing of such report, the Commission shall cease to exist.

"Sec. 2. [*Membership; Appointment; Compensation; Expenses*] (a) The Commission shall be composed of the following members appointed as follows:

"(1) three members appointed by the President of the United States, one of whom shall be designated as Chairman by the President;

"(2) two Members of the Senate, one from each of the two major political parties, appointed by the President of the Senate;

"(3) two Members of the House of Representatives, one from each of the two major political parties, appointed by the Speaker of the House of Representatives; and

"(4) two appointed by the Chief Justice of the United States.

"(b) Five members of the Commission shall constitute a quorum.

"(c) A vacancy in the Commission shall not affect its powers. Any vacancy shall be filled in the manner in which the original appointment was made.

"(d) Referees in bankruptcy and any other employees of the Federal Government who are members of the Commission shall serve without additional compensation. Each member from private life shall receive $100 per diem for each day (including traveltime) during which he is engaged in the actual performance of his duties as a member of the Commission. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

"Sec. 3. [*Personnel*] The Commission shall have the power to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this joint resolution. Such appointments shall be without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such compensation shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"Sec. 4. [*Powers and Authority*] To carry out the purposes of this joint resolution, the Commission shall have the authority, within the limits of available appropriations—

"(1) to obtain any research or other assistance it deems necessary;

"(2) to prescribe such rules and regulations as it deems necessary governing the manner of its operations and its organization and personnel;

"(3) to enter into contracts or other arrangements, or modifications thereof, and such contracts or other arrangements or modifications thereof may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

"(4) to make advance, progress, and other payments which it deems necessary without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

"(5) to accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code; and

"(6) to acquire by lease, loan, gift, bequest, or devise, and to hold and dispose of by sale, lease, or loan, real or personal property of all kinds necessary for or resulting from the exercise of authority under this joint resolution.

"Sec. 5. [*Cooperation of Other Agencies*] Any office, department, agency, or instrumentality of the executive or judicial branches of the United States Government shall

furnish to the Commission, upon a reimbursable basis, such advice, information, and records as the Commission may require for the performance of its duties.

"SEC. 6. [*Authorization of Appropriations*] There are authorized to be appropriated out of the Salaries and Expenses Fund created pursuant to section 40c(4) of the Bankruptcy Act (11 U.S.C. 68c(4)) to the Commission such sums, but not more than $600,000, as may be necessary to carry out the provisions of this joint resolution."

Chapter 1.—DEFINITIONS

Sec.
1. Meaning of words and phrases.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 502, 781, 802, 886, 1002, 1069 of this title.

§ 1. Meaning of words and phrases.

The words and phrases used in this title and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

(1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition;

(2) "Adjudication" shall mean a determination, whether by decree or by operation of law, that a person is a bankrupt;

(3) "Appellate courts" shall include the United States courts of appeals and the Supreme Court of the United States;

(4) "Bankrupt" shall include a person against whom an involuntary petition or an application to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

(5) "Bona-fide purchaser" shall include a bona-fide encumbrancer or pledgee and the transferee, immediate or mediate, of any of them;

(5a) "Circuit" shall mean judicial circuit;

(6) "Clerk" shall mean the clerk of a court of bankruptcy;

(7) "Conceal" shall include secrete, falsify, and mutilate;

(7a) "Conference" shall mean the Judicial Conference of the United States;

(8) "Corporation" shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument;

(8a) "Council" shall mean the Judicial Council of the circuit;

(9) "Court" shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending;

(10) "Courts of bankruptcy" shall include the United States district courts and the district courts of the Territories and possessions to which this title is or may hereafter be applicable;

(11) "Creditor" shall include anyone who owns a debt, demand, or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy;

(12) "Date of adjudication" shall mean the date of the filing of any petition which operates as an adjudication, or the date of entry of a decree of adjudication, or if such decree is appealed from, then the date when such decree is finally confirmed or the appeal is dismissed;

(13) "Date of bankruptcy", "time of bankruptcy", "commencement of proceedings", or "bankruptcy", with reference to time, shall mean the date when the petition was filed;

(14) "Debt" shall include any debt, demand, or claim provable in bankruptcy;

(14a) "Director" shall mean the Director of the Administrative Office of the United States Courts;

(15) "Discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this title;

(16) "Document" shall include any book, deed, record, paper, or instrument in writing;

(17) "Farmer" shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations;

(18) "Holiday" shall include New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Christmas Day, and any day appointed as a holiday or as a day of public fasting or thanksgiving by the President or the Congress of the United States, or by the Governor or the Legislature of the State in which the proceeding under this title is filed or pending;

(19) A person shall be deemed insolvent within the provisions of this title whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts;

(20) "Judge" shall mean a judge of a court of bankruptcy, not including the referee;

(21) "Oath" shall include affirmation;

(22) "Officer" shall include clerk, marshal, receiver, custodian, referee, and trustee, and the imposing of a duty upon, or the forbidding of an act by, any officer shall include his successor and any person authorized by law to perform the duties of such officer;

(23) "Persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are forbidden under this title shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees or of other similar controlling bodies of corporations;

(24) "Petition" shall mean a document filed in a court of bankruptcy or with a clerk thereof initiating a proceeding under this title;

(25) "To record" shall include to register or to file for record or registration;

(26) "Referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred or anyone acting in his stead;

(27) "Relatives" shall mean persons related by affinity or consanguinity within the third degree as determined by the common law and shall include the spouse;

(28) "Secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this title or who owns such a debt for which some endorser, surety, or other person secondarily liable for the bankrupt has such security upon the bankrupt's assets;

(29) "States" shall include the Territories and possessions to which this title is or may hereafter be applicable, Alaska, and the District of Columbia;

(29a) Statutory lien shall mean a lien arising solely by force of statute upon specified circumstances or conditions, but shall not include any lien provided by or dependent upon an agreement to give security, whether or not such lien is also provided by or is also dependent upon statute and whether or not the agreement or lien is made fully effective by statute.

(30) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumberance, gift, security, or otherwise; the retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by such debtor;

(31) "Trustee" shall include all of the trustees and "receiver" shall include all of the receivers of an estate;

(32) "Wage earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding $1,500 per year;

(33) Words importing the masculine gender may be applied to and include all persons;

(34) Words importing the plural number may be applied to and mean only a single person or thing; and

(35) Words importing the singular number may be applied to and mean several persons or things. (July 1, 1898, ch. 541, § 1, 30 Stat. 544; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; May 27, 1926, ch. 406, § 1, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 840; June 28, 1946, ch. 512, § 1, 60 Stat. 323; July 7, 1952, ch. 579, § 1, 66 Stat. 420; June 23, 1959, Pub. L. 86-64, § 1, 73 Stat. 109; July 5, 1966, Pub. L. 89-495, § 1, 80 Stat. 268.)

CODIFICATION

"Veterans Day" was substituted for "Armistice Day" in par. (18) to conform to act June 1, 1954, ch. 250, 68 Stat. 168. See section 6103a of Title 5, Government Organization and Employees.

AMENDMENTS

1966—Par. (29a). Pub. L. 89-495 added par. (29a).

1959—Par. (2). Pub. L. 86-64, § 1(a), substituted "a determination, whether by decree or by operation of law, that a person is a bankrupt" for "a decree that a person is a bankrupt."

Par. (12). Pub. L. 86-64, § 1(b), included the date of the filing of any petition which operates as an adjudication within the definition of "date of adjudication."

1952—Pars. (3), (5a), (7a), (8a), (10), (14a), (24), and (30). Act July 7, 1952, redefined the terms contained within said paragraphs.

1946—Pars. (5a), (7a), (8a), and (14a). Act June 28, 1946, added pars. (5a), (7a), (8a), and (14a).

1938—Pars. (5), (12), (17), (25), and (27). Act June 22, 1938, added pars. (5), (12), (17), (25), and (27).

Pars. (2)—(4), (8)—(11), (13), (16), (18), (22)—(24), (30), (31), (33), and (34), formerly (2)—(4), (6)—(9), (10), (13), (14), (18)—(20), (25), (26), (28), and (29), respectively, amended by act June 22, 1938.

Pars. (1), (6), (7), (14), (15), (19)—(21), (26), (28), (29), (32), and (35), formerly (1), (5), (22), (11), (12), (15)—(17), (21), (23), (24), (27), and (30), respectively, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 57 of act July 7, 1952, provided that: "This amendatory Act [Act July 7, 1952] shall take effect and be in force on and after three months from the date of its approval [July 7, 1952]."

EFFECTIVE DATE OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided in part that the amendment of this section by act June 28, 1946, should be effective on June 28, 1946.

SHORT TITLE

Congress by act Dec. 20, 1950, ch. 1138, 64 Stat. 1113, amended act July 1, 1898, to authorize that act July 1, 1898, this title, be popularly known as the "Bankruptcy Act".

REPEALS; SAVINGS CLAUSE

Section 55 of act July 7, 1952, provided that:

"(a) All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [Act July 7, 1952] are hereby repealed.

"(b) If any provision of this amendatory Act [Act July 7, 1952] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act [Act July 7, 1952] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act [Act July 7, 1952] are declared to be severable."

EFFECT OF 1952 AMENDATORY ACT

Section 56 of act July 7, 1952, provided that:

"(a) Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act [Act July 7, 1952] is amendatory.

"(b) The provisions of this amendatory Act [Act July 7, 1952] shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act [Act July 7, 1952] are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto."

CHANDLER ACT; CONSTRUCTION; EFFECTIVE DATE

Sections 5—7 of act June 22, 1938, which act is popularly known as the "Chandler Act," provided that:

"SEC. 5. SEVERABILITY; HEADINGS.—a. If any provision of this amendatory Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable.

"b. Sections and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate.

"SEC. 6. EFFECT OF THIS AMENDATORY ACT.—a. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory.

"b. Except as otherwise provided in this amendatory Act, the provisions of this amendatory Act shall govern proceedings so far as practicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto.

"SEC. 7. This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

CROSS REFERENCES

Repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

Wage earner defined for purposes of chapter 13, see section 1006(8) of this title.

Chapter 2.—COURTS OF BANKRUPTCY

Sec.
11. Creation of courts of bankruptcy and their jurisdiction.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 76, 502, 781, 802, 886, 1002, 1069 of this title.

§ 11. Creation of courts of bankruptcy and their jurisdiction.

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are created courts of bankruptcy and are invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

(1) Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdiction, or in any cases transferred to them pursuant to this title;

(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

(2A) Hear and determine, or cause to be heard and determined, any question arising as to the amount or legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, and in respect to any tax, whether or not paid, when any such question has been contested and adjudicated by a judicial or administrative tribunal of competent jurisdiction and the time for appeal or review has not expired, to authorize the receiver or the trustee to prosecute such appeal or review;

(3) Appoint, upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to protect the interests of creditors after the filing of the petition and until it is dismissed or the trustee is qualified; and to authorize such receiver, upon his application, to prosecute or defend any pending suit or proceeding by or against a bankrupt or to commence and prosecute any suit or proceeding in behalf of the estate, before any judicial, legislative, or administrative tribunal in any jurisdiction, until the petition is dismissed or the trustee is qualified: *Provided, however,* That the court shall be satisfied that such appointment or authorization is necessary to preserve the estate or to prevent loss thereto;

(4) Arraign, try, and punish persons for violations of this title, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

(5) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section 76 of this title;

(6) Bring in and substitute additional persons or parties in proceedings under this title when necessary for the complete determination of a matter in controversy;

(7) Cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property in any estate whenever, under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest; and where in a controversy arising in a proceeding under this title an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;

(8) Close estates, by approving the final accounts and discharging the trustees, whenever it appears that the estates have been fully administered or, if not fully administered, that the parties in interest will not furnish the indemnity

necessary for the expenses of the proceeding or take the steps necessary for the administration of the estate; and reopen estates for cause shown;

(9) Confirm or reject arrangements or plans proposed under this title, set aside confirmations of arrangements or wage-earner plans and reinstate the proceedings and cases;

(10) Consider records, findings, and orders certified to the judges by referees, and confirm, modify, or reverse such findings and orders, or return such records with instructions for further proceedings;

(11) Determine all claims of bankrupts to their exemptions;

(12) Discharge or refuse to discharge bankrupts, set aside discharges, determine the dischargeability of debts, and render judgments thereon;

(13) Enforce obedience by persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14) Extradite bankrupts from their respective districts to other districts;

(15) Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this title: *Provided, however,* That an injunction to restrain a court may be issued by the judge only;

(16) Punish persons for contempts committed before referees;

(17) Approve the appointment of trustees by creditors or appoint trustees when creditors fail so to do; and, upon complaints of creditors or upon their own motion, remove for cause receivers or trustees upon hearing after notice;

(18) Tax costs, and render judgments therefor against the unsuccessful party, against the successful party for cause, in part against each of the parties, and against estates, in proceedings under this title;

(19) Transfer cases to other courts of bankruptcy;

(20) Exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy: *Provided, however,* That the jurisdiction of the ancillary court over a bankrupt's property which it takes into its custody shall not extend beyond preserving such property and, where necessary, conducting the business of the bankrupt, and reducing the property to money, paying therefrom such liens as the court shall find valid and the expenses of ancillary administration, and transmitting the property or its proceeds to the court of primary jurisdiction;

(21) Require receivers or trustees appointed in proceedings not under this title, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this title or, where an arrangement or a plan under this title has been confirmed and such property has not prior thereto been delivered to a receiver or trustee appointed under this title, to deliver such property to the debtor or other person entitled to such property according to the provisions of the arrangement or plan, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: *Provided, however,* That such delivery and accounting shall not be required, except in proceedings under section 205 and chapters 10 and 12 of this title, if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for services and expenses under such receivership, trusteeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this title, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive; and

(22) Exercise, withhold, or suspend the exercise of jurisdiction, having regard to the rights or convenience of local creditors and to all other relevant circumstances, where a bankrupt has been adjudged bankrupt by a court of competent jurisdiction without the United States.

(b) Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated. (July 1, 1898, ch. 541, § 2, 30 Stat. 545; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Feb. 5, 1903, ch. 487, § 1, 32 Stat. 797; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; June 25, 1910, ch. 412, §§ 1, 2, 36 Stat. 838, 839; May 27, 1926, ch. 406, § 2, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 842; July 7, 1952, ch. 579, § 2, 66 Stat. 420; Sept. 25, 1962, Pub. L. 87–681, §§ 1, 2, 76 Stat. 570; July 5, 1966, Pub. L. 89–496, § 1, 80 Stat. 270; Oct. 19, 1970, Pub. L. 91–467, § 1, 84 Stat. 990.)

AMENDMENTS

1970—Subd. (a)(12). Pub. L. 91–467 substituted "Discharge or refuse to discharge bankrupts, set aside discharges, determine the dischargeability of debts, and render judgments thereon" for "Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases".

1966—Subd. (a)(2A). Pub. L. 89–496 added par. (2A).

1962—Subd. (a)(1). Pub. L. 87–681, § 1, eliminated provision authorizing courts of bankruptcy to adjudge persons bankrupt who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction.

Subd. (a)(22). Pub. L. 87–681, § 2, added subd. (22).

1952—Subd. (a)(1). Act July 7, 1952, § 2 (a), added "or who have * * * pursuant to this title;".

Subd. (a)(7). Act July 7, 1952, § 2 (b), added "and where in a * * * to such jurisdiction;".

Subd. (a)(21). Act July 7, 1952, § 2 (c), inserted "section 205" immediately preceding "chapters 10 and 12 of this title".

1938—Subd. (a)(21). Act June 22, 1938, added subd. (a)(21).

Subd. (a), opening paragraph and (1), (3), (4), (7)—(10), (13), (15), (17), (18), (20), formerly first paragraph and clauses thereof, amended by act June 22, 1938.

Subd. (a) (2), (5), (6), (11), (12), (14), (16), (19), formerly clauses of the first paragraph, and subd. (b), formerly the last paragraph, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 10 of Pub. L. 91–467 provided that: "The provisions of this amendatory Act [amending this section and sections 32, 33, 35, 66 and 94 of this title] shall take effect on and after sixty days from the date of its approval [Oct. 19, 1970] and shall govern proceedings in all cases filed after such date."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6 of Pub. L. 89–496 provided that: "This Act [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title] shall take effect on the ninetieth day after the date of its enactment [July 5, 1966]."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SEPARABILITY OF PROVISIONS

Section 4 of Pub. L. 89–496 provided that: "If any provision of this Act, or any amendment made by it [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title], or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Act, or other amendments made by it, or applications thereof which can be given effect without the invalid provision or application."

SAVING PROVISION; PENDING PROCEEDINGS

Section 5 of Pub. L. 89–496 provided that:

"(a) Nothing in this Act, or in the amendments made by it [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title, shall operate to release or extinguish any penalty, forfeiture, or liability incurred under the Bankruptcy Act [this title] before the effective date of this Act [see Effective Date of 1966 Amendment note under this section].

"(b) The amendments made by this Act [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title] shall govern proceedings so far as applicable in cases pending when it takes effect."

CROSS REFERENCES

Jurisdiction and powers of bankruptcy courts in agricultural adjustment, corporate reorganization, railroad reorganization, and arrangement proceedings, see sections 205, 511—517, 519—521, 711—716, and 811—816 of this title.

Chapter 3.—BANKRUPTS

Sec.
21. Acts of bankruptcy.
22. Who may become bankrupts.
23. Partners.
24. Exemptions of bankrupts.
25. Duties of bankrupts.
26. Death or insanity of bankrupts.
27. Protection of bankrupts.
28. Apprehension and extradition of bankrupts.
29. Suits by and against bankrupts.
30. Compositions; when confirmed.
31. Same; when set aside.
32. Discharges, when granted.
33. Discharges, when revoked.
34. Co-debtors, guarantors or sureties for bankrupts.
35. Dischargeability of debts.
(a) Debts not affected by discharge.
(b) Proceedings for debts dischargeable.
(c) Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 502, 781, 802, 886, 1002, 1069 of this title.

§ 21. Acts of bankruptcy.

(a) Acts of bankruptcy by a person shall consist of his having (1) concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 107 or 110 of this title; or (2) made or suffered a preferential transfer, as defined in subdivision (a) of section 96 of this title; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt.

(b) A petition may be filed against a person within four months after the commission of an act of bankruptcy. Such time with respect to the third act of bankruptcy shall expire four months after the date the lien through legal proceedings or distraint was obtained and, with respect to the first or fourth act of bankruptcy, such time shall not expire until four months after the date when the transfer or assignment became so far perfected that no bona fide purchaser from the debtor could thereafter have acquired any rights in the property so transferred or assigned superior to the rights of the transferee or assignee therein, and such time with respect to the second act of bankruptcy shall not expire until four months after the date when the transfer became perfected as prescribed in subdivision (a) of section 96 of this title. For the purposes of this section, it is sufficient if intent to hinder, delay or defraud under the first act of bankruptcy, where such intent is an element of such act, or if insolvency under the second act of bankruptcy, exists either at the time when the transfer was made or at the time when it became perfected, as hereinabove provided.

(c) It shall be a complete defense to any proceedings under the first act of bankruptcy to allege and prove that the party proceeded against was not insolvent as defined in this title at the time of the filing of the petition against him. If solvency at such date is proved by the alleged bankrupt, the proceedings shall be dismissed. In such proceedings the burden of proving solvency shall be on the alleged bankrupt.

(d) Whenever a person against whom a petition has been filed alleging the commission of the second, third, or fifth act of bankruptcy takes issue with and denies the allegation of his insolvency or his inability to pay his debts as they mature, he shall appear in court on the hearing, and prior thereto if ordered by the court, with his books, papers, and accounts, and submit to an examination and give testimony as to all matters tending to establish solvency or insolvency or ability or inability to pay his debts as they

mature and, in case of his failure so to do, the burden of proving solvency or ability to pay his debts as they mature shall rest upon him. (July 1, 1898, ch. 541, § 3, 30 Stat. 546; Feb. 5, 1903, ch. 487, § 2, 32 Stat. 797; May 27, 1926, ch. 406, § 3, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 844; July 7, 1952, ch. 579, § 3, 66 Stat. 421.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, § 3 (a), correlated the first two acts of bankruptcy as set out in this subdivision with sections 96, 107, and 110 of this title, and made a distraint under a landlord's warrant a legal proceeding.

Subd. (b). Act July 7, 1952, § 3 (b), made for the purpose of the third act of bankruptcy, permitted a petition to be filed within a four month period from the date the lien was obtained, and made other clarifying and conforming changes.

1938—Subd. (a) (1) and (2). Act June 22, 1938, reenacted subd. (a) (1) and (2) without change.

Subd. (a) (3) (formerly (3) and (4), (4) and (5) formerly (5)), and (6) (formerly (6)), and subds. (b), (c), and (d), were amended by act June 22, 1938.

Former subd. (e) and the closing paragraph were not reenacted as parts of this section by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 22. Who may become bankrupts.

(a) Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt.

(b) Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of this title. The bankruptcy of a corporation shall not release its officers, the members of its board of directors or trustees or of other similar controlling bodies, or its stockholders or members, as such, from any liability under the laws of a State or of the United States. The status of an alleged bankrupt as a wage earner or farmer shall be determined as of the time of the commission of the act of bankruptcy. (July 1, 1898, ch. 541, § 4, 30 Stat. 547; Feb. 5, 1903, ch. 487, § 3, 32 Stat. 797; June 25, 1910, ch. 412, §§ 3, 4, 36 Stat. 839; Feb. 11, 1932, ch. 38, 47 Stat. 47; May 15, 1935, ch. 114, § 1, 49 Stat. 246; June 22, 1938, ch. 575, § 1, 52 Stat. 845.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, reenacted subd. (a) without change.

Subd. (b). Act June 22, 1938, consisting of former subd. (b) together with a concluding paragraph.

1935—Subd. (b). Act May 15, 1935, substituted "farmer" for "person engaged chiefly in farming or the tillage of the soil".

1932—Act Feb. 11, 1932, inserted references to building and loan association.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 806 of this title.

§ 23. Partners.

(a) A partnership, including a limited partnership containing one or more general partners, during the continuation of the partnership business or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt either separately or jointly with one or more or all of its general partners.

(b) A petition may be filed by one or more or all of the general partners in the separate behalf of a partnership or jointly in behalf of a partnership and of the general partner or partners filing the same: *Provided, however,* That where a petition is filed in behalf of a partnership by less than all of the general partners, the petition shall allege that the partnership is insolvent. A petition may be filed separately against a partnership or jointly against a partnership and one or more or all of its general partners.

(c) The creditors of the bankrupt partnership shall appoint the trustee, who shall be the trustee of the individual estate of a general partner being administered in the proceeding: *Provided, however,* That the creditors of a general partner adjudged a bankrupt may, upon cause shown, be permitted to appoint their separate trustee for his estate. In other respects, so far as possible, the partnership estate shall be administered as herein provided for other estates.

(d) The court of bankruptcy which has jurisdiction of one of the general partners may have jurisdiction of all the general partners and of the administration of the partnership and individual property.

(e) The trustee or trustees shall keep separate accounts of the partnership property and of the property belonging to the individual general partners.

(f) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(g) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts and the net proceeds of the individual estate of each general partner to the payment of his individual debts. Should any surplus remain of the property of any general partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be distributed among the individual partners, general or limited, or added to the estates of the general partners, as the case may be, in the proportion of their respective interests in the partnership and in the order of distribution provided by the laws of the State applicable thereto.

(h) The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(i) Where all the general partners are adjudged bankrupt, the partnership shall also be adjudged bankrupt. In the event of one or more, but not all of the general partners of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the general partner or partners not adjudged bankrupt; but such general partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit and account for the interest of the general partner or partners adjudged bankrupt.

(j) The discharge of a partnership shall not discharge the individual general partners thereof from the partnership debts. A general partner adjudged a bankrupt either in a joint or separate proceeding may, pursuant to the provisions of this title, obtain a discharge from both his partnership and individual debts.

(k) If a limited partnership is adjudged bankrupt, any limited partner who is individually liable under the laws of the United States or of any State for any of the partnership debts shall be deemed a general partner as to such debts and, if he is insolvent, shall be subject to the provisions and entitled to the benefits of this title, as in the case of a general partner. (July 1, 1898, ch. 541, § 5, 30 Stat. 547; June 22, 1938, ch. 575, § 1, 52 Stat. 845.)

AMENDMENTS

1938—Subds. (b), (j), and (k). Act of June 22, 1938, added subds. (b), (j), and (k).

Subds. (a), (d), (e), (g), and (i), formerly (a), (c), (d), (f), and (h), respectively, amended by act June 22, 1938.

Subds. (c), (f), and (h), formerly (b), (e), and (g), respectively, reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 24. Exemptions of bankrupts.

This title shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State: *Provided, however,* That no such allowance shall be made out of the property which a bankrupt transferred or concealed and which is recovered or the transfer of which is avoided under this title for the benefit of the estate, except that, where the voided transfer was made by way of security only and the property recovered is in excess of the amount secured thereby, such allowance may be made out of such excess. (July 1, 1898, ch. 541, § 6, 30 Stat. 548; June 22, 1938, ch. 575, § 1, 52 Stat. 847.)

AMENDMENTS

1938—Act June 22, 1938, allowed exemptions prescribed by the laws of the United States, reworded provision relating to portion of the domiciliary period, and added the proviso.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 25. Duties of bankrupts.

(a) The bankrupt shall (1) attend at the first meeting of his creditors, at the hearing upon objections, if any, to his application for a discharge and at such other times as the court shall order; (2) comply with all lawful orders of the court; (3) examine and report to his trustee concerning the correctness of all proofs of claim filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute and deliver to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt by his creditors or other persons to evade the provisions of this title coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within five days after adjudication, if an involuntary bankrupt, and with his petition, if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof and its money value, in detail; and a list of all his creditors, including all persons asserting contingent, unliquidated, or disputed claims, showing their residences or places of business, if known, or if unknown that fact to be stated, the amount due to or claimed by each of them, the consideration thereof, the security held by them, if any, and what claims, if any, are contingent, unliquidated or disputed; and a claim for such exemptions as he may be entitled to; all in triplicate, one copy for the clerk, one for the referee, and one for the trustee: *Provided, however,* That the court may for cause shown grant further time for the filing of such schedules if, with his petition in a voluntary proceeding or with his application to have such time extended in an involuntary proceeding, the bankrupt files a list of all such creditors and their addresses; (9) file in triplicate with the court at least five days prior to the first meeting of his creditors a statement of his affairs in such form as may be prescribed by the Supreme Court; (10) at the first meeting of his creditors, at the hearing upon objections, if any, to his discharge and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; but no testimony, or any evidence which is directly or indirectly derived from such testimony, given by him shall be offered in evidence against him in any criminal proceeding, except such testimony as may be given by him in the hearing upon objections to his discharge: *Provided, however,* That when the bankrupt is required to attend for examination, except at the first meeting and at the hearing upon objections, if any, to his discharge, he shall be paid actual and necessary traveling expenses for any distance in excess of one hundred miles from his place of residence at the date of bankruptcy: *And provided further,* That the court may for cause shown, and upon such terms and conditions as the court may impose, permit the bankrupt to be examined at such place as the court

may direct whether within or without the district in which the proceedings are pending; and (11) when required by the court, prepare, verify, and file with the court in duplicate a detailed inventory, showing the cost to him of his merchandise or of such other property as may be designated, as of the date of his bankruptcy.

(b) Where the bankrupt is a corporation, its officers, the members of its board of directors or trustees or of other similar controlling bodies, its stockholders or members, or such of them as may be designated by the court, shall perform the duties imposed upon the bankrupt by this title. (July 1, 1898, ch. 541, § 7, 30 Stat. 548; May 27, 1926, ch. 406, § 4, 44 Stat. 663; June 22, 1938, ch. 575, § 1, 52 Stat. 847; July 7, 1952, ch. 579, § 4, 66 Stat. 422; Oct. 15, 1970, Pub. L. 91–452, title II, § 207, 84 Stat. 929.)

AMENDMENTS

1970—Subd. (a)(10). Pub. L. 91–452 added ", or any evidence which is directly or indirectly derived from such testimony," following "but no testimony".

1952—Subd. (a)(8). Act July 7, 1952, permitted the list of creditors to contain either their residence or place of business instead of only their residence as previously required.

1938—Subds. (a) (9), (11), and (b). Act June 22, 1938, added subds. (a), (9), (11), and (b).

Subd. (a) (1), (3), (5), (8) and (10) (formerly opening paragraph (9)), and closing paragraph, amended by act June 22, 1938.

Subd. (a) (2), (4), (6), and (7), formerly those clauses of the opening paragraph, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on the sixtieth day following the date of enactment of Pub. L. 91–452, which was approved Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 205 of this title.

§ 26. Death or insanity of bankrupts.

The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided,* That in case of death, the bankrupt's right to exemption, if any, shall be preserved, and if the exempt property has not already been set off or awarded to him, it shall upon application be ordered set off and awarded to the spouse or dependent children surviving at his death to the exclusion of his personal representatives. (July 1, 1898, ch. 541, § 8, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

AMENDMENTS

1938—Act June 22, 1938, substituted proviso for last sentence relating to widow's and children's rights to dower and allowance fixed by State laws.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 27. Protection of bankrupts.

A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and when served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this title. (July 1, 1898, ch. 541, § 9, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

AMENDMENTS

1938—Section, formerly subd. (a), reenacted without change by act June 22, 1938.

Former subd. (b) reenacted as subd. (a) of section 28 of this title by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 28. Apprehension and extradition of bankrupts.

(a) The court may, during the pendency of a proceeding in bankruptcy, upon application of the receiver, trustee, or a creditor and upon satisfactory proof by affidavit that the examination of such bankrupt is necessary for the proper administration of the estate and that there is reasonable cause to believe that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, or that he has evaded service of a subpena or of an order to attend for examination, or that, having been served with a subpena or order to attend for examination, he has willfully disobeyed the same, issue to the marshal a warrant directing him to bring such bankrupt forthwith before the court for examination. If, upon hearing the evidence of the parties, it shall appear to the court that the allegations are true and that it is necessary, the court shall fix bail conditioned for his appearance for examination, from time to time not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

(b) Whenever any warrant for the apprehension of a bankrupt shall have been issued under this title, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner as persons under indictment are now extradited from one district to another.

(c) Where the bankrupt is a corporation, "bankrupt" for the purposes of this section shall include its officers and the members of its board of directors

or trustees or of other similar controlling bodies. (July 1, 1898, ch. 541, § 10, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

AMENDMENTS

1938—Subd. (a), formerly subd. (b) of section 27, reenacted as a part of this section and amended by act June 22, 1938.

Subd. (b), formerly this entire section, amended by act June 22, 1938.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Extradition, see section 3181 et seq. of Title 18, Crimes and Criminal Procedure.

§ 29. Suits by and against bankrupts.

(a) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged bankrupt, such action may be further stayed until the question of his discharge is determined by the court after a hearing, or by the bankrupt's filing a waiver of, or having lost, his right to a discharge, or, in the case of a corporation, by its failure to file an application for a discharge within the time prescribed under this title: *Provided, however,* That such stay shall be vacated by the court if, in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy, such person has been granted a discharge, or has had a composition confirmed, or has had an arrangement by way of composition confirmed, or has had a wage earner's plan by way of composition confirmed.

(b) The court may order the receiver or trustee to enter his appearance and defend any pending suit against the bankrupt.

(c) A receiver or trustee may, with the approval of the court, be permitted to prosecute as receiver or trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d) Suits shall not be brought against a person who has acted as a receiver or trustee of a bankrupt estate, upon any matter arising in connection with the administration thereof, subsequent to two years after the estate has been closed.

(e) A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy, the receiver or trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be.

(f) The operation of any statute of limitations of the United States or of any State, affecting the debts of a bankrupt provable under this title, shall be suspended during the period from the date of the filing or lost his right to a discharge, then until the expiration of thirty days after the date of the entry of an order denying his discharge; or (2) if he has waived or lost his right to a discharge, then until the expiration of thirty days after the filing of such waiver or loss of such right or, in the case of a corporation, if no application for a discharge is filed within the period of six months after the adjudication, then until the expiration of thirty days after the end of such period; or (3) until thirty days after the dismissal of the bankruptcy proceedings, whichever may first occur. (July 1, 1898, ch. 541, § 11, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 849; July 7, 1952, ch. 579, § 5, 66 Stat. 422.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, deleted the proviso "has been adjudicated a bankrupt or" following "such person".

1938—Subds. (a)—(d) amended by act June 22, 1938. Subds. (e), (f) added by act of June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 516, 714, 814, 1014 of this title.

§ 30. Compositions; when confirmed.

CODIFICATION

Section, acts July 1, 1898, ch. 541, § 12, 30 Stat. 549; June 25, 1910, ch. 412, § 5, 36 Stat. 839; May 27, 1926, ch. 406, § 5, 44 Stat. 663, and sections 31, 201, 202, 206, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act).

Subject matter of the various subdivisions comprising this section was distributed by said act June 22, 1938, as follows:

Section 30, subdivisions:	Present sections
a	721, 725, 735, 736, 821, 825, 826, 834, 836, 906, 1024, 1025, and 1033.
b	762, 866, 868, and 1052.
c	737 (3), 837 (3) and 1033.
d	761, 766, 867, and 1056.
e	767, 776, 881, 882, and 1066.

SAVINGS CLAUSE

Continuance of section in force with respect to certain proceedings, see section 799 of this title.

§ 31. Same; when set aside.

CODIFICATION

Section, act July 1, 1898, ch. 541, § 13, 30 Stat. 550, and sections 30, 201, 202, 206, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and

14, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act). Subject matter of section is now contained in sections 786, 911, and 1071 of this title.

§ 32. Discharges, when granted.

(a) The adjudication of any person, except a corporation, shall operate as an application for a discharge: *Provided,* That the bankrupt may, before the hearing on such application, waive by writing, filed with the court, his right to a discharge. A corporation may, within six months after its adjudication, file an application for a discharge in the court in which the proceedings are pending.

(b) (1) The court shall make an order fixing a time for the filing of objections to the bankrupt's discharge and a time for the filing of applications pursuant to section 35(c)(2) of this title to determine the dischargeability of debts, which time or times shall be not less than thirty days nor more than ninety days after the first date set for the first meeting of creditors. Notice of such order shall be given to all parties in interest as provided in section 94(b) of this title. The Court may, upon its own motion or, for cause shown, upon motion of any party in interest, extend the time or times for filing such objections or applications.

(2) Upon the expiration of the time fixed in the order for filing objections or of any extension of such time granted by the court, the court shall discharge the bankrupt if no objection has been filed and if the filing fees required to be paid by this title have been paid in full; otherwise, the court shall hear such proofs and pleas as may be made in opposition to the discharge, by the trustee, creditors, the United States attorney, or such other attorney as the Attorney General may designate, at such time as will give the bankrupt and the objecting parties a reasonable opportunity to be fully heard.

(c) The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under section 152 of Title 18; or (2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case; or (3) while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business money or property on credit or as an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation; or (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property with intent to hinder, delay, or defraud his creditors; or (5) in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy has been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this title; or (6) in the course of a proceeding under this title refused to obey any lawful order of, or to answer any material question approved by, the court; or (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities; or (8) has failed to pay the filing fees required to be paid by this title in full: *Provided,* That if, upon the hearing of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision, would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.

(d) When requested by the court, the United States attorney, located in the judicial district in which the bankruptcy proceeding is pending, or such other attorney as the Attorney General may designate, shall examine into the acts and conduct of the bankrupt and, if satisfied that probable grounds exist for the denial of the discharge and that the public interest so warrants, he shall oppose the discharge of such bankrupt in like manner as provided in the case of a trustee.

(e) If the bankrupt fails to appear at the hearing upon the objections to his application for a discharge, or having appeared refuses to submit himself to examination, or if the court finds after hearing upon notice that the bankrupt has failed without sufficient excuse to appear and submit himself to examination at the first meeting of creditors or at any meeting specially called for his examination, he shall be deemed to have waived his right to a discharge, and the court shall enter an order to that effect.

(f) An order of discharge shall—

(1) declare that any judgment theretofore or thereafter obtained in any other court is null and void as a determination of the personal liability of the bankrupt with respect to any of the following: (a) debts not excepted from the discharge under subdivision (a) of section 35 of this title; (b) debts discharged under paragraph (2) of subdivision (c) of section 35 of this title; and (c) debts determined to be discharged under paragraph (3) of subdivision (c) of section 35 of this title; and

(2) enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt.

(g) An order of discharge which has become final may be registered in any other district by filing therein a certified copy of such order and when so registered shall have the same effect as an order of the bankruptcy court of the district where registered and may be enforced in like manner.

(h) Within forty-five days after the order of discharge becomes final the court shall give notice of the entry thereof to all parties in interest as specified in subdivision (b) of section 94 of this title. Such notice shall also specify the debts, if any, theretofore determined by the court to be nondischargeable, the

debts, if any, as to which applications to determine dischargeability are pending, and those contents of the order of discharge required by subdivision (f) of this section. (July 1, 1898, ch. 541, § 14, 30 Stat. 550; Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797; June 25, 1910, ch. 412, § 6, 36 Stat. 839; May 27, 1926, ch. 406, § 6, 44 Stat. 663; June 22, 1938, ch. 575, § 1, 52 Stat. 850; May 24, 1949, ch. 139, § 130, 63 Stat. 107; July 7, 1952, ch. 579, § 6, 66 Stat. 422; Sept. 2, 1957, Pub. L. 85-275, § 1, 71 Stat. 599; July 12, 1960, Pub. L. 86-621, § 1, 74 Stat. 408; Sept. 2, 1965, Pub. L. 89-166, 79 Stat. 646; Oct. 19, 1970, Pub. L. 91-467, §§ 2, 3, 84 Stat. 990, 991.)

AMENDMENTS

1970—Subd. (b). Pub. L. 91-467 split up existing provisions into pars. (1) and (2), and in pars. (1) and (2) as so designated, required the court to make orders fixing time for filing applications under section 35(c) of this title in addition to making orders fixing time for filing objections to the bankrupt's discharge, laid down a maximum time limit of 90 days after the first date set for the first meeting of creditors and struck out the limitation on the court's power that the time may be extended only for the purpose of the examination of the bankrupt.

Subds. (f)—(h). Pub. L. 91-467 added subds. (f) to (h).

1965—Subd. (b). Pub. L. 89-166 deleted the payment of filing fees as a prerequisite to the making of an order fixing a time for the filing of objections and made the payment of the filing fees a prerequisite to discharge.

Subd. (c). Pub. L. 89-166 added clause (8).

1960—Subd. (c)(3). Pub. L. 86-621 limited the use of false financial statements as a bar to discharge of bankrupts who furnished such false statements while engaged in business as a sole proprietor, partnership, or an executive of a corporation.

1957—Subd. (b). Pub. L. 85-275 substituted provisions requiring (1) the court, upon payment of required filing fees, to fix time for filing of objections to bankrupt's discharge, not less than thirty days after first date set for first meeting of creditors and (2) notice thereof to all parties in interest and permitting extension of time for filing objections, for provisions requiring (1) the court, after the bankrupt has been examined, either at first meeting of creditors or at meeting specially fixed for that purpose, to fix time for filing of objections to bankrupt's discharge; and (2) notice thereof to all parties in interest.

1952—Subd. (c) (5). Act July 7, 1952, § 6 (a), made the six year period within which objection can be made to a discharge in a bankruptcy proceeding run from the date of the commencement of the prior proceeding rather than the date of the discharge or its equivalent.

Subd. (e). Act July 7, 1952, § 6 (b), substituted "hearing upon the objection to his application for a discharge," in lieu of "hearing upon his application for a discharge".

1949—Subd. (c) (1). Act May 24, 1949, substituted "section 152 of Title 18" for "this Act".

1938—Subd. (a) added by act June 22, 1938.

Subds. (b) and (c), formerly subd. (b), were relettered (b) and amended generally by act June 22, 1938. Former subd. (c), which related to effect of a confirmation of a composition as a discharge of bankrupt, was omitted from this section by act June 22, 1938.

Subds. (d) and (e) added by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-467 effective sixty days after October 19, 1970, with such amendments to govern proceedings in all cases filed after such date, see, section 10 of Pub. L. 91-467, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Adjudication of bankruptcy, see Form 11, Appendix to this title.

Adjudications, see section 41 of this title.

Amendments, see Gen. Ord. 11, Appendix to this title.

Arrangements, see section 701 et seq. of this title.

Concealment of assets; false oaths and claims; bribing, see section 152 of Title 18, Crimes and Criminal Procedure.

Debtors petition and schedules, see Form 1, Appendix to this title.

Debts not affected by discharge, see section 35 of this title.

Definitions—

Adjudication, see section 1 (2) of this title.

Bankruptcy, see section 1 (4) of this title.

Creditor, see section 1 (11) of this title.

Discharge, see section 1 (15) of this title.

Discharge of bankrupt, see Form 45, Appendix to this title.

Duty of bankrupt to answer questions generally, see sections 25 (a) and 44 (a) of this title.

Duty of bankrupt to comply with lawful orders, see section 25(a) (2) of this title.

Jurisdiction of referee to grant discharge, see section 66 (4) of this title.

Meeting of creditors, see section 91 of this title.

Notice of order fixing time for filing objections to discharge, see Form 43, Appendix to this title.

Notices to creditors for filing objections to discharge, see section 94 (b) of this title.

Opposition to discharge, see Gen. Ord. 32, Appendix to this title.

Order fixing time for filing objections to discharge, see Form 42, Appendix to this title.

Partnership petition, see Form 4, Appendix to this title.

Petition for discharge, see Gen. Ord. 31 and Form 41, Appendix to this title.

Refusal to obey lawful orders or to appear and testify, as contempt, see section 69 (a) of this title.

Release of directors and stockholders from liability by discharge of corporation, see section 22 of this title.

Revocation of discharges, see section 33 of this title.

Specification of objections to discharge, see Form 44, Appendix to this title.

Trustee's duty to oppose discharges when advisable to do so, see section 75(a) (9) of this title.

Wage earners' plans, see section 1001 et seq. of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Discharge in bankruptcy as affirmative defense, see rule 8 (c), Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35 of this title.

§ 33. Discharges, when revoked.

The court may revoke a discharge upon the application of a creditor, the trustee, the United States attorney, or any other party in interest, who has not been guilty of laches, filed at any time within one year after a discharge has been granted, if it shall appear (1) that the discharge was obtained through the fraud of the bankrupt, that the knowledge of the fraud has come to the applicant since the discharge was granted, and that the facts did not warrant the discharge; or (2) that the bankrupt, before or after discharge, received or became entitled to receive property of any kind which is or which became a part of the bankrupt estate and that he knowingly and fraudulently failed to report or to deliver such property to the trustee; or (3) that the bankrupt during the pendency of the proceeding refused to obey

any lawful order of, or to answer any material question approved by, the court. The application to revoke for such refusal may be filed at ay time during the pendency of the proceeding or within one year after the discharge was granted, whichever period is longer. (July 1, 1898, ch. 541, § 15, 30 Stat. 550; June 22, 1938, ch. 575, § 1, 52 Stat. 851; Oct. 19, 1970, Pub. L. 91–467, § 4, 84 Stat. 991.)

AMENDMENTS

1970—Pub. L. 91–467 designated as cl. (1) the existing enumeration of parties who can apply for the revocation of the discharge and added cls. (2) and (3).

1938—Act June 22, 1938, substituted "court" for "judge" and deleted "upon a trial" after "revoke it."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–467 effective sixty days after October 19, 1970, with such amendments to govern proceedings in all cases filed after such date, see, section 10 of Pub. L. 91–467, set out as a note under section 11 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Discharges, when granted, see section 32 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Relief from order procured by fraud, see rule 60, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 34. Co-debtors, guarantors or sureties for bankrupts.

The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt. (July 1, 1898, ch. 541, § 16, 30 Stat. 550.)

CROSS REFERENCES

Action to proceed against bankrupt to save rights against sureties, see section 29 of this title.

Bankruptcy of partnerships and partners, see section 23 of this title.

Effect of discharge of corporations on liability of officers and stockholders, see section 22 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Discharge in bankruptcy as affirmative defense, see rule 8 (c), Title 28, Appendix, Judiciary and Judicial Procedure.

§ 35. Dischargeability of debts.

(a) Debts not affected by discharge.

A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as

(1) are taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof within three years preceding bankruptcy: *Provided, however,* That a discharge in bankruptcy shall not release a bankrupt from any taxes (a) which were not assessed in any case in which the bankrupt failed to make a return required by law, (b) which were assessed within one year preceding bankruptcy in any case in which the bankrupt failed to make a return required by law, (c) which were not reported on a return made by the bankrupt and which were not assessed prior to bankruptcy by reason of a prohibition on assessment pending the exhaustion of administrative or judicial remedies available to the bankrupt, (d) with respect to which the bankrupt made a false or fraudulent return, or willfully attempted in any manner to evade or defeat, or (e) which the bankrupt has collected or withheld from others as required by the laws of the United States or any State or political subdivision thereof, but has not paid over; but a discharge shall not be a bar to any remedies available under applicable law to the United States or to any State or any subdivision thereof, against the exemption of the bankrupt allowed by law and duly set apart to him under this title: *And provided further,* That a discharge in bankruptcy shall not release or affect any tax lien;

(2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful and malicious conversion of the property of another;

(3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy;

(4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity;

(5) are for wages and commissions to the extent they are entitled to priority under subdivision (a) of section 104 of this title;

(6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment;

(7) are for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female or for breach of promise of marriage accompanied by seduction, or for criminal conversation; or

(8) are liabilities for willful and malicious injuries to the person or property of another other than conversion as excepted under clause (2) of this subdivision.

(b) Proceedings for debts dischargeable.

The failure of a bankrupt or debtor to obtain a discharge in a prior proceeding under this title for any of the following reasons shall not bar the release by discharge in a subsequent proceeding under the title of debts that were dischargeable under subdivision (a) of this section in the prior proceeding: (1) discharge was denied in the prior proceeding solely under clause (5) or clause (8) of subdivision (c) of section 32 of this title; (2) the prior proceeding was dismissed without prejudice for failure to pay filing fees or to secure costs. If a bankrupt or debtor fails to obtain a discharge in a proceeding under this title by reason of a waiver filed pursuant to section 32(a) of this title or by reason of a denial on any ground under section 32(c) of this title other than clause (5) or clause (8) thereof, the debts provable in such proceeding shall not be released by a discharge granted in any subsequent proceeding under

this title. A debt not released by a discharge in a proceeding under this title by reason of clause (3) of subdivision (a) of this section may nevertheless be dischargeable in a subsequent bankruptcy proceeding.

(c) Procedure.

(1) The bankrupt or any creditor may file an application with the court for the determination of the dischargeability of any debt.

(2) A creditor who contends that his debt is not discharged under clause (2), (4), or (8) of subdivision (a) of this section must file an application for a determination of dischargeability within the time fixed by the court pursuant to paragraph (1) of subdivision (b) of section 32 of this title and, unless an application is timely filed, the debt shall be discharged. Notwithstanding the preceding sentence, no application need be filed for a debt excepted by clause (8) if a right to trial by jury exists and any party to a pending action on such debt has timely demanded a trial by jury or if either the bankrupt or a creditor submits a signed statement of an intention to do so.

(3) After hearing upon notice, the court shall determine the dischargeability of any debt for which an application for such determination has been filed, shall make such orders as are necessary to protect or effectuate a determination that any debt is dischargeable and, if any debt is determined to be nondischargeable, shall determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof. A creditor who files such application does not submit himself to the jurisdiction of the court for any purposes other than those specified in this subdivision.

(4) The provisions of this subdivision shall apply whether or not an action on a debt is then pending in another court and any party may be enjoined from instituting or continuing such action prior to or during the pendency of a proceeding to determine its dischargeablity under this subdivision.

(5) Nothing in this subdivision shall be deemed to affect the right of any party, upon timely demand, to a trial by jury where such right exists.

(6) If a bankruptcy case is reopened for the purpose of obtaining the orders and judgments authorized by this subdivision, no additional filing fee shall be required. (July 1, 1898, ch. 541, § 17, 30 Stat. 550; Feb. 5, 1903, ch. 487, § 5, 32 Stat. 798; Mar. 2, 1917, ch. 153, 39 Stat. 999; Jan. 7, 1922, ch. 22, 42 Stat. 354; June 22, 1938, ch. 575, § 1, 52 Stat. 851; July 12, 1960, Pub. L. 86–621, § 2, 74 Stat. 409; July 5, 1966, Pub. L. 89–496, § 2, 80 Stat. 270; Oct. 19, 1970, Pub. L. 91–467, §§ 5–7, 84 Stat. 992.)

AMENDMENTS

1970—Subd. (a)(2). Pub. L. 91–467, § 5, substituted "malicious conversion of the property of another" for "malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation" in the list of liabilities.

Subd. (a)(5). Pub. L. 91–467, § 5, substituted "are for wages and commissions to the extent they are entitled to priority under subdivision (a) of section 104 of this title;" for "are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or".

Subd. (a)(6). Pub. L. 91–467, § 5, substituted a semicolon for a period at the end of cl. (6).

Subd. (a)(7). Pub. L. 91–467, § 6, added subd. (a)(7).

Subd. (a)(8). Pub. L. 91–467, § 6, added subd. (a)(8).

Subds. (b), (c). Pub. L. 91–467, § 7, added subds. (b), (c).

1966—Subd. (a)(1). Pub. L. 89–496 made dischargeable in bankruptcy debts for taxes which became legally due and owing more than three years preceding bankruptcy, provided certain exceptions to such a discharge for failure to make returns, omissions from returns, false or fraudulent returns, and nonpayment of taxes collected or withhheld from others, and provided that discharge shall not bar any remedies available against the exemption of the bankrupt allowed by law or affect tax liens.

1960—Pub. L. 86–621 inserted the prohibition against discharge in bankruptcy from debts which are liabilities for obtaining money or property on credit or obtaining an extension or a renewal of credit by furnishing false financial statements in clause (2).

1938—Opening clause. Act June 22, 1938, inserted "whether allowable in full or in part" after "provable debts."

Clause (1). Act June 22, 1938, substituted "or any State" for "the State" and deleted "in which he resides" after "municipality".

Clause (2). Act June 22, 1938, inserted "money or" before "property."

Clauses (3), (4), and (6) reenacted without change by act June 22, 1938.

Clause (5) amended generally by act June 22, 1938, which among other changes inserted "on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt" after "traveling or city salesmen".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–467 effective sixty days after October 19, 1970, with such amendments to govern proceedings in all cases filed after such date, see, section 10 of Pub. L. 91–467, set out as a note under section 11 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Debts which may be proved, see section 103 of this title.
Discharge, when granted, see section 32 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 94, 771, 876, 1060, 1061 of this title.

Chapter 4.—COURTS AND PROCEDURE THEREIN

Sec.
41. Process; pleadings; and adjudications.
42. Jury trials.
43. Oaths; affirmations.
44. Evidence.
45. Reference of petitions.
46. Jurisdiction of controversies between receivers and trustees and adverse claimants.
47. Jurisdiction of appellate courts.
48. Practice on appeals.
49. Arbitration of controversies.
50. Compromises.
51. Designation of newspapers.
52, 53. Repealed.
54. Computation of time.
55. Transfer of cases.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 502, 781, 802, 886, 1002, 1069 of this title.

§ 41. Process; pleadings; and adjudications.

(a) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpena, shall be made upon the person therein named as defendant. Upon the filing of a voluntary petition in behalf of a partnership by less than all of the general partners, service thereof, with a writ of subpena, shall be made upon the general partner or partners not parties to the filing of such petition. Such service shall be returnable within ten days, unless the court shall, for cause shown, fix a longer time, and shall be made at least five days prior to the return day, and in other respects shall be made in the same manner that service of summons is had upon the commencement of a civil action in the courts of the United States; but in case personal service cannot be made within the time allowed, then notice shall be given by publication in the same manner as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the court shall otherwise direct, the order shall be published only once and the return day shall be five days after such publication.

(b) The bankrupt and, in the case of a petition against a partnership, any general partner or, in the case of a petition in behalf of a partnership, any general partner not joining therein, may appear and plead to the petition within five days after the return day or within such further time as the court may allow.

(c) Petitions for both voluntary and involuntary bankruptcy shall be verified under oath.

(d) If a party entitled to appear and plead shall appear, within the time limited, and controvert the facts alleged in the petition, the court shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury except in cases where a jury trial is given by this title, and make the adjudication or dismiss the petition.

(e) If on the last day within which pleadings may be filed none is filed, the court shall on the next day, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f) The filing of a voluntary petition under chapters 1 to 7 of this title, other than a petition filed in behalf of a partnership by less than all of the partners, shall operate as an adjudication with the same force and effect as a decree of adjudication. (July 1, 1898, ch. 541, § 18, 30 Stat. 551; Feb. 5, 1903, ch. 487, § 6, 32 Stat. 798; June 22, 1938, ch. 575, § 1, 52 Stat. 851; July 7, 1952, ch. 579, § 7, 66 Stat. 423; June 23, 1959, Pub. L. 86-64, § 2, 73 Stat. 109; Sept. 21, 1959, Pub. L. 86-293, 73 Stat. 571.)

AMENDMENTS

1959—Subd. (c). Pub. L. 86-293 substituted "Petitions for both voluntary and involuntary bankruptcy" for the words "All pleadings setting up matters of fact".

Subd. (f). Pub. L. 86-64, § 2(b), redesignated former subd. (g) as (f), and substituted provisions requiring the filing of a voluntary petition under chapters 1 to 7 of this title, other than a petition filed in behalf of a partnership by less than all of the partners, to operate as an adjudication, for provisions which required a judge to hear the petition and to make the adjudication or dismiss the petition, and eliminated provisions which required the clerk to refer the case to a referee if at the time of the filing of the petition the judge is absent from the district or division in which the petition was filed. Former subd. (f), which related to referral of cases by the clerk when the judge was absent, was repealed by Pub. L. 86-64, § 2(a).

Subd. (g). Pub. L. 86-64, § 2(b), redesignated former subd. (g) as (f).

1952—Subd. (a). Act July 7, 1952, amended subsec. (a) to conform to the Federal Rules of Civil Procedure.

1938—Subd. (a). Act June 22, 1938, among other changes, provided for service of subpoena upon a partner or partners not parties to the filing of a partnership petition; reduced from fifteen to ten days the return date in cases of personal service and from ten to five days the return date in cases of notice by publication.

Subd. (b). Act June 22, 1938, substituted "and, in the case of a petition against a partnership * * * partner not joining therein" for "or any creditor" after "bankrupt".

Subd. (c) reenacted without change by act June 22, 1938.

Subd. (d). Act June 22, 1938, substituted "a party entitled to appear and plead" for "the bankrupt, or any of his creditors" after "If" and "court" for "judge" after "petition".

Subd. (e). Act June 22, 1938, substituted "is" for "are" after "none", "court" for "judge" and omitted "by the bankrupt or any of his creditors" after "filed", and "if present" after "next day".

Subd. (f). Act June 22, 1938, substituted "has" for "have" after "none", omitted "by the bankrupt or any of his creditors" after "filed" and inserted "if the case has not already been referred" after "shall".

Subd. (g). Act June 22, 1938, inserted "other than a petition filed in behalf of a partnership by less than all of the partners" after "voluntary petition".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Adjudication—
- Bankruptcy, see Form 11, Appendix to this title.
- Debtor is not bankrupt, see Form 10, Appendix to this title.

Amendments, see Gen. Ord. 11, Appendix to this title.

Answer of alleged bankrupt, see Form 7, Appendix to this title.

Creditor's petition, see Form 5, Appendix to this title.

Debtor's petition and schedules, see Form 1, Appendix to this title.

Debtor's petition in proceedings under section 75 of the Bankruptcy Act [11 U. S. C. § 203], see Gen. Ord. 50, Appendix to this title.

Definitions—
- Adjudication, see section 1 (2) of this title.
- Bankrupt, see section 1 (4) of this title.
- Court, see section 1 (9) of this title.
- Creditor, see section 1 (11) of this title.
- Petition, see section 1 (24) of this title.

Designation of newspapers, see section 51 of this title.

Domicile, residue, or place of business of bankrupt as affecting jurisdiction, see section 11 (a) (1) of this title.

Federal Rules of Civil Procedure, applicability of, see Gen. Ord. 37, Appendix to this title.

Form of petitions and other papers, see Gen. Ord. 5, Appendix to this title.

Jurisdiction and power to issue process, see section 11 (a) (15) of this title.

Jury trial, see section 42 of this title.

Original petition in proceedings under—
- Chapter XI, see Gen. Ord. 48 and Form 48, Appendix to this title.
- Chapter XII, see Gen. Ord. 54 and Form 53, Appendix to this title.
- Chapter XIII, see Gen. Ord. 55 and Form 58, Appendix to this title.

Partnership petition, see Form 4, Appendix to this title.

Petition in corporate reorganization proceedings, see section 526 et seq. of this title.

Proceedings under Chapter X of the Act [11 U. S. C. § 501 et seq.], see Gen. Ord. 52, Appendix to this title.

Process, see Gen. Ord. 3, Appendix to this title.

Reference after adjudication, see section 45 of this title.

Subpoena for alleged bankrupt, see Form 6, Appendix to this title.

Who may—

Become bankrupt, see section 22 of this title.

File and dismiss petitions, see section 95 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 533 of this title.

§ 42. Jury trials.

(a) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury in respect to the question of his insolvency, except as herein otherwise provided, and of any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b) If a jury is not in attendance upon the court, one may be specially summoned for the trial or the case may be postponed.

(c) The right to submit to a jury matters in controversy or an alleged offense under this title shall be determined and enjoyed, except as provided by this title, according to the laws of the United States now in force or such as may be hereafter enacted in relation to trials by jury. (July 1, 1898, ch. 541, § 19, 30 Stat. 551; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

AMENDMENTS

1938—Subds. (a) and (b) reenacted without change by act June 22, 1938.

Subd. (c). Act June 22, 1938, inserted "to a jury" after "submit".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Acts of bankruptcy, see section 21 of this title.

Federal Rules of Civil Procedure as applicable to bankruptcy proceedings, see Gen. Ord. 37, Appendix to this title.

Insolvency defined, see section 1 (19) of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Jury trial in civil actions, see rules 38 and 39, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 43. Oaths; affirmations.

(a) Oaths required by this title, except upon hearing before a judge, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath. (July 1, 1898, ch. 541, § 20, 30 Stat. 551; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, substituted "hearing before a judge" for "hearings in court."

Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Affidavit of loss of negotiable instrument, see Form 32, Appendix to this title.

Appointment and oath of appraiser, see Form 12, Appendix to this title.

Consular officer authorized to administer oath or affirmation, see section 1195 of Title 22, Foreign Relations and Intercourse.

False oaths and claim in bankruptcy proceedings, see section 152 of Title 18, Crimes and Criminal Procedure.

Notary public and other officers authorized to administer oaths, see sections 637 and 2903 of Title 28, Judiciary and Judicial procedure.

Perjury generally, see section 1621 of Title 18, Crimes and Criminal Procedure.

Proof of claim under oath, see section 93 of this title, and Forms 28—31, Appendix to this title.

Referee—

Administration of oath to parties or witnesses, see Gen. Ord. 22, Appendix to this title.

Oath of office, see Form 15, Appendix to this title.

Verification of petitions, schedules, etc., see Gen. Ord. 38 and Form 1 et seq., Appendix to this title.

§ 44. Evidence.

(a) The court may, upon application of any officer, bankrupt, or creditor, by order require any designated persons, including the bankrupt and his or her spouse, to appear before the court or before the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt: *Provided,* That the spouse may be examined only touching business transacted by such spouse or to which such spouse is a party and to determine the fact whether such spouse has transacted or been a party to any business of the bankrupt: *And provided further,* That the spouse may be so examined, any law of the United States or of any State to the contrary notwithstanding.

(b) Except as herein otherwise provided, the right to take depositions in proceedings under this title shall be determined and enjoyed according to the laws of the United States now in force, or such as may be hereafter enacted, relating to the taking of depositions.

(c) Notice of the taking of depositions shall be filed with the court and a copy of such notice shall be served upon the adverse party in every case.

(d) Certified copies of proceedings before a referee, or of papers, when issued by the clerk, referee, or an employee of the referee designated by his order, which shall be filed in the office of the clerk, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

(e) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of his appointment and qualification.

(f) A certified copy of any order or decree entered in a proceeding under this title shall be evidence of the jurisdiction of the court, the regularity of the

proceedings, the fact that the order or decree was made, and the contents thereof, and, if recorded, shall impart the same notice that a deed or other instrument affecting property, if recorded, would impart.

(g) A certified copy of the petition with the schedules omitted, of the decree of adjudication or of the order approving the trustee's bond may be recorded at any time in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has an interest in real property. Such certified copy may be recorded by the bankrupt, trustee, receiver, custodian, referee, or any creditor, and the cost of such recording shall be paid out of the estate of the bankrupt as part of the expenses of administration. Unless a certified copy of the petition, decree, or order has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property in any State whose laws authorize such recording, the commencement of a proceeding under this title shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. The exercise by any court of the United States or of any State of jurisdiction to authorize or effect a judicial sale of real property of the bankrupt within any county in any State whose laws authorize the recording aforesaid shall not be impaired by the pendency of such proceeding unless such copy be recorded in such county, as aforesaid, prior to the consummation of such judicial sale: *Provided, however,* That this subdivision shall not apply to the county in which is kept the record of the original proceedings under this title.

(h) A certified copy of an arrangement or wage-earner plan and of the order confirming it shall constitute evidence of the revesting in the debtor of title to the property dealt with by the arrangement or wage-earner plan, or of the vesting of title to such property in such other person as may be provided by the arrangement or wage-earner plan, and if recorded shall impart the same notice that an instrument of transfer from the trustee to the debtor or to such person if recorded would impart.

(i) A communication by a creditor, by the receiver or the trustee of a bankrupt, by the attorney for any of them, or by the referee to a creditor, to the receiver or trustee of the bankrupt, to the attorney for any of them, to the referee or to the bankrupt or his attorney, uttered in good faith and with reasonable grounds for belief in its truth, concerning the conduct, acts, or property of the bankrupt, shall be privileged and the creditor, receiver, trustee, attorney, or referee so uttering the same shall not be held liable therefor.

(j) In any proceeding or controversy, or in any plenary suit, brought under this title, if it shall appear that the interest of a witness is adverse to the party calling him, such witness may be examined as if under cross-examination and the party calling him shall not be bound by such testimony.

(k) In all proceedings under this title, the parties in interest shall be entitled to all rights and remedies granted by the Rules of Civil Procedure for the United States District Courts established from time to time by the Supreme Court pertaining to discovery, interrogatories, inspection and production of documents, and to the admission of execution and genuineness of instruments: *Provided, however,* That the limitations of time therein prescribed may be shortened by the court to expedite hearings.

(*l*) In any proceeding under this title against a bankrupt for an accounting by him for his property or the disposition thereof, or to compel a turn-over of property by him, if his books, records, and accounts shall fail to disclose the cost to him of such property sold by him during any period under consideration, it shall be presumed, until the contrary shall appear, that such property was sold at a price not less than the cost thereof to him. (July 1, 1898, ch. 541, § 21, 30 Stat. 552; Feb. 5, 1903, ch. 487, § 7, 32 Stat. 798; May 27, 1926, ch. 406, § 7, 44 Stat. 664; June 22, 1938, ch. 575, § 1, 52 Stat. 852; July 7, 1952, ch. 579, § 8, 66 Stat. 423; Sept. 25, 1962, Pub. L. 87–681, § 3, 76 Stat. 570.)

AMENDMENTS

1962—Subd. (d). Pub. L. 87–681 substituted "clerk, referee" for "clerk or referee" and inserted "or an employee of the referee designated by his order, which shall be filed in the office of the clerk" preceding "shall be admitted as evidence."

1952—Subd. (k). Act July 7, 1952, made certain Federal Rules of Civil Procedure applicable to proceedings under this title.

1938—Subd. (a). Act June 22, 1938, substituted "spouse" for "wife" in the first proviso, and added the second proviso.

Subd. (b). Act June 22, 1938, inserted "otherwise" after "herein" in the proviso, and placed such proviso at the beginning of the subdivision.

Subd. (c) amended generally by act June 22, 1938, which among other changes, omitted provision relating to depositions taken in opposition to a discharge.

Subd. (e). Act June 22, 1938, substituted "his appointment and qalification", for provisions relating to vesting of title in the trustee and imparting of notice if the copy is recorded.

Subd. (f) amended generally by act June 22, 1938.

Subd. (g) added by act June 22, 1938. Former subd. (g) is now (h).

Subd. (h), formerly (g), amended generally by act June 22, 1938, which, among other changes, substituted "an arrangement and wage-earner plan" for "composition". Former subd. (h) redesignated (i).

Subd. (i), formerly (h), redesignated (i) by act June 22, 1938.

Subds. (j)—(*l*) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Contempt, see section 69 of this title.

Court defined, see section 1 (9) of this title.

Examination of bankrupt, see section 25 (a) (10) of this title.

Referee authorized to employ stenographer, see section 66 (7) of this title.

Taking of testimony, see Gen. Ord. 22, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under that rule, Title 28, Appendix, Judiciary and Judicial Procedure.

Proof of official record, see rule 44, Title 28, Appendix.

Reference to master in civil actions, see rule 53, Title 28, Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 110 of this title.

§ 45. Reference of petitions.

(a) Unless the judge or judges direct otherwise, the clerk shall refer to a referee all cases filed under chapters 1 to 7, chapter 11, and chapter 13 of this title.

(b) The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another. (July 1, 1898, ch. 541, § 22, 30 Stat. 552; June 22, 1938, ch. 575, § 1, 52 Stat. 854; June 23, 1959, Pub. L. 86–64, § 3, 73 Stat. 109.)

AMENDMENTS

1959—Subd. (a). Pub. L. 86–64 substituted provisions requiring the clerk, unless the judge or judges direct otherwise, to refer all cases filed under chapters 1 to 7, chapter 11, and chapter 13 of this title for provisions which permitted the judge at any stage of a proceeding to refer it to a referee, either generally or specially.

1938—Subd. (a) amended generally by act June 22, 1938, which among other changes omitted provision relating to reference to a referee within the territorial jurisdiction of the court.

Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Copy of order of reference mailed to referee, see Gen. Ord. 12, Appendix to this title.

Duties and compensation of referees, see sections 67 and 68 of this title.

Filing papers after reference, see Gen. Ords. 2 and 20, Appendix to this title.

Order of General Reference, see Form 13, Appendix to this title.

Powers of referee, see section 66 of this title, and Gen. Ord. 22, Appendix to this title.

Proceedings referable to referee—

Arrangements, see section 731 of this title.

Corporate reorganization, see section 517 of this title.

Real property arrangements, see section 831 of this title.

Wage earners' plans, see section 1031 of this title.

Referee not to practice as an attorney in any proceeding, see section 67 (b) of this title.

Restriction on compensation of referee, see section 112 of this title.

§ 46. Jurisdiction of controversies between receivers and trustees and adverse claimants.

(a) The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this title, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this title had not been instituted, unless by consent of the defendant, except as provided in sections 96, 107, and 110 of this title. (July 1, 1898, ch. 541, § 23, 30 Stat. 552; Feb. 5, 1903, ch. 487, § 8, 32 Stat. 798; June 25, 1910, ch. 412, § 7, 36 Stat. 840; May 27, 1926, ch. 406, § 8, 44 Stat. 664; June 22, 1938, ch. 575, § 1, 52 Stat. 854.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, substituted "under this title" for "in bankruptcy" after "proceedings", and inserted "receivers and" after "between", and "receivers or" after "claimed by the".

Subd. (b). Act June 22, 1938, inserted "the receiver and" after "Suits by" and substituted "under this title" for "in bankruptcy" after "proceedings".

1926—Subd. (a). Act May 27, 1926, substituted "district" for "circuit" after "The United States".

Subd. (d). Act May 27, 1926, inserted "only" after "prosecuted".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Ancillary jurisdiction in aid of receiver or trustee, see section 11 (20) of this title.

Authority of receivers to prosecute or defend proceedings, see section 11 (3) of this title.

Concurrent jurisdiction of plenary proceedings—

Recovery or avoidance of preferences, see section 96 (b) of this title.

Recovery or avoidance of liens and fraudulent transfers, see section 107 (e) of this title.

Recovery or avoidance of transfer or obligation, see section 110 (e) (3) of this title.

Duties of trustee, see section 75 of this title.

Exclusive jurisdiction—

Arrangement proceedings, see section 711 of this title.

Corporate reorganization proceedings, see section 511 of this title.

Real property arrangement proceedings, see section 811 of this title.

Wage earners' plans proceedings, see section 1011 of this title.

Jurisdiction—

Action involving diversity of citizenship, see section 1332 of Title 28, Judiciary and Judicial Procedure.

Bankruptcy courts generally, see section 11 of this title.

To enter turn-over orders, see section 11(a) (15) of this title.

Summary jurisdiction to determine rights of lienholders, see section 107 (a) (4) of this title.

Title to bankrupts' property vested in trustee, see section 110 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Civil action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 502 of this title.

§ 47. Jurisdiction of appellate courts.

(a) The United States courts of appeals, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however*, That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury shall extend to matters of law only: *And provided further*,

That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

(c) The Supreme Court of the United States is vested with jurisdiction to review judgments, decrees, and orders of the United States courts of appeals in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted. (July 1, 1898, ch. 541, § 24, 30 Stat. 553; May 27, 1926, ch. 406, § 9, 44 Stat. 664; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 854; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 7, 1952, ch. 579, § 9, 66 Stat. 423.)

AMENDMENTS

1952—Subds. (a) and (c). Act July 7, 1952, § 9 (a), deleted reference to United States court of appeals for the District of Columbia since such court is contained within the reference "United States courts of appeals".

1938—Subds. (a), (formerly (a) and part of (b)), and (b), (formerly part of (b)), amended generally by act June 22, 1938, which among other changes added after "matters of fact" the two provisos in subd. (a).

Subd. (c), formerly subd. (c) of section 48 of this title, amended generally by act June 22, 1938, which act did not reenact former subd. (c) as a part of this section. See subd. (a) of section 48 of this title for provisions on that subject.

1926—Subd. (a). Act May 27, 1926, inserted "the "Court of Appeals of the District of Columbia" after "the circuit courts of appeal of the United States" and deleted the last sentence.

Subd. (d) amended generally by Act May 27, 1926, which among other changes inserted "and the Court of Appeals of the District of Columbia" after "circuit courts of appeal" and the last sentence. "Such power shall * * * in the discretion of the appellate court".

Subd. (c). Act May 27, 1926, added subd. (c).

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" and "United States Court of Appeals for the District of Columbia" for "United States Circuit Court of Appeals for the District of Columbia".

Act June 7, 1934, changed the name of "Court of Appeals of the District of Columbia" to "United States Circuit Court of Appeals for the District of Columbia".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS

Act Mar. 3, 1911, ch. 231, § 128 (c), as added by act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 936, was repealed by act June 25, 1948. Said act of 1925 provided that: "The circuit courts of appeal shall also have an appellate and supervisory jurisdiction under sections 24 and 25 of the Bankruptcy Act of July 1, 1898 [this section and section 48 of this title], over all proceedings, controversies, and cases had or brought in the district courts under that Act or any of its amendments, and shall exercise the same in the manner prescribed in those sections; and the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit in this regard shall cover the courts of bankruptcy in Alaska and Hawaii, and that of the Circuit Court of Appeals for the First Circuit shall cover the court of bankruptcy in Porto Rico."

Act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941, provided for the repeal of so much of sections 24 and 25 [this section and section 48 of this title] "as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named."

CROSS REFERENCES

Appeals, see Gen. Ord. 36, Appendix to this title.

Final decisions of district court appealable to courts of appeals, see section 1291 of Title 28, Judiciary and Judicial Procedure.

Interlocutory decisions of district courts appealable to courts of appeals, see section 1292 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of Supreme Court to review cases from courts of appeals, see section 1254 of Title 28, Judiciary and Judicial Procedure.

Time for appeal from bankruptcy judgment, order or decree, see section 48 (a) of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Appeals by allowance in bankruptcy proceedings, see rule 6, Title 28, Appendix, Judiciary and Judicial Procedure.

Notice of appeal, see rules 3, 4, Title 28, Appendix.

§ 48. Practice on appeals.

(a) Appeals under this title to the United States courts of appeals shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

(b) Receivers and trustees shall not be required in any case to give bond when they take appeals. (July 1, 1898, ch. 541, § 25, 30 Stat. 553; May 27, 1926, ch. 406, § 10, 44 Stat. 665; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 855; June 25, 1948, ch. 646, §§ 23, 32 (a), 39, 62 Stat. 990, 992; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 7, 1952, ch. 579, § 10, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, deleted reference to the United States Court of Appeals for the District of Columbia since such court is now contained within the reference to "United States courts of appeals".

1948—Sections 23, 39 of act June 25, 1948, eff. Sept. 1, 1948, repealed act Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54, and substituted appeal for writ of error.

1938—Subd. (a), formerly subd. (c) of section 47 of this title, amended generally by act June 22, 1938, which among other changes provided for the time of filing proof of notice of appeal.

Subd. (b). Act June 22, 1938 inserted "Receivers and" preceding "trustees".

1926—Subd. (a). Act May 27, 1926, inserted "and the Court of Appeals of the District of Columbia and to the Supreme Courts of the Territories" after "circuit courts of appeals" in the first sentence and substituting "thirty" for "ten" preceding "days" in the last sentence.

CHANGE OF NAME

Act June 25, 1948, § 32(a), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" and "United States Court of Appeals for the District of Columbia" for "United States Circuit Court of Appeals for the District of Columbia".

Act June 7, 1934, changed the name of "Court of Appeals of the District of Columbia" to "United States Circuit Court of Appeals for the District of Columbia."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS

Act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941, provided for the repeal of so much of sections 24 and 25 [section 47 of this title and this section] "as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named."

CROSS REFERENCES

Appeals, see Gen. Ord. 36, Appendix to this title.

Damages and costs on affirmance, see section 1912 of Title 28, Judiciary and Judicial Procedure.

Exemption of United States from fees and costs, see section 2412 of Title 28.

Fees and costs in courts of appeals, see section 1913 of Title 28.

Security not required of United States, see section 2408 of Title 28.

Time for—

Appeal to court of appeals in civil cases, see section 2107 of Title 28.

Filing petition for review of order of referee to judge, see section 67 (c) of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Appeals by allowance in bankruptcy proceedings, see rule 6, Title 28, Appendix, Judiciary and Judicial Procedure.

Bonds for costs on appeal in civil cases, see rule 7, Title 28, Appendix.

Notice of appeal, see rules 3, 4, Title 28, Appendix.

Record on appeal, see rule 10. Title 28, Appendix.

Stay or injunction pending appeal, see rule 8, Title 28, Appendix.

§ 49. Arbitration of controversies.

(a) The receiver or trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b) Three arbitrators shall be chosen by mutual consent, or one by the receiver or trustee, one by the other party to the controversy, and the third by the two so chosen or, if they fail to agree in five days after their appointment, the court shall appoint the third arbitrator.

(c) The written finding of the arbitrators or of a majority of them as to the issues presented may be filed in court and shall have like force and effect as the verdict of a jury. (July 1, 1898, ch. 541, § 26, 30 Stat. 553; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, inserted "receiver or" preceding "trustee".

Subd. (b). Act June 22, 1938, inserted "receiver or" preceding "trustee".

Subd. (c). Act June 22, 1938, reenacted subd. (c) without change.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Arbitration and compromise, see Gen. Ord. 33, Appendix to this title.

§ 50. Compromises.

The receiver or trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interest of the estate. (July 1, 1898, ch. 541, § 27, 30 Stat. 553; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

AMENDMENTS

1938—Act June 22, 1938, inserted "receiver or" preceding "trustee".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Arbitration and compromise, see Gen. Ord. 33, Appendix to this title.

Notice to creditors of proposed compromise, see section 94 (a) (6) of this title.

§ 51. Designation of newspapers.

The judges of courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published. (July 1, 1898, ch. 541, § 28, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

AMENDMENTS

1938—Act June 22, 1938, inserted "the judges of" preceding "courts of bankruptcy" and omitted "required to be published by this Act" after "in which notices", in the first sentence.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 52. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, acts July 1, 1898, ch. 541, § 29, 30 Stat. 554; May 27, 1926, ch. 406, § 11, 44 Stat. 665; June 22, 1938, ch. 575, § 1, 52 Stat. 856, relating to offenses, is now covered by sections 151–154, 3057, and 3284 of Title 18, Crimes and Criminal Procedure.

§ 53. Repealed. Pub. L. 88–623, § 3, Oct. 3, 1964, 78 Stat. 1001.

Section, act July 1, 1898, ch. 541, § 30, 30 Stat. 554, empowered the Supreme Court to prescribe and amend all rules, forms, and orders to effectuate the provisions of this title, and is now covered by section 2075 of Title 28, Judiciary and Judicial Procedure.

RULES, FORMS AND ORDERS PRESCRIBED PRIOR TO OCT. 3, 1964

Section 3 of Pub. L. 88–623 provided that: "Section 30 of the Bankruptcy Act [this section] is repealed but its repeal shall not operate to invalidate or repeal rules, forms, or orders prescribed under the authority of that section by the Supreme Court prior to the enactment of this Act [Oct. 3, 1964]."

§ 54. Computation of time.

Whenever time is enumerated by days in this title or in any proceeding thereunder the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a holiday. (July 1, 1898, ch. 541, § 31, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

AMENDMENTS

1938—Act June 22, 1938, deleted "legal" preceding "holiday" at end of section.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 55. Transfer of cases.

(a) In the event petitions are filed by or against the same person or by or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall, by order of the court first acquiring jurisdiction, be transferred to and consolidated in the court which can proceed with the same for the greatest convenience of parties in interest.

(b) Where venue in any case filed under this title is laid in the wrong court of bankruptcy, the judge may, in the interest of justice, upon timely and sufficient objection to venue being made, transfer the case to any other court of bankruptcy in which it could have been brought.

(c) The judge may transfer any case under this title to a court of bankruptcy in any other district, regardless of the location of the principal assets of the bankrupt, or his principal place of business, or his residence, if the interests of the parties will be best served by such transfer. (July 1, 1898, ch. 541, § 32, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857; July 7, 1952, ch. 579, § 11, 66 Stat. 424.)

AMENDMENTS

1952—Act July 7, 1952, designated former section as subd. (a) and added subds. (b) and (c).

1938—Act June 22, 1938 inserted "by or" preceding "against" in two instances and provided for transfer and consolidation by order of court first acquiring jurisdiction instead of by court relinquishing jurisdiction.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

Chapter 5.—OFFICERS, THEIR DUTIES AND COMPENSATION

Sec.
61. Creation of two offices.
62. Appointment, reappointment, and removal of referees.
(a) Appointment.
(b) Removal.
63. Qualifications of referees.
64. Oaths of referees.
65. Number and territories of referees.
66. Jurisdiction of referees.
67. Duties of referees; prohibition against practice of law and acting as trustees or receivers; review of orders.
68. Compensation of referees; referees' salary and expense fund; retirement of referees.
69. Contempts before referees.
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71. Vacancies; referee's absence or disability.
72. Trustees; creditors' committees; and attorneys
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(a) Receivers.
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79. Clerks; duties.
80. Clerks and marshals; compensation.
81. Statistics.
82. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 502, 802, 886, 1002, 1069 of this title.

§ 61. Creation of two offices.

The offices of referee and trustee are created. (July 1, 1898, ch. 541, § 33, 30 Stat. 555.)

§ 62. Appointment, reappointment, and removal of referees.

(a) Appointment.

The judges of the several courts of bankruptcy shall appoint referees. Where there is more than one judge of a court of bankruptcy, or where the territory to be served by a referee includes territory in more than one judicial district, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such court or of the courts of bankruptcy of such judicial districts, and where there is no such concurrence, then by the chief judge. Except as otherwise provided in section 65 of this title, each appointment and reappointment shall be for a term of six years. Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized as provided in subdivision (b) of section 71 of this title.

(b) Removal.

Removal of a referee during the term for which he is appointed shall be only for incompetency, misconduct, or neglect of duty: *Provided, however,* That, in the case of a part-time referee, an additional cause for removal shall be that his services are not needed. Any cause for removal in respect of any referee coming to the knowledge of the Director shall be reported by him to the judge or judges of the judicial district or districts in which such referee serves, and a copy of such report shall at the same time be transmitted to the council and to the referee. Such judge or judges may, upon receipt of such report, or upon their own motion, remove the referee for any one or more of the above mentioned causes; where there is more than one judge, such removal shall be by a concurrence of a majority of the judges, and where there is no such concurrence, then by the council. Before any order of removal shall be entered, except in the case of a part-time referee where the cause for removal is that his services are not needed, a full specification of the charges shall be furnished to the referee, and he shall be accorded by the removing judge or judges an opportunity to be heard on the charges. (July 1, 1898, ch. 541, § 34, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 2, 60 Stat. 324; May 16, 1951, ch. 81, 65 Stat. 42; Aug. 7, 1959, Pub. L. 86-144, § 2, 73 Stat. 297.)

AMENDMENTS

1959—Subd. (a). Pub. L. 86-144 substituted "chief" for "senior" and deleted "by the Conference" following "authorized".

1951—Subd. (a). Act May 16, 1951, added last sentence providing that upon the expiration of bankruptcy referee's term of office he shall continue to serve until a successor is appointed.

1946—Act June 28, 1946, amended section generally to provide that where there is more than one district judge in a territory, the appointments of referees are to be made by a concurrence of a majority, to extend the term of office from 2 to 6 years, and to provide for removal during term of office only for incompetency, misconduct, or neglect of duty, except in the case of a part-time referee who may be removed at any time if his services are no longer needed.

1938—Act June 22, 1938, amended section generally, and, among other changes, inserted provision which related to territorial limits of referees' jurisdiction.

EFFECTIVE DATES OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided:

"Sections 1 and 10 of this amendatory Act [section 1 (5a), (7a), (8a), (14a) of this title and repeal of section 82 of this title] and so much of section 4 of this amendatory Act as amends subdivision (b) of section 37 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended [subd. (b) of section 65 of this title], shall be effective upon approval of this amendatory Act [June 28, 1946]. All other provisions of this amendatory Act [sections 62, 63, 65 (a), 67 (b), 68, 71, 79 (2), (5), 80 (a), 102 (a), (b), 104 (a) (1), 112, 517, 1024 (3), 1033 (2), 1059 (1), (3) of this title] shall become effective sixty days after promulgation of the determinations of the conference, as provided in the said subdivision (b) of section 37, as amended by this amendatory Act [subd. (b) of section 65 of this title]: *Provided, however,* That the references contained in paragraph (1) of subdivision (b) of section 37 as amended by this amendatory Act [subd. (b) of section 65 of this title] to 'subdivision (a) of this section, and required for subdivisions (a) and (c) of section 40 [section 68 of this title], paragraph (2) of section 633 [section 1033 of this title], and paragraph (3) of section 659 of this Act' [section 1059 of this title] are intended to refer to those subdivisions and paragraphs as they will be amended when sections 6, 16, and 17 of this amendatory Act [sections 68, 1033, and 1059 of this title] become effective, and section 4 of this amendatory Act [section 65 of this title] becomes fully effective."

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS; SAVINGS CLAUSE; SECTION AND SUBDIVISION CATCHLINES

Section 19 of act June 28, 1946, provided:

"a. All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [sections 1 (5a), (7a), (8a), (14a), 62, 63, 65 (a), (c), 67 (b), 68, 71, 79 (2), (5), 80 (a), 102 (a), (b), 104 (a) (1), 112, 517, 1024 (3), 1033 (2), 1059 (1), (3) of this title] are hereby repealed.

"b. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act [said sections] is amendatory.

"c. If any provision of this amendatory Act [said sections] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act [said sections] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act [said sections] are declared to be severable.

"d. Section and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate."

§ 63. Qualifications of referees.

Individuals shall not be eligible to appointments as referees unless they are (1) competent to perform the duties of a referee in bankruptcy; (2) not holding any office of profit or emolument under the laws of the United States or of any State or subdivision thereof other than conciliation commissioner or special master under this title: *Provided, however,* That part-time referees may be commissioners of deeds, United States commissioners, justices of the peace, masters in chancery, notaries public, retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Marine Corps, and Coast Guard, members of the National Guard of the United States and of the National Guard of a State, Territory, or the District of Columbia, except the National Guard disbursing officers who are on a full time salary basis, or either conciliation commissioners or supervising conciliation commissioners but not both; (3) at the time when originally appointed not relatives of any of the judges of the courts of bankruptcy or of the justices or judges of the appellate courts of the districts wherein they may be appointed; (4) resident and have their offices within the judicial district of the court or one of the courts of bankruptcy under which they are to hold appointment: *Provided, however,* That where a referee shall be temporarily transferred or permanently appointed to another judicial district, residence or office in such other district shall not be requisite for eligibility; and *Provided further,* That referees serving the District of Columbia shall reside in the District of Columbia, or within twenty miles thereof; and (5) members in good standing at the bar of the district court of the United States in which they are first appointed or, if appointed to serve in territory within more than one judicial district, at the bar of one of such district courts: *Provided, however,* That the requirement of membership at such bar shall not apply to referees holding office on the date when this amendatory Act takes effect. (July 1, 1898, ch. 541, § 35, 30 Stat. 555; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 3, 60 Stat. 324; June 30, 1947, ch. 182, 61 Stat. 213; Aug. 5, 1953, ch. 327, 67 Stat. 366.)

REFERENCES IN TEXT

"This amendatory Act", referred to in the text, refers to act June 28, 1946.

AMENDMENTS

1953—Act Aug. 5, 1953, provided for residential qualification for referees in District of Columbia.

1947—Act June 30, 1947, enlarged the category of official and quasi-official positions, the holding of which would not bar an appointment as a part-time referee to include retired officers and enlisted men of the Regular and Reserve components of the Army, Navy, etc. including the National Guard.

1946—Act June 28, 1946, prohibited a referee from holding any office other than a conciliation commissioner or special master under this title, but allowed a part-time referee to be a United States commissioner, justice of peace, master in chancery, notary public or either a conciliation commissioner or supervising conciliation commissioner, but not both, and made conforming changes in clauses (4) and (5).

1938—Clauses (1), (3), and (4) amended by act June 22, 1938.

Clause (2) reenacted without change by act June 22, 1938.

Clause (5) added by act June 22, 1938.

1911—Act Mar. 3, 1911, substituted "district court" for "circuit court".

EFFECTIVE DATE AND CONSTRUCTION OF AMENDMENTS

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes under section 62 of this title.

Effective date, construction, etc., of act June 22, 1938, known as the Chandler Act, see notes under section 1 of this title.

§ 64. Oaths of referees.

Referees shall take the same oath of office as that prescribed for judges of United States courts. (July 1, 1898, ch. 541, § 36, 30 Stat. 555.)

CROSS REFERENCES

Oaths of judges of United States courts, see section 453 of Title 28, Judiciary and Judicial Procedure.

§ 65. Number and Territories of Referees.

(a) The Director shall recommend to the district judges, the councils and the conference the number of referees to hold appointment and the territory which each shall serve, after he has made a careful study of conditions throughout the country as a whole, and of local conditions, including the estimated amount of funds available for salaries, the areas and the populations to be served, the transportation and communication facilities, the previous types and amount of business under this title in such areas and where such business is centered, the existing personnel, and any other material factors. The territory of a referee may, if it is deemed advisable, lie within more than one judicial district, but shall be within one circuit: *Provided, however,* That the jurisdiction of a referee in any matter referred to him shall not be restricted to the territory to be served by him but shall, unless otherwise provided in this title, be coextensive with the territorial jurisdiction of the court or courts of bankruptcy whose judges participated in appointing him.

(b) (1) The Director shall, within one year immediately following the date of the enactment of this amendatory Act, make the initial surveys required by subdivision (a) of this section, and required for subdivisions (a) and (c) of section 68 of this title, paragraph (2) of section 1033 of this title, and paragraph (3) of section 1059 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient. In the course of such surveys, the Director shall give consideration to suggestions from any interested parties, including district judges, referees, bar associations, trade associations, and the like. The surveys shall be made with a view toward creating and maintaining a system of full-time referees. However, should the Director find, as a result of any such surveys, any area in which the employment of a full-time referee would not be feasible because of the small amount of business under this title and the extent of the territory to be served, he shall also report separately thereon, with a statement of all the pertinent facts and data and his recommendations and the reasons therefor. Upon the completion of the initial surveys, the Director shall report to the district judges, the councils and the conference concerning the number of referees, their respective territories, the amounts of their respective salaries, and the schedules of additional fees to be charged in asset, arrangement and wage-earner cases. The district judges shall advise their respective councils, and the councils shall advise the conference, in respect thereto, stating their recommendations and their reasons therefor. The conference shall determine, in the light of the recommendations of the Director and of the councils, the number of referees, full-time and part-time, to be appointed, the respective territories which they shall serve, including the regular place of office and the places at which courts shall be held, their respective salaries, and schedules of graduated additional fees to be charged in asset, arrangement and wage-earner cases, and such determinations shall become effective sixty days after they are promulgated by the conference.

(2) The Director shall upon such promulgation divide by lot the total number of referees first to be appointed as equally as possible into three classes. The initial terms of the referees in the first class shall expire at the end of the second year, in the second class at the end of the fourth year, and in the third class at the end of the sixth year.

(3) Thereupon the Director shall report in writing to the judge or judges of the several courts of bankruptcy the number of referees to be appointed by them in each of the three classes above specified. the respective territories which such referees shall serve, and the respective salaries to be paid to them. The judge or judges shall thereupon appoint, pursuant to subdivision (a) of section 62 of this title such referees in each of the specified classes for terms commencing sixty days after such promulgation of the determinations of the conference, and shall select them as far as practicable from the referees then in office within their respective judicial districts.

(c) Except as otherwise provided in this title, the conference may, from time to time, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, change the number of referees and the extent of the respective territories to be served by them, as the expeditious transaction of the business of the several courts of bankruptcy may require. (July 1, 1898, ch. 541, § 37, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 4, 60 Stat. 325.)

REFERENCES IN TEXT

"This amendatory Act", referred to in subd. (b) (1), refers to act June 28, 1946.

AMENDMENTS

1946—Act June 28, 1946, amended section generally to authorize the Director of the Administrative Office to make a survey of the entire country within one year in order to ascertain the number of referees needed and the territories they are to serve, and to stagger the initial terms of the first appointees so that one-third will expire every two years but that all subsequent appointments shall be for a full term.

1938—Section, as amended by act June 22, 1938, provided: "Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy, but, insofar as possible, the number shall be limited with a view to employment of referees on a full-time basis."

EFFECTIVE DATES; REPEALS, ETC., OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided in part that subd. (b) of this section, as amended by said act June 28, 1946, should be effective on June 28, 1946. Said section 18 further provided that subds. (a) and (c) of this section should become effective sixty days after June 28, 1946.

Repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 68, 91 of this title.

§ 66. Jurisdiction of referees.

Referees are invested, subject always to a review by the judge, with jurisdiction to (1) consider all petitions referred to them and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or showing his sickness or inability to act; (4) grant, deny, or revoke discharges, determine the dischargeability of debts, and render judgments thereon; (5) confirm or refuse to confirm arrangements or wage-earner plans, or set aside the confirmation of arrangements or wage-earner plans and reinstate the proceedings or cases; (6) perform such of the duties as are by this title conferred on courts of bankruptcy, including those incidental to ancillary jurisdiction, and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (7) during the examination of the bankrupt, or during other proceedings, authorize the employment of stenographers for reporting and transcribing proceedings at such reasonable expense to the estate as the court may fix. (July 1, 1898, ch. 541, § 38, 30 Stat. 555; May 27, 1926, ch. 406, § 12, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 857; Oct. 19, 1970, Pub. L. 91–467, § 8, 84 Stat. 993.)

AMENDMENTS

1970—Cl. (4). Pub. L. 91–467 added the determination of dischargeability and the rendering of judgments thereon to the powers of the referees.

1938—Clauses (1), (6), and (7), formerly (1), (4), and (5), respectively, amended by act June 22, 1938.

Clauses (2) and (3) reenacted without change by act June 22, 1938.

Clauses (4) and (5) added by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–467 effective sixty days after October 19, 1970, with such amendments to govern proceedings in all cases filed after such date, see section 10 of Pub. L. 91–467, set out as a note under section 11 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 67. Duties of referees; prohibition against practice of law and acting as trustees or receivers; review of orders.

(a) Referees shall (1) give notice to creditors and other parties in interest, as provided in this title; (2) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts or cause the same to be done when the bankrupts fail, refuse, or neglect to do so; (3) examine all schedules of property, lists of creditors, and statements of affairs, filed as provided under this title, and cause such as are incomplete and defective to be amended; (4) furnish or cause to be furnished such information concerning proceedings before them as may be requested by parties in interest; (5) declare dividends and cause to be prepared dividend sheets showing the dividends declared and to whom payable; (6) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts and secure the return of such papers after they have been used, or, if it be impractical to transmit the original papers, transmit certified copies thereof by mail; (7) upon application of any party in interest, preserve the evidence taken, or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; (8) prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits; and (9) safely keep, perfect, and transmit to the clerks, when the cases are concluded, the records herein required to be kept by them.

(b) Referees shall not (1) act in cases in which they are directly or indirectly interested; or (2) purchase, directly or indirectly, any property of an estate in any proceeding under this title. Active full-time referees shall not exercise the profession or employment of counsel or attorney, or be engaged in the practice of law; nor act as trustee or receiver in any proceeding under this title. Active part-time referees, and referees receiving benefits under paragraph (1) of subdivision (d) of section 68 of this title, shall not practice as counsel or attorney nor act as trustee or receiver in any proceeding under this title.

(c) A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court upon petition filed within such ten-day period may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Unless the person aggrieved shall petition for review of such order within such ten-day period, or any extension thereof, the order of the referee shall become final. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest. (July 1, 1898, ch. 541, § 39, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 858; June 28, 1946, ch. 512, § 5, 60 Stat. 326; July 7, 1952, ch.

579, § 12, 66 Stat. 424; June 23, 1959, Pub. L. 86–49, 73 Stat. 80; July 14, 1960, Pub. L. 86–662, 74 Stat. 528; May 10, 1966, Pub. L. 89–414, 80 Stat. 135.)

AMENDMENTS

1966—Subd. (b). Pub. L. 89–414 prohibited full-time referees, part-time referees, and retired referees from acting as trustees or receivers in bankruptcy proceedings.

1960—Subd. (c). Pub. L. 86–662 required the petition for extension of time to be filed within the ten-day period, and provided that the order of the referee shall become final unless the person aggrieved shall petition for review of such order within the ten-day period, or any extension thereof.

1959—Subd. (a). Pub. L. 86–49 repealed former clause (9) that required transmittal of papers by referees to the clerk of the court, and redesignated former clause (10) as (9).

1952—Subd. (a) (9). Act July 7, 1952, clarified the duties of referees.

1946—Subd. (b). Act June 28, 1946, prohibited full-time referees from practicing law, but permitted part-time referees and retired referees to practice law except in proceedings under this title.

1938—Subd. (a) amended by act June 22, 1938. Clause (9) added. Clauses (1), (3), (4), (5), (6), (8), and (10), formerly (4), (2), (3), (1), (8), (5), and (7), respectively, amended. Clauses (2) and (7), formerly (6) and (9), respectively, reenacted without change. Former clause (10) was not reenacted as part of this section.

Subd. (b). Act June 22, 1938, reenacted subd. (b) without change.

Subd. (c). Act June 22, 1938, added subd. (c).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates; repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Additional duties of referee, see Gen. Ord. 12, Appendix to this title.

Filing of papers, see Gen. Ord. 2, Appendix to this title.

§ 68. Compensation of referees; referees' salary and expense fund; retirement of referees.

(a) Referees shall receive as full compensation for their services salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, at rates not more than $36,000 per annum for full-time referees, and not more than $18,000 per annum for part-time referees. In fixing the amount of salary to be paid to a referee, consideration shall be given to the average number and the types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director.

(b) The conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease any salary, within the limits prescribed in subdivision (a) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries: *Provided, however,* That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term: *And provided further,* That no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.

(c) (1) Except as otherwise provided in this title, there shall be deposited with the clerk, at the time the petition is filed in each case, and at the time an ancillary proceeding is instituted, $37 for each estate for the referees' salary and expense fund, as herein below established: *Provided, however,* That in cases of voluntary bankruptcy such fee, as well as the filing fees of the clerk and trustee, may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.

(2) Additional fees for the referees' salary and expense fund shall be charged, in accordance with the schedule fixed by the conference (a) against each estate wholly or partially liquidated in a bankruptcy proceeding, and be computed upon the net proceeds realized; (b) against each case in an arrangement confirmed under chapter 11 of this title, and be computed upon the amount to be paid to the unsecured creditors upon confirmation of the arrangement and thereafter, pursuant to the terms of the arrangement, and where under the arrangement any part of the consideration to be distributed is other than money, upon the amount of the fair value of such consideration; and (c) against each case in a wage earner plan confirmed under chapter 13 of this title, and be computed upon the payments actually made by or for a debtor under the plan. Such schedule of fees may be revised by the Director, with the approval of the conference, not more than once during each calendar year, so that the total amount of fees, allowances, and charges collected and to be collected from all sources for the referees' salary and expense fund will, as near as may be equal the total amount of salaries paid and to be paid to referees in active service, and the total amount of their expenses: *Provided, however,* That such schedule of fees shall not be so revised for any year that the total collections estimated by the Director for such year shall exceed by more than 10 per centum the total collections in the preceding year. The Director, with the approval of the conference, may make, and from time to time amend, rules and regulations prescribing methods for determining net proceeds realized in asset cases, fair values of considerations, other than money, distributable in arrangement cases, and payments actually made by or for a debtor under the plan in wage earner cases; prescribing the procedure for collection by the clerk of fees and allowances for the referees' salary and expense fund; and providing for the effective administration of the provisions of this paragraph (2).

(3) Charges for the expense of special services relating to or in connection with proceedings before referees shall be made and collected by the referees

in accordance with regulations to be prescribed by the Director, with the approval of the conference, and the proceeds shall be paid by the referees to the clerk for transmission to the Treasury of the United States for deposit in the referees' expense fund.

(4) A referees' salary and expense fund shall be established in the Treasury of the United States, and the amounts of the various fees and allowances collected by the clerks for the services of referees, and for their expenses, including the fees, allowances and charges for their services and expenses as conciliation commissioners and as special masters under this title, shall be covered into the Treasury of the United States for the account of such salary and expense funds. The salaries of the referees in active service and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such salary and expense fund by the United States. Any deficiencies of such salary and expense fund shall be paid out of any funds in the Treasury of the United States not otherwise appropriated, and appropriations to pay such deficiencies are authorized: *provided, however,* That there shall be covered into miscellaneous receipts of the Treasury of the United States in any subsequent year so much of the surplus, if any, arising in the salary and expense fund as may be necessary to reimburse the Treasury of the United States for payments made on account of such fund in any prior year.

(5) As of the day preceding the date when the referees, as provided by paragraph (2) of subdivision (b) of section 65 of this title, are to take office, an allocation shall be made by the judge or judges of the several courts of bankruptcy of all filing and other fees, commissions, and allowances, and of all expense funds, due the then existing referees for services rendered and expenses incurred in the cases pending before them, whether as referee, conciliation commissioner, or special master under this title. The balances of such filing and other fees, commissions, and allowances and the expense surpluses shall be covered into the Treasury of the United States by the referees and the clerks, to be deposited to the credit of the salary and expense fund. All cases pending before outgoing referees shall be referred, and no additional filing fees shall be required, but additional salary and expense charges may be assessed in such cases in such amounts as the judge or judges of the several courts of bankruptcy may deem equitable, taking into consideration the schedules of additional fees fixed by the Director and the payments previously made therein.

(d)(1) All referees in bankruptcy and employees in the offices of such referees shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of the Civil Service Retirement Act.

(2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court of bankruptcy, perform such duties of a referee, conciliation commissioner, or special master under this title, within the jurisdiction of the court, as he may be able and willing to undertake. The retired referee shall receive as compensation for his services, either full or part time, the salary authorized for the referee serving the territory to which the retired referee is assigned. However, the rate of compensation of a retired referee assigned to serve on a full-time basis in the territory of a part-time referee shall be the minimum rate established by the Judicial Conference of the United States for full-time service. Salaries authorized under this paragraph shall be subject to the provisions of section 2263(b) of Title 5. (July 1, 1898, ch. 541, § 40, 30 Stat. 556; Feb. 5, 1903, ch. 487, § 9, 32 Stat. 799; June 22, 1938, ch. 575, § 1, 52 Stat. 859; June 28, 1946, ch. 512, § 6, 60 Stat. 326; July 7, 1952, ch. 580, 66 Stat. 438; May 10, 1956, ch. 257, 70 Stat. 151; July 28, 1959, Pub. L. 86–110, § 1, 73 Stat. 259; Sept. 19, 1962, Pub. L. 87–677, 76 Stat. 559; Aug. 14, 1964, Pub. L. 88–426, title IV, § 402(d), 78 Stat. 434; Nov. 28, 1967, Pub. L. 90–161, § 1, 81 Stat. 518; Dec. 16, 1967, Pub. L. 90–206, Title II, § 225(h), 81 Stat. 644.)

REFERENCES IN TEXT

This amendatory Act, referred to in subd. (b), refers to act June 28, 1946.

The Civil Service Retirement Act, referred to in subd. (d)(1), is now covered by section 8301 et seq. of Title 5, Government Organization and Employees.

Section 2263(b) of Title 5, referred to in subsec. (d)(2), is now covered by section 8344 of Title 5.

AMENDMENTS

1969—Salaries of full-time referees and part-time referees increased respectively from maximums of $22,500 and $11,000 to maximums of $36,000 and $18,000 per annum, commencing February 14, 1969, upon recommendation of the President of the United States, pursuant to Pub. L. 90–206. See note set out under section 358 of Title 2, The Congress.

1967—Subd. (c)(1). Pub. L. 90–161 substituted "$37" for "32".

1964—Subd. (a). Pub. L. 88–426 substituted "$22,500" and "$11,000" for "$15,000" and "$7,500", respectively.

1962—Subd. (d)(1). Pub. L. 87–677 substituted "Civil Service Retirement Act" for "section 693 of Title 5."

Subd. (d)(2). Pub. L. 87–677 inserted provisions respecting the compensation of retired referees for their services.

1959—Pub. L. 86–110, § 1(a), substituted "referees' salary and expense fund" for "referees' salary and expense funds" in the section catchline.

Subd. (c)(1). Pub. L. 86–110, § 1(b), substituted "$32 for each estate for the referees' salary and expense fund, as herein below established" and "such fee" for "(a) $17 for each estate for the referees' salary fund, and (b) $15 for each estate for the referees' expense fund, as hereinbelow established" and "such fees".

Subd. (c)(2). Pub. L. 86–110, § 1(c), substituted "referees' salary and expense fund" for "referees' salary fund and for the referees' expense fund" in the first and second sentences and for "referees' salary fund and the referees' expense fund" in the third sentence and "schedule" for "schedules" in two instances and deleted "for each fund, respectively," following "equal".

Subd. (c)(4). Pub. L. 86–110, § 1(d), substituted "referees' salary and expense fund" and "salary and expense fund" for "referee's salary fund and a referee's expense fund" and "salary fund and expense fund" in the first sentence: "The salaries of the referees in active service and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such salary and expense fund by the United States" for "The salaries of the referees in active service shall be paid out of annual appropriations from such salary fund, and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such expense fund, by the United States"; "salary and expense fund" for "salary fund or expense fund" in the third sentence, and for "salary fund or expense fund respectively" in the proviso.

Subd. (c)(5). Pub. L. 86–110, § 1(e), substituted "salary and expense fund" for "respective salary and expense funds".

1956—Subd. (a). Act May 10, 1956, substituted "$15,000" for $12,500", and $7,500" for $6,000".

1952—Subd. (a). Act July 7, 1952, increased salaries of full-time referees from $10,000 to $12,500 per annum, and part-time referees from $5,000 to $6,000 per annum.

1946—Act June 28, 1946, amended section generally to place all referees upon a salary basis, to simplify the charges for referees' expenses and compensation so that they will be easily computed and uniform, and to finance the bankruptcy system on a national basis instead of having each referee responsible for the financing of his office as an individual unit.

1938—Subd. (a). Act June 22, 1938, among other changes, inserted provision for commissions of one-half of 1 per centum on debts extended or paid in full from estates administered by referees,

Subd. (b) and (c) reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 3 of Pub. L. 90–161 provided that: "This amendatory Act [amending this section and section 80(a) of this title] shall take effect on the thirtieth day following the date of its approval [Nov. 28, 1967]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 8 of Pub. L. 86–110 provided that: "This amendatory Act [amending this section and sections 79, 104, 112, 1024, 1033, and 1059 of this title] shall take effect on the first day of the fiscal year following the date of its approval."

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Compensation of referee in,
- Corporate reorganization proceeding where petition filed in pending bankruptcy proceeding, judge not restricted by this section, see section 645 of this title.
- Real property arrangements where petition filed in pending bankruptcy proceeding, judge not restricted by this section, see section 894 of this title.

Compensation of referees and,
- Special masters in composition proceedings of local taxing agencies not governed by this section, see section 403 (b) of this title.

Trustees in,
- Corporate reorganization proceedings not governed by this section and section 76 of this title, see section 641 of this title.
- Real property arrangements not governed by this section and section 76 of this title, see section 891 of this title.

Limitation of compensation of officers of court, see section 112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 65, 67, 79, 403, 641, 645, 891, 894, 1033, 1059 of this title.

§ 69. Contempts before referees.

(a) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpenaed, or, upon appearing, refuse to take the oath as a witness, or having taken the oath, refuse to be examined according to law: *Provided,* That a person other than a bankrupt or, where the bankrupt is a corporation, its officers, or the members of its board of directors or trustees or of other similar controlling bodies, shall not be required to attend as a witness before a referee at a place more than one hundred miles from such person's place of residence or unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b) The referee shall forthwith certify the facts to the judge, if any person shall do any of the things forbidden in this section, and he may serve or cause to be served upon such person an order requiring such person to appear before the judge upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before him, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of the court of bankruptcy or in the presence of the judge. (July 1, 1898, ch. 541, § 41, 30 Stat. 556; June 22, 1938, ch. 575, § 1, 52 Stat. 859.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, among other changes, limited attendance as witnesses of persons other than bankrupt, corporate officers and directors, and trustees at a place more than one hundred miles from such person's residence, instead of limitation that no person shall be required to attend as a witness outside the State of his residence and more than one hundred miles from such residence.

Subd. (b). Act June 22, 1938, among other changes, inserted provision for service of show cause order by such person should not be adjudged in contempt.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 70. Records of referees.

(a) The records of all proceedings in each case before a referee shall be kept in the manner as prescribed by the Supreme Court of the United States.

(b) A separate record shall be kept of the proceedings in each case and shall, together with the papers on file, constitute the records of the case.

(c) The record of the proceedings shall, when the case is concluded before the referee, be certified to by him and shall, together with such papers as are on file before him, be transmitted to the clerk and shall remain until no longer needed in conducting current business in the office of the clerk as a part of the records of the court. (July 1, 1898, ch. 541, § 42, 30 Stat. 556; June 22, 1938, ch. 575, § 1, 52 Stat. 860; Oct. 25, 1951, ch. 562, § 2 (2), 65 Stat. 639; July 7, 1952, ch. 579, § 13, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, provided that records of referees shall be kept in the manner prescribed by the United States Supreme Court.

1951—Subd. (c). Act Oct. 25, 1951, inserted "until no longer needed in conducting current business".

1938—Subd. (a). Act June 22, 1938, substituted "are kept" for "were kept on July 1, 1898."

Subd. (b). Act June 22, 1938, substituted "A separate record shall be kept of the proceedings in each case" for "A record of the proceedings in each case shall be kept in a separate book or books,"

Subd. (c). Act June 22, 1938, substituted reference to record of proceedings for book or books containing record of proceedings, provided for transmission to clerk instead of to the court of bankruptcy, and for records to remain in office of clerk instead of the court.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Management and disposition of records, see sections 2901 et seq. and 3101 et seq. of Title 44, Public Printing and Documents.

§ 71. Vacancies; referee's absence or disability.

(a) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the clerk of the district court in which the territory or any part of the territory served by such referee is located shall immediately notify the Director of such fact.

(b) A vacancy in the office of referee may be filled without any changes in the salary or arrangements upon the recommendations of the Director, the district judge or judges, and the circuit council that the office be so continued. If a change in the salary or arrangements is recommended by the Director, the district judge or judges, or the circuit council, a vacancy shall not be filled until the Conference has acted thereon.

(c) Whenever the office of a referee is vacant or its occupant is temporarily absent or disqualified to act, or whenever the expeditious transaction of the business of the court or courts of bankruptcy may require, the judge, or any one of the judges, may act; or the judge or the chief judge of the district may designate and assign temporarily any referee of the district to act; or the chief judge of the circuit may designate and assign temporarily one or more referees within the circuit to act upon presentation of a certificate of necessity by the judge or chief judge of the district wherein the need arises, or the chief judge of the circuit may order that pending cases be rereferred and future cases referred to one or more referees within the circuit; or the Chief Justice of the United States may designate and assign temporarily a referee from another circuit to act upon presentation of a certificate of necessity by the chief judge of the circuit wherein the need arises. No designation and assignment shall be made without the consent of the chief judge or judicial council of the circuit from which a referee is to be designated and assigned. All designations and assignments of referees shall be filed with the clerks and entered on the minutes of the courts from and to which made. The Chief Justice of the United States or a chief judge of a circuit or a judge or chief judge of a district may make new designations and assignments in accordance with the provisions of this subdivision, and may revoke those previously made by him. (July 1, 1898, ch. 541, § 43, 30 Stat. 557; June 28, 1946, ch. 512, § 7, 60 Stat. 328; Sept. 19, 1950, ch. 954, 64 Stat. 866; Aug. 7, 1959, Pub. L. 86-144, § 1, 73 Stat. 296.)

AMENDMENTS

1959—Subd. (b). Pub. L. 86-144 substituted provision permitting a vacancy in the office of a referee to be filled, without any changes in the salary or arrangements, when recommended by the Director, the district judge or judges, and the circut council that the office be continued, without recommendation to the Conference or its approval for provision that when the office is vacant, the Director shall recommend to the district judges, the councils and the Conference whether a new appointment should be made and no such appointment shall be made until authorized by the Conference.

1950—Subd. (c). Act Sept. 19, 1950, provided for temporary designations and assignments of referees by the judge or chief justice of the district, the chief judge of the circuit, and the Chief Justice of the United States, instead of the judge or a majority of judges of the district, the council, and the conference, respectively, to provide for consent of the chief judge or judicial council of the circuit, and to provide for filing and entry of designations and assignments.

1946—Act June 28, 1946, provided for the notification to the Director of the Administrative Office by the clerk of the court of any vacancy, absence, or disqualification of a referee, to provide for the designation of another referee from the same or another circuit, and to prohibit the filling of a permanent vacancy unless authorized by the conference of judges.

EFFECTIVE DATE; REPEALS; ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 62 of this title.

§ 72. Trustees; creditors' committees; and attorneys.

(a) The creditors of a bankrupt, exclusive of the bankrupt's relatives or, where the bankrupt is a corporation, exclusive of its stockholders or members, its officers, and the members of its board of directors or trustees or of other similar controlling bodies, shall, at the first meeting of creditors after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, appoint a trustee or three trustees of such estate. If the creditors do not appoint a trustee or if the trustee so appointed fails to qualify as herein provided, the court shall make the appointment. If the bankrupt is a face-amount certificate company, as defined in section 80a-4 of Title 15, the court alone shall make the appointment; but the court shall not make such appointment without first notifying the Securities and Exchange Commission and giving it an opportunity to be heard.

(b) Such creditors may, at their first meeting, also appoint a committee of not less than three creditors, which committee may consult and advise with the trustee in connection with the administration of the estate, make recommendations to the trustee in the performance of his duties and submit to the court any question affecting the administration of the estate.

(c) An attorney shall not be disqualified to act as attorney for a receiver or trustee merely by reason of his representation of a general creditor. (July 1, 1898, ch. 541, § 44, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860; Aug 22, 1940, ch. 686, title I, § 29 (b), 54 Stat. 835.)

AMENDMENTS

1940—Subd. (a). Act Aug. 22, 1940, inserted last sentence relating to appointment of trustees for face-amount certificate company.

1938—Subd. (a), formerly entire section, amended generally by act June 22, 1938.

Subds. (b) and (c) added by act June 22, 1938.

EFFECTIVE DATE OF 1940 AMENDMENT

Effective date of act Aug. 22, 1940, see section 80a-52 of Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee, see section 1910 of Title 18, Crimes and Criminal Procedure.

Partnership bankruptcy trustees, see section 23 of this title.

Title, rights, powers, and duties of trustee in,

Corporate reorganization proceeding same as trustee appointed under this section, see sections 586 and 587 of this title.

Real property arrangements same as trustee appointed under this section, see sections 841 and 842 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 586, 587, 638, 841, 842 of this title.

§ 73. Receivers and trustees; qualifications.

Receivers and trustees shall be (1) individuals who are competent to perform their duties and who reside or have an office in the judicial district within which they are appointed; or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed. (July 1, 1898, ch. 541, § 45, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

AMENDMENTS

1938—Act June 22, 1938, inserted "Receivers and" preceding "trustees" and made other changes in phraseology.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 556 of this title.

§ 74. Same; death or removal.

The death or removal of a receiver or trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor. (July 1, 1898, ch. 541, § 46, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

AMENDMENTS

1938—Act June 22, 1938 included receiver.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Removal for cause of receivers and trustees, see section 11 (a) (17) of this title.

§ 75. Trustees; duties.

(a) Trustees shall (1) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest; (2) deposit all money received by them in designated depositories initially in demand deposits; and subsequently, if authorized by the court, in interest-bearing savings deposits, time certificates of deposit, or time deposits-open account; (3) account for and pay over to the estates under their control all interest received by them upon funds belonging to such estates; (4) disburse money only by check or draft on such depositories; (5) keep records and accounts showing all amounts and items of property received and from what sources, all amounts expended and for what purposes and all items of property disposed of; (6) set apart the bankrupts' exemptions allowed by law, if claimed, and report the items and estimated value thereof to the courts as soon as practicable after their appointment; (7) examine the bankrupts (a) at the first meetings of creditors or at other meetings specially fixed for that purpose, unless they shall already have been fully examined by the referees, receivers, or creditors, and (b) upon the hearing of objections, if any, to their discharges, unless otherwise ordered by the court; (8) examine all proofs of claim and object to the allowance of such claims as may be improper; (9) oppose at the expense of estates the discharges of bankrupts when they deem it advisable to do so; (10) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (11) pay dividends within ten days after they are declared by the referees; (12) report to the courts in writing the condition of the estates, the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter; unless otherwise ordered by the courts; (13) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; and (14) lay before the final meetings of the creditors detailed statements of the administration of the estates.

(b) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

(c) The trustee shall, within ten days after his qualification, record a certified copy of the order approving his bond in the office where conveyances of real estate are recorded in every county where the bankrupt owns real property or an interest therein, not exempt from execution, and pay the fee for such filing. He shall receive a compensation of 50 cents for each copy so filed which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the expenses of administration. (July 1, 1898, ch. 541, § 47, 30 Stat. 557; Feb. 5, 1903, ch. 487, § 10, 32 Stat. 799; June 25, 1910, ch. 412, § 8, 36 Stat. 840; June 22, 1938, ch. 575, § 1, 52 Stat. 860; May 8, 1963, Pub. L. 88-16, 77 Stat. 14.)

AMENDMENTS

1963—Subd. (a)(2). Pub. L. 88-16 provided for deposits initially in demand deposits and subsequently, when authorized by the court, in interest-bearing savings deposits, time certificates of deposit, or time deposits-open account.

1938—Subd. (a) amended by act June 22, 1938. Clauses 1—6, formerly 2, 3, 1, 4, 6, and 11, respectively, amended. Clauses 7—9 added. Clauses 10—14, formerly 5, 9, 10, 8, and 7, respectively, reenacted without change.

Subd. (b) reenacted without change by act June 22, 1938.

Subd. (c) amended generally by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Preferences, avoidance by trustee, see section 96 of this title.

Title to property, vestment in trustee, see section 110 of this title.

§ 76. Receivers; marshals, and trustees; compensation.

(a) Receivers.

The compensation of receivers appointed under this title, for their services payable after they are rendered, shall be as follows:

(1) As custodians.

Receivers appointed pursuant to clause (3) of subdivision (a) of section 11 of this title who serve as mere custodians shall receive such amount as may be allowed by the court, but in no event to exceed 2 per centum on the first $1,000 or less and one-half of 1 per centum on all above $1,000 on moneys disbursed by them or turned over by them to any persons, including lienholders and also upon moneys turned over by them to the trustees and on money subsequently realized from property turned over by them in kind to the trustee.

(2) With full powers.

Receivers appointed pursuant to clause (3) of subdivision (a) of section 11 of this title who serve otherwise than as mere custodians shall receive compensation by way of commissions upon the moneys disbursed or turned over to any persons, including lienholders, by them and also upon the moneys turned over by them or afterward realized by the trustees from property turned over in kind by them to the trustees, such amount as the court may allow, but in no event to exceed 6 per centum on the first $500 or less, 4 per centum on all in excess of $500 but not more than $1,500, 2 per centum on all above $1,500 and not more than $10,000, and 1 per centum on all above $10,000.

(3) Conducting business.

Receivers appointed pursuant to clause (3) of subdivision (a) of section 11 of this title who conduct the business of the bankrupt as provided in clause (5) of subdivision (a) of section 11 of this title, shall receive such amount as may be allowed by the court, but in no event to exceed twice the maximum allowance permitted by paragraph (2) of this subdivision.

(4) Ancillary receivers.

The compensation of ancillary receivers appointed pursuant to this title shall be such amount as may be allowed by the court of ancillary jurisdiction, but in no event to exceed the maximum compensation permitted by paragraphs (1), (2), or (3) of this subdivision, as the case may be, based upon assets in such ancillary jurisdiction.

(b) Marshals.

The compensation of marshals, payable after their services are rendered, shall be such amount as may be allowed by the court, but in no event to exceed the maximum allowance permitted for receivers for like services.

(c) Trustees.

The compensation of trustees for their services, payable after they are rendered, shall be a fee of $10 for each estate, deposited with the clerk at the time the petition is filed in each case, except where installment payments may be authorized pursuant to section 68 of this title, and such further sum as the court may allow, as follows:

(1) Normal administration.

When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 10 per centum on the first $500 or less, 6 per centum on moneys in excess of $500 and not more than $1,500, 3 per centum on moneys in excess of $1,500 and not more than $10,000, 2 per centum on moneys in excess of $10,000 and not more than $25,000, and 1 per centum on moneys in excess of $25,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: *Provided, however,* That in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, the maximum compensation allowable to him hereunder does not exceed $150, the court may of its own motion allow the trustee a fee which with the commissions, if any, paid or to be paid him shall not exceed $150.

(2) Conducting business.

Trustees who conduct the business of the bankrupts as provided in clause (5) of subdivision (a) of section 11 of this title shall receive such amount as may be allowed by the court, but in no event to exceed twice the maximum allowance permitted by paragraph (1) of this subdivision.

(d) Apportionment of fees.

In the event of the appointment, concurrently or successively, of more than one receiver of an estate

or of more than one ancillary receiver in the same jurisdiction, or in the event of the administration of an estate by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions among such receivers, ancillary receivers, or trustees, as the case may be, according to the services actually rendered, so that there shall not be paid to any such group a greater amount than that to which one receiver, ancillary receiver, or trustee, respectively, would be entitled.

(e) Withholding compensation.

The court may, in its discretion, withhold all compensation from any receiver, trustee, attorney, or any other person who has been removed from office or dismissed because of the unlawful sharing of fees or for any other cause.

(f) Arrangements.

In the case of an arrangement confirmed under this title, the compensation of a marshal, receiver, or trustee in a prior pending bankruptcy proceeding superseded by the arrangement proceeding, or of a receiver appointed in an original proceeding for an arrangement under this title, shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services. Such compensation shall be computed upon all moneys disbursed or turned over by him to any persons, including lienholders, upon all moneys to be paid to unsecured creditors upon the confirmation of the arrangement and thereafter, pursuant to the terms of the arrangement, and where under the arrangement any part of the consideration to be paid is other than money, upon the amount of the fair value of such consideration: *Provided, however,* That the court may, in respect to all moneys to be paid to such unsecured creditors after the confirmation of the arrangement, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable.

(g) Plans of reorganization.

In the case of a plan of reorganization confirmed under this title, the compensation of a marshal, receiver, or trustee, in a prior pending bankruptcy proceeding superseded by the reorganization proceeding shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services. Such compensation shall be computed upon all moneys disbursed or turned over by him to any persons, including lienholders, upon all moneys to be paid to unsecured creditors upon the consummation of the plan of reorganization and thereafter, pursuant to the terms of the plan of reorganization, and where under the plan of reorganization any part of the consideration to be paid to unsecured creditors is other than money, upon the amount of the fair value of such consideration: *Provided, however,* That the court may, in respect to the moneys to be paid to such unsecured creditors after the consummation of the plan of reorganization, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable. (July 1, 1898, ch. 541, § 48, 30 Stat. 557; Feb. 5, 1903, ch. 487, § 11, 32 Stat. 799; June 25, 1910, ch. 412, § 9, 36 Stat. 840; June 22, 1938, ch. 575, § 1, 52 Stat. 861; May 28, 1956, ch. 330, § 1, 70 Stat. 216; June 11, 1960, Pub. L. 86-504, § 1, 74 Stat. 198; Sept. 25, 1962, Pub. L. 87-681, § 4, 76 Stat. 570.)

AMENDMENTS

1962—Subd. (c). Pub. L. 87-681 substituted "where installment payments may be authorized pursuant to section 68 of this title" for "when a fee is not required from a voluntary bankrupt."

1960—Subd. (c). Pub. L. 86-504 increased closing fee from $5 to $10.

1956—Subd. (c) (1). Act May 28, 1956, increased rates of compensation allowable by courts to trustees by substituting per centum figures "10" for "6", "6" for "4", "3" for "2", and "2" for "1"; added "and not more than $25,000, and 1 per centum on moneys in excess of $25,000", and substituted "$150" for "$100" in two places in the proviso.

1938—Act June 22, 1938, amended section generally.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act May 28, 1956, provided that: "The provisions of this Act [amending subd. (c) (1) of this section] shall apply to all cases in which the petition initiating the proceeding under the Bankruptcy Act is filed subsequent to the date of the enactment of this act [May 28, 1956]."

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Compensation of referees and trustees in,

Corporate reorganization proceedings not governed by this section and section 68 of this title, see section 641 of this title.

Real property arrangements not governed by this section and section 68 of this title, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 641, 644, 891, 893 of this title.

§ 76a. Receivers and trustees; apportionment of appointments; disqualification; compensation.

In the administration of this title the district court or any judge thereof shall, in its or his discretion, so apportion appointments of receivers and trustees among persons, firms, or corporations, or attorneys therefor, within the district, eligible thereto, as to prevent any person, firm, or corporation from having a monopoly of such appointments within such district. No person shall be appointed as a receiver or trustee who is a near relative of the judge of the court making such appointment. The compensation allowed a receiver or trustee or an attorney for a receiver or trustee shall in no case be excessive or exorbitant, and the court in fixing such compensation shall have in mind the conservation and preservation of the estate of the bankrupt and the interests of the creditors therein. (June 7, 1934, ch. 424, § 3, 48 Stat. 923.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee generally, see section 1910 of Title 18, Crimes and Criminal Procedure.

§ 77. Receivers and trustees; accounts and papers.

The accounts and papers of receivers and trustees shall be open to the inspection of officers and all parties in interest. (July 1, 1898, ch. 541, § 49, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 863.)

AMENDMENTS

1938—Act June 22, 1938, included receivers.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 78. Bonds.

(a) Referees, before assuming the duties of their offices and within such time as the district courts of the United States having jurisdiction shall prescribe, shall qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed $5,000, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

(b) Receivers and trustees, before entering upon the performance of their official duties and within five days after their appointment or within such further time, not to exceed five days, as the court may permit, shall qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

(c) The court shall fix the amount of receivers' and trustees' bonds and may increase or decrease the amounts at any time when cause therefor appears.

(d) The court shall require evidence as to the actual value of the property of sureties.

(e) There shall be at least two sureties upon each bond, except as provided in subdivision (g) of this section.

(f) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g) Corporations organized for the purpose of becoming sureties on bonds or authorized by law to do so may be accepted as sole sureties upon the bonds of referees, receivers, and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h) Bonds of referees, receivers, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be proceeded upon in the name of the United States for the use of any person injured by a breach of their conditions or may be enforced as provided in subdivision (n) of this section.

(i) Receivers or trustees shall not be liable personally or on their bonds to the United States for any penalties or forfeitures incurred by the bankrupts under this title of whose estates they are receivers or trustees.

(j) Joint receivers or trustees may give joint or several bonds.

(k) If any referee, receiver, or trustee shall fail to give bond as herein provided and within the time limited, he shall be deemed to have declined his appointment and such failure shall create a vacancy in his office.

(*l*) Proceedings upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

(m) Proceedings upon receivers' or trustees' bonds shall not be brought subsequent to two years after their respective discharges.

(n) In the event of the breach of any obligation of a bond furnished pursuant to this title, the court may, upon application of any party in interest and after notice, summarily determine the damages and by appropriate process enforce the collection thereof from those liable on the bond. (July 1, 1898, ch. 541, § 50, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 863.)

AMENDMENTS

1938—Subds. (a), (d), and (e) reenacted without change by act June 22, 1938.

Subds. (b), (c), (e), and (g)—(m) amended generally by act June 22, 1938.

Subd. (n) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Order approving trustee's bond, see Form 24, Appendix to this title.

Receiver or trustee, bond of, see Form 23, Appendix to this title.

Referee's bond, see Form 16, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 109 of this title.

§ 79. Clerks; duties.

Clerks shall (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk and trustee and the fees for the referees' salary and expense fund provided in paragraph (1) of subdivision (c) of section 68 of this title in each case instituted before filing the petition, except where installment payments may be authorized pursuant to section 68 of this title, and collect the various other fees, allowances and charges for the services of referees and for their expenses, including their services and expenses as conciliation commissioners and as special masters under this title; (3) collect the fees of the clerk and referee in each ancillary proceeding before filing the petition whereby the ancillary proceeding is instituted; (4) deliver to the referees all papers which may be referred to them or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail and in like manner return papers which were received from such referees after they have been used; and (5) transmit to the Treasury of the United States all fees, allowances and charges collected for the referees' salary and expense fund, and transmit to the trustee, within ten days after a case had been closed the fee collected for him at the time of the filing of the petition. (July 1, 1898, ch. 541, § 51, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 8, 60 Stat. 329; July 28, 1959, Pub. L. 86–110, § 2, 73 Stat. 260.)

AMENDMENTS

1959—Clause (2). Pub. L. 86–110, § 2(a), substituted "referees' salary and expense fund" for "referees' salary fund and referees' expense fund".

Clause (5). Pub. L. 86–110, § 2(b), substituted "referees' salary and expense fund" for "referees' salary fund and the referees' expense fund".

1946—Act June 28, 1946, amended clauses (2) and (5) to place upon the clerk the duty of collecting the various fees and allowances for the compensation and expenses

of referees, and of covering them into the Treasury for the respective salary and expense funds.

1938—Clauses (1), (2), and (5), formerly (1), (2), and (4), respectively, reenacted without change by act June 22, 1938.

Clause (3) added by act June 22, 1938.

Clause (4), formerly (3), amended by act June 22, 1938.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-110 effective on the first day of the first fiscal year following July 28, 1959, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATES; REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 80. Clerks and marshals; compensation.

(a) Clerks shall charge and collect for their services to each estate, whether in a court of primary or ancillary jurisdiction, a filing fee of $3. The clerk may collect this amount in installments when such installment payments have been authorized by General Order of the Supreme Court of the United States.

(b) Marshals shall charge the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to charge for the performance of the same or similar services in other cases in accordance with laws in force on July 1, 1898, or such as may be thereafter enacted, fixing the compensation of marshals. (July 1, 1898, ch. 541, § 52, 30 Stat. 559; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 8a, 60 Stat. 329; Nov. 28, 1967, Pub. L. 90-161, § 2, 81 Stat. 518.)

AMENDMENTS

1967—Subd. (a). Pub. L. 90-161 substituted "$3" for "$8".

1946—Subd. (a). Act June 28, 1946, reduced the filing fee from $10 to $8, omitted "except when a fee is not required from a voluntary bankrupt" and added provision concerning installments.

1938—Subd. (a). Act June 22, 1938, omitted "respectively" preceding "charge and collect", inserted "in a court of primary or ancillary jurisdiction" preceding "a filing fee", and added a provision requiring payment of fee into United States Treasury.

Subd. (b). Act June 22, 1938, omitted "respectively" preceding "charge the estate".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-161 effective on the thirtieth day following Nov. 28, 1967, see section 3 of Pub. L. 90-161, set out as a note under section 68 of this title.

EFFECTIVE DATES; REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Compensation of marshals, see section 76 (b) of this title.

Fees of clerks of district courts, see sections 1914, 1917 of Title 28, Judiciary and Judicial Procedure.

§ 81. Statistics.

The Director annually shall lay before Congress statistical tables which will accurately reflect the business transacted by the several bankruptcy courts, a statement of the amounts received and disbursed for the referees' salary fund and referees' expense fund, and all other pertinent data. (July 1, 1898, ch. 541, § 53, 30 Stat. 559; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 9, 60 Stat. 329.)

AMENDMENTS

1946—Act June 28, 1946, imposed upon the Director of the Administrative Office the duty to gather all statistics with regard to the operation of this title, and to submit annual reports to Congress.

1938—Act June 22, 1938, amended section generally.

EFFECTIVE DATES; REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 82. Repealed. June 28, 1946, ch. 512, § 10, 60 Stat. 329.

Section, act July 1, 1898, ch. 541, § 54, 30 Stat. 559, required officers to furnish information for statistical purposes. For effective date of repealing act, see note under section 62 of this title.

Chapter 6.—CREDITORS

Sec.
91. Meetings of creditors.
92. Voters at creditors' meeting.
93. Proof and allowance of claims.
93a. Same; limitation on time of proving certain claims.
94. Notices.
95. Who may file and dismiss petitions.
96. Preferred creditors.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 502, 781, 802, 886, 1002, 1069 of this title.

§ 91. Meetings of creditors.

(a) The court shall cause the first meeting of the creditors of a bankrupt to be held not less than ten nor more than thirty days after the adjudication, at the place or at one of the places designated by the conference pursuant to paragraph (1) of subdivision (b) of section 65 of this title as a place at which court shall be held within the judicial district in which the proceeding is pending or if that place would be unreasonably inconvenient as a place of meeting for the parties in interest, the court shall fix a place for the meeting within said judicial district which is not unreasonably inconvenient for the parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date as soon as may be thereafter, when it shall be held.

(b) At the first meeting of creditors, the judge or referee shall preside and, before proceeding with other business, may allow or disallow the claims of creditors there presented, and shall publicly examine the bankrupt or cause him to be examined, and may permit creditors to examine him.

(c) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this title.

(d) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proved their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(e) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered: *Provided, however*, That a no-asset case may be closed without ordering such final meeting. (July 1, 1898, ch. 541, § 55, 30 Stat. 559; June 22 1938, ch. 575, § 1, 52 Stat. 865; May 16, 1951, ch. 82, 65 Stat. 42.)

AMENDMENTS

1951—Subd. (a) amended generally by act May 16, 1951, to permit the court to fix the place for the holding of the first meeting of the creditors.

1938—Subds. (b) and (e), formerly (b) and (f), respectively, amended by act June 22, 1938.

Subds. (a), (c), and (d), formerly (a), (c), and (e), respectively, reenacted without change by act June 22, 1938.

Former subd. (d), which related to subsequent meeting on consent of all creditors with allowed claims, was not reenacted as a part of this section by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Examination of bankrupt, see section 25 (a) (10) of this title.

Power of attorney and special power of attorney, see Forms 18 and 19, Appendix to this title.

Special meeting of creditors authorized by court, see Gen. Ord. 25, Appendix to this title.

§ 92. Voters at creditors' meeting.

(a) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and who are present, except as herein otherwise provided.

(b) Except as otherwise provided in this title, creditors holding claims which are secured or have priority shall not in respect to such claims be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

(c) Claims of $50 or less shall not be counted in computing the number of creditors voting or present at creditors' meetings, but shall be counted in computing the amount. (July 1, 1898, ch. 541, § 56, 30 Stat. 560; June 22, 1938, ch. 575, § 1, 52 Stat. 865.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, reenacted subd. (a) without change.

Subd. (b). Act June 22, 1938, inserted "Except as otherwise provided in this title," at the beginning.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Claims which may be proved and allowed, see section 103 of this title.

Trustee, voting for, see section 72 of this title.

§ 93. Proof and allowance of claims.

(a) A proof of claim shall consist of a statement, in writing and signed by a creditor, setting forth the claim; the consideration therefor; whether any and, if so, what securities are held therefor; and whether any and, if so, what payments have been made thereon; and that the claim is justly owing from the bankrupt to the creditor. A proof of claim filed in accordance with the requirements of this title, the General Orders of the Supreme Court, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim.

(b) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court upon leaving a copy thereof on file with the claim.

(c) Proofs of claim may, for the purpose of allowance, be filed by the claimants in the court of bankruptcy where the proceedings are pending or before the referee if the case has been referred.

(d) Claims which have been duly proved shall be allowed upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest or unless their consideration be continued for cause by the court upon its own motion: *Provided, however*, That an unliquidated or contingent claim shall not be allowed unless liquidated or the amount thereof estimated in the manner and within the time directed by the court; and such claim shall not be allowed if the court shall determine that it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this title.

(e) Claims of secured creditors and those who have priority may be temporarily allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be thus temporarily allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received or acquired preferences, liens, conveyances, transfers, assignments or encumbrances, void or voidable under this title, shall not be allowed unless such creditors shall surrender such preferences, liens, conveyances, transfers, assignments, or encumbrances.

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors, or by such creditors and the trustee by agreement, arbitration, compromise or litigation,

as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance. Such determination shall be under the supervision and control of the court.

(i) Whenever a creditor whose claim against a bankrupt estate is secured, in whole or in part, by the individual undertaking of a person, fails to prove and file that claim, that person may do so in the creditor's name, and he shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by him in the creditor's name, to the extent that he discharges the undertaking except that in absence of an agreement to the contrary, he shall not be entitled to any dividend until the amount paid to the creditor on the undertaking plus the dividends paid to the creditor from the bankrupt estate on the claim equal the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such person.

(j) Debts owing to the United States or to any State or any subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued on the amount of such loss according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed.

(*l*) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part, and the trustee may also recover any excess dividend paid to any creditor. The court shall have summary jurisdiction of a proceeding by the trustee to recover any such dividends.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved and filed by the receiver or trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n) Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or any subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: *Provided, however,* That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any State or any subdivision thereof: *Provided further,* That the right of infants and insane persons without guardians, without notice of the bankruptcy proceedings, may continue six months longer: *And provided further,* That a claim arising in favor of a person by reason of the recovery by the trustee from such person of money or property, or the avoidance by the trustee of a lien held by such person, may be filed within thirty days from the date of such recovery or avoidance, but if the recovery is by way of a proceeding in which a final judgment has been entered against such person, the claim shall not be allowed if the money is not paid or the property is not delivered to the trustee within thirty days from the date of the rendering of such final judgment, or within such further time as the court may allow. When in any case all claims which have been duly allowed have been paid in full, claims not filed within the time hereinabove prescribed may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case. (July 1, 1898, ch. 541, § 57, 30 Stat. 560; Feb. 5, 1903, ch. 487, § 12, 32 Stat. 799; May 27, 1926, ch. 406, § 13, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 866; July 7, 1952, ch. 579, § 14, 66 Stat. 424; June 12, 1960, Pub. L. 86-519, § 1, 74 Stat. 217; Sept. 25, 1962, Pub. L. 87-681, § 5, 76 Stat. 570.)

AMENDMENTS

1962—Subd. (i). Pub. L.. 87-681 provided that the security be in whole or in part, inserted the clause "whether the claim has been filed by the creditor or by him in the creditor's name" and added the provisions for payment of dividends and for trustee status of creditor.

1960—Subd. (a). Pub. L. 86-519 deleted words "under oath" which followed "statement", and inserted sentence which provides that a proof of claim filed in accordance with the requirements of this title, the General Orders, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim.

1952—Subd. (j). Act July 7, 1952, § 14 (a), clarified the fact that the limitation on interest "up to the date of bankruptcy" relates only to interest on "pecuniary loss".

Subd. (n). Act July 7, 1952, § 14 (b), deleted "except proceedings under chapters 10—13 of this title" preceding "the right of infants" in the second proviso.

1938—Subds. (a), (c)—(e), (g)—(j), and (*l*)—(n) amended generally by act June 22, 1938.

Subds. (b), (f), and (k) reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Additional provisions regarding proof of debts, see Gen. Ord. 21, Appendix to this title.

Expenses of administration, claims for, see section 102 of this title.

Provable claims, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 107, 108, 502, 638, 778, 802, 883, 1044 of this title.

§ 93a. Same; limitation on time of proving certain claims.

CODIFICATION

Section, act June 5, 1936, ch. 512, § 2, 49 Stat. 1476, related to proving claims at any time within 60 days after June 5, 1936.

§ 94. Notices.

(a) Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt or as

afterward filed with the papers in the case by the creditors, of (1) all examinations of the bankrupt, if the court so directs; (2) all hearings upon applications for the confirmation of arrangements and wage-earner plans; (3) all meetings of creditors; (4) all proposed sales of property: *Provided,* That the court may, upon cause shown, shorten such time or order an immediate sale without notice; (5) the filing of all accounts of the receiver and trustee, for which confirmation is asked, and the time when they will be examined and passed upon; (6) the proposed compromise of a controversy unless the court, for cause shown, directs that notice be not sent; (7) the proposed dismissal of the proceedings, in cases where notice is required by subdivision (g) of section 95 of this title; and (8) all applications by receivers, ancillary receivers, marshals, trustees, committees, and attorneys for compensation from the estate for services rendered, specifying the amount and by whom made: *Provided, however,* That where a creditors' committee has been appointed pursuant to this title, the notice required by clauses (1), (4), and (6) of this subdivision shall be sent only to such committee and to the creditors who have filed with the court a demand that all notices under this subdivision be mailed to them.

(b) The court shall give at least thirty days' notice by mail of the last day fixed by its order for the filing of objections to a bankrupt's discharge and for the filing of applications pursuant to paragraph (2) of subdivision (c) of section 35 of this title to determine the dischargeability of debts (1) to the creditors in the manner prescribed in subdivision (a) of this section; (2) to the trustee, if any, and his attorney, if any, at their respective addresses as filed by them with the court; and (3) to the United States attorney of the judicial district wherein the proceeding is pending. The court shall also give at least thirty days' notice by mail of the time and place of a hearing upon objections to a bankrupt's discharge (1) to the bankrupt, at his last known address as appears in his petition, schedules, list of creditors, or statement of affairs, or, if no address so appears, to his last known address as furnished by the trustee or other party after inquiry; (2) to the bankrupt's attorney, if any, at his address as filed by him with the court; and (3) to the objecting parties and their attorneys, at their respective addresses as filed by them with the court.

(c) All notices shall be given by the referee unless otherwise ordered by the judge. Any notice required by this title may be waived in writing by any person entitled thereto.

(d) Notices to creditors may be published as the court shall direct.

(e) The court shall, in every case instituted under any provisions of this title, mail or cause to be mailed a copy of the notice of the first meeting of creditors to the district director of internal revenue for the district in which the court is located. In cases involving a bankrupt where it clearly appears on the face of the petition that the bankrupt is or was engaged in the business of transporting persons or property, the court also shall mail, or cause to be mailed, a copy of such notice to the Comptroller General of the United States. Whenever the schedules of the bankrupt, or the list of creditors of the bankrupt, or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate), a notice of the first meeting shall be mailed as well to the head of such department, agency, or instrumentality. (July 1, 1898, ch. 541, § 58, 30 Stat. 561; June 25, 1910, ch. 412, § 9½, 36 Stat. 841; June 22, 1938, ch. 575, § 1, 52 Stat. 867; July 3, 1951, ch. 205, 65 Stat. 114; July 7, 1952, ch. 579, § 15, 66 Stat. 425; Aug. 2, 1956, ch. 893, 70 Stat. 955; Sept. 2, 1957, Pub. L. 85–275, § 2, 71 Stat. 599; July 12, 1960, Pub. L. 86–631, § 2, 74 Stat. 466; Sept. 25, 1962, Pub. L. 87–681, § 6, 76 Stat 570; Oct. 19, 1970, Pub. L. 91–467, § 9, 48 Stat. 993.)

AMENDMENTS

1970—Subd. (b). Pub. L. 91–467 extended the requirement that the court give at least thirty days' notice by mail of the last day fixed by its order to the filing of applications pursuant to section 35(c)(2) of this title to determine the dischargeability of debts.

1962—Subd. (a)(6). Pub. L. 87–681 substituted "the proposed compromise of a controversy unless the court, for cause shown, directs that notice be not sent" for "the proposed compromise of any controversy in which the amount claimed by either party in money or value exceeds $1,000."

1960—Subd. (e). Pub. L. 86–631 provided for the mailing of notices of the first meeting of creditors to the Comptroller General only in cases involving a bankrupt where it clearly appeared on the face of the petition that the bankrupt is or was engaged in the business of transporting persons or property.

1957—Subd. (b). Pub. L. 85–275 added in clause (2) of the first sentence the words "if any" after the word "trustee" and after the word "attorney".

1956—Subd. (e). Act. Aug. 2, 1956, eliminated requirement for mailing to the Commissioner of Internal Revenue and the Comptroller General of the United States a certified copy of every order of adjudication upon its entry and to the Commissioner a copy of the notice of the first meeting of creditors, substituted "district director" for "collector," and inserted the parenthetical clause excepting any internal revenue obligation payable to the Secretary of the Treasury or his delegate.

1952—Subd. (a) (8). Act July 7, 1952, made section applicable to "committees".

1951—Subd. (d). Act July 3, 1951, made publication of notices of first meeting of creditors discretionary instead of mandatory.

Subd. (e). Act of July 3, 1951, required the mailing of a copy of the notice of first meeting of creditors to Comptroller General and to the head of any department, agency, or instrumentality of the United States disclosed to be a creditor as well as to the Commissioner of Internal Revenue.

1938—Subd. (a) amended by act June 22, 1938. Opening clause amended and in part reenacted as a portion of subd. (c). Clauses (1), (2), (4), and (5—7), formerly (1), (2), (4), and (6—8), amended. Clause (3) reenacted without change. Former clause (5) was not reenacted as a part of this section. Clause (9) added, and former clause (9) reenacted in subd. (b).

Subd. (b), formerly clause (9) of subd. (a), amended by act June 22, 1938.

Subd. (c), formerly subd. (c) and part of opening clause of subd. (a), amended by act June 22, 1938.

Subd. (d), formerly subd. (b), reenacted without change by act June 22, 1938.

Subd. (e) added by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–467 effective sixty days after October 19, 1970, with such amendments to govern pro-

ceedings in all cases filed after such date, see section 10 of Pub. L. 91–467, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. The district director of internal revenue referred to in this section, is an official of the Treasury Department.

CROSS REFERENCES

Designation of newspapers, see section 51 of this title.

Duty of referee to give notice, see section 67 (a) (1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 95, 792, 1077 of this title.

§ 95. Who may file and dismiss petitions.

(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims not contingent as to liability against a person, amounting in the aggregate to $500 in excess of the value of any securities held by them, or, if all of the creditors of the person are less than twelve in number, then one or more of the creditors whose claim or claims equal that amount, may file a petition to have him adjudged a bankrupt; but the claim or claims, if unliquidated, shall not be counted in computing the number and the aggregate amount of the claims of the creditors joining in the petition, if the court determines that the claim or claims cannot be readily determined or estimated to be sufficient, together with the claims of the other creditors, to aggregate $500, without unduly delaying the decision upon the adjudication.

(c) Petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.

(d) If it be averred in the petition that the creditors of the bankrupt, computed as provided in subdivision (e) of this section, are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses and a brief statement of the nature of their claims and the amounts thereof, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that the parties in interest shall have an opportunity to be heard. If upon such hearing it shall appear that a sufficient number of qualified creditors have joined in such petition or, if prior to or during such hearing, a sufficient number of qualified creditors shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, there shall not be counted (1) such creditors as were employed by the bankrupt at the time of the filing of the petition; (2) creditors who are relatives of the bankrupt or, if the bankrupt is a corporation, creditors who are stockholders or members, officers or members of the board of directors or trustees or of other similar controlling bodies of such bankrupt corporation; (3) creditors who have participated, directly or indirectly, in the act of bankruptcy charged in the petition; (4) secured creditors whose claims are fully secured; and (5) creditors who have received preferences, liens, or transfers void or voidable under this title.

(f) Creditors other than the original petitioners may at any time enter their appearance and join in the petition.

(g) A voluntary or involuntary petition shall not be dismissed upon the application of the petitioner or petitioners, or for want of prosecution, or by consent of parties, until after notice to the creditors as provided in section 94 of this title, and to that end the court shall, upon entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, shall cause such notice to be sent to the creditors of the pendency of such application and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest an opportunity to be heard. If the bankrupt shall fail to file such list within the time fixed by the court, such list may be filed by the petitioning creditors according to the best of their knowledge, information, and belief: *Provided, however,* That in the case of a dismissal for failure to pay the costs of the bankruptcy proceedings, such notice of dismissal shall not be required.

(h) A creditor shall not be estopped to act as a petitioning creditor because he participated in any prior matter or judicial proceeding, having for its purpose the adjustment or settlement of the affairs of the debtor or the liquidation of his property, or to allege such prior matter or proceeding as an act of bankruptcy, unless he has consented thereto in writing with knowledge of the facts, if any, which would be a bar to the discharge of the debtor under this title. (July 1, 1898, ch 541, § 59, 30 Stat. 561; June 25, 1910, ch. 412, § 10, 36 Stat 841; June 22, 1938, ch. 575, § 1, 52 Stat. 868; July 7, 1952, ch. 579, § 16, 66 Stat. 425; Sept. 25, 1962, Pub. L. 87–681, § 7, 76 Stat. 571.)

AMENDMENTS

1962—Subd. (b). Pub. L. 87–681 excluded unliquidated claims from the computation of the number and aggregate amount of the claims of the creditors joining in the petition where the court determined that the claims could not be readily determined or estimated to be sufficient, together with the claims of the other creditors, to aggregate $500, without unduly delaying the decision upon the adjudication.

1952—Subd. (b). Act July 7, 1952, substituted "not contingent" in lieu of "fixed" following "amount".

1938—Subd. (a) reenacted without change by act June 22, 1938.

Subds. (b)—(g) amended generally by act June 22, 1938.

Subd. (h) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Time of filing petition, see section 21 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 94 of this title.

§ 96. Preferred creditors.

(a) (1) A preference is a transfer, as defined in this title, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this title, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class.

(2) For the purposes of subdivisions (a) and (b) of this section, a transfer of property other than real property shall be deemed to have been made or suffered at the time when it became so far perfected that no subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee. A transfer of real property shall be deemed to have been made or suffered when it became so far perfected that no subsequent bona fide purchase from the debtor could create rights in such property superior to the rights of the transferee. If any transfer of real property is not so perfected against a bona fide purchase, or if any transfer of other property is not so perfected against such liens by legal or equitable proceedings prior to the filing of a petition initiating a proceeding under this title, it shall be deemed to have been made immediately before the filing of the petition.

(3) The provisions of paragraph (2) of this subdivision shall apply whether or not there are or were creditors who might have obtained such liens upon the property other than real property transferred and whether or not there are or were persons who might have become bona fide purchasers of such real property.

(4) A lien obtainable by legal or equitable proceedings upon a simple contract within the meaning of paragraph (2) of this subdivision is a lien arising in ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(5) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchase could create rights superior to the rights of a transferee within the meaning of paragraph (2) of this subdivision, if such consequences would follow only from the lien or purchase itself, or from such lien or purchase followed by any step wholly within the control of the respective lien holder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become so superior and such a purchase could not create such superior rights for the purposes of paragraph (2) of this subdivision through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action, or ruling.

(6) The recognition of equitable liens where available means of perfecting legal liens have not been employed is declared to be contrary to the policy of this section. If a transfer is for security and if (A) applicable law requires a signed and delivered writing, or a delivery of possession, or a filing or recording, or other like overt action as a condition to its full validity against third persons other than a buyer in the ordinary course of trade claiming through or under the transferor and (B) such overt action has not been taken, and (C) such transfer results in the acquisition of only an equitable lien, then such transfer is not perfected within the meaning of paragraph (2) of this subdivision. Notwithstanding the first sentence of paragraph (2) of this subdivision, it shall not suffice to perfect a transfer which creates an equitable lien such as is described in the first sentence of this paragraph, that it is made for a valuable consideration and that both parties intend to perfect it and that they take action sufficient to effect a transfer as against liens by legal or equitable proceedings on a simple contract: *Provided, however,* That where the debtor's own interest is only equitable, he can perfect a transfer thereof by any means appropriate fully to transfer an interest of that character: *And provided further,* That nothing in this paragraph shall be construed to be contrary to the provisions of paragraph (7) of this subdivision.

(7) Any provision in this subdivision (a) to the contrary notwithstanding if the applicable law requires a transfer of property other than real property for or on account of a new and contempraneus consideration to be perfected by recording, delivery, or otherwise, in order that no lien described in paragraph (2) of this subdivision could become superior to the rights of the transferee therein, or if the applicable law requires a transfer of real property for such a consideration to be so perfected in order that no bona fide purchase from the debtor could create rights in such property superior to the rights of the transferee, the time of transfer shall be determined by the following rules:

I. Where (A) the applicable law specifies a stated period of time of not more than twenty-one days after the transfer within which recording, delivery, or some other act is required, and compliance therewith is had within such stated period of time; or where (B) the applicable law specifies no such stated period of time or where

such stated period of time is more than twenty-one days, and compliance therewith is had within twenty-one days after the transfer, the transfer shall be deemed to be made or suffered at the time of the transfer.

II. Where compliance with the law applicable to the transfer is not had in accordance with the provisions of subparagraph (I) of this paragraph, the transfer shall be deemed to be made or suffered at the time of compliance therewith, and if such compliance is not had prior to the filing of the petition initiating a proceeding under this title, such transfer shall be deemed to have been made or suffered immediately before the filing of such petition.

(8) If no such requirement of applicable law specified in paragraph (7) of this subdivision exists, a transfer wholly or in part, for or on account of a new and contemporaneous consideration shall, to the extent of such consideration and interest thereon and the other obligations of the transferor connected therewith, be deemed to be made or suffered at the time of the transfer. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(b) Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent. Where the preference is voidable, the trustee may recover the property or, if it has been converted, its value from any person who has received or converted such property, except a bona-fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order such lien or title to be preserved for the benefit of the estate, in which event such lien or title shall pass to the trustee. For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(c) If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estate, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney at law, for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the trustee or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

If, whether before or after filing, a debtor shall agree orally or in writing to pay money or transfer property to an attorney at law after the filing, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the bankrupt made prior to discharge and shall be held valid only to the extent of a reasonable amount to be determined by the court, and any excess obligation shall be canceled, or if excess payment or transfer has been made, returned to the bankrupt.

(e) (1) Where the bankrupt is a stockbroker, the following definitions and provisions of this subdivision shall apply: "Property" shall include cash, securities, whether or not negotiable, and all other property of similar character; "customers" of a stockbroker shall include persons who have claims on account of securities received, acquired, or held by the stockbroker from or for the account of such persons (a) for safekeeping, or (b) with a view to sale, or (c) to cover consummated sales, or (d) pursuant to purchases, or (e) as collateral security, or (f) by way of loans of securities by such persons to the stockbroker, and shall include persons who have claims against the stockbroker arising out of sales or conversions of such securities; "cash customers" shall mean customers entitled to immediate possession of such securities without the payment of any sum to the stockbroker; the same person may be a cash customer with reference to certain securities and not a cash customer with reference to other securities; the "net equity" of a customer's account shall be determined by excluding any specifically identifiable securities reclaimable by the customer and by subtracting the indebtedness of the customer to the stockbroker from the sum which would have been owing by the stockbroker to the customer had the stockbroker liquidated, by sale or purchase on the date of bankruptcy, the remaining securities or security commitments of the customer.

(2) All property at any time received, acquired, or held by a stockbroker from or for the account of customers, except cash customers who are able to identify specifically their property in the manner prescribed in paragraph (4) of this subdivision and the proceeds of all customers' property rightfully transferred or unlawfully converted by the stockbroker, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the date of bankruptcy: *Provided, however,* That such fund shall to the extent approved by the court be subject to the priority of payment of the costs and expenses enumerated in clauses (1) and (2) of subdivision (a) of section 104 of this title. If such fund shall not be sufficient to pay in full the claims of such class of creditors, such creditors shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with the general creditors.

(3) Any property remaining after the liquidation of a pledge made by a stockbroker shall be apportioned between his general estate and such single and

separate fund in the proportion in which the general property of the stockbroker and the property of his customers contributed to such pledge.

(4) No cash received by a stockbroker from or for the account of a customer for the purchase or sale of securities, and no securities or similar property received by a stockbroker from or for the account of a cash customer for sale and remittance or pursuant to purchase or as collateral security, or for safekeeping, or any substitutes therefor or the proceeds thereof, shall for the purposes of this subdivision (e) be deemed to be specifically identified, unless such property remained in its identical form in the stockbroker's possession until the date of bankruptcy, or unless such property or any substitutes therefor or the proceeds thereof were, more than four months before bankruptcy or at a time while the stockbroker was solvent, allocated to or physically set aside for such customer, and remained so allocated or set aside at the date of bankruptcy.

(5) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a stockbroker of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of this title. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the stockbroker and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. If any securities received or acquired by a stockbroker from a cash customer are transferred by the stockbroker, such customer shall not have any specific interest in or specific right to any securities of like kind on hand at the time of bankruptcy, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund: *Provided, however,* That a customer shall have a specific title to securities (a) which have been physically set aside by a stockbroker, more than four months before his bankruptcy or while solvent, in safekeeping for such customer, and so retained until the date of bankruptcy, regardless of the name in which such securities are registered, or (b) which a stockbroker, more than four months before his bankruptcy or while solvent, caused to be registered in the name of such customer. (July 1, 1898, ch. 541, § 60, 30 Stat. 562; Feb. 5, 1903, ch. 487, § 13, 32 Stat. 799; June 25, 1910, ch. 412, § 11, 36 Stat. 842; May 27, 1926, ch. 406, § 14, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 869; Mar. 18, 1950, ch. 70, § 1, 64 Stat. 25; May 8, 1963, Pub. L. 88-17, 77 Stat. 14.)

AMENDMENTS

1963—Subd. (d). Pub. L. 88-17 authorized the court to examine transactions on its own motion, provided for examinations instead of reexaminations by the court on petition of trustee, changed "attorney and counselor at law" to "attorney at law", deleted following such term "solicitor in equity, or proctor in admiralty", substituted "for services rendered or to be rendered" for "for services to be rendered" and added par. for examination into the reasonableness of amount for legal services, cancellation and return of any excess to the bankrupt.

1950—Subd. (a). Act Mar. 18, 1950, clarified its provisions, eliminated confusions that have arisen by reason of certain court decisions, and removed doubts existing among banks, factors, and other extenders of credit regarding the validity of security taken in good faith and for present value.

1938—Subds. (a) and (b) amended generally by act June 22, 1938.

Subds. (c) and (d) reenacted without change by act June 22, 1938.

Subd. (e) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

EFFECT OF 1950 AMENDMENT

Section 4 of act Mar. 18, 1950, provided that:

"a. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory [sections 96 and 110 of this title].

"b. The provisions of this amendatory Act [sections 96 and 110 of this title] shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act [sections 96 and 110 of this title] are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898 [this title], and the Acts amendatory thereof and supplementary thereto."

REPEALS; SEPARABILITY OF PROVISIONS

Section 3 of act Mar. 18, 1950, provided that:

"a. All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [sections 96 and 110 of this title] are hereby repealed.

"b. If any provision of this amendatory Act [sections 96 and 110 of this title] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act [sections 96 and 110 of this title] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable."

CROSS REFERENCES

Attorney fees as expenses, see section 102 of this title.

Insolvency, definition of, see section 1 (19) of this title.

Preference as act of bankruptcy, see section 21 (a) of this title.

Railroad reorganizations, section as applicable, see section 205 (b) of this title.

Recovery of property transferred generally in fraud—

Of creditors, see section 110 (e) of this title.

Within the four months' period, see section 107 of this title.

Statutory liens arising within four months' period as valid, see section 107 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 46, 107, 205 of this title.

Chapter 7.—ESTATES

Sec.
101. Depositories for money.
101a. Deposits in postal savings depositories authorized.
102. Expenses of administering estates; unauthorized sharing of fees; withholding allowances.
103. Debts which may be proved.
103a. Same; application of section 103.
104. Debts which have priority.
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106. Unclaimed moneys.
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109. Taking possession of property; receivers.
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111. Clerks' indexes; certificates of search; dockets.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 502, 781, 802, 886, 1002, 1069 of this title.

§ 101. Depositories for money.

The judges of the several courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of estates under this title, as convenient as may be to the residences of receivers and trustees, and shall require from each such banking institution a good and sufficient bond with surety, to secure the prompt repayment of the deposit. Said judges may, in accordance with the provisions of, and the authority conferred in section 15 of Title 6, accept the deposit of the securities therein designated, in lieu of a surety or sureties upon such bond and may, from time to time as occasion may require, by like order increase or decrease the number of depositories or the amount of any bond or other security or change such depositories: *Provided,* That no security in the form of a bond or otherwise shall be required in the case of such part of the deposits as are insured under section 1821 of Title 12: *And provided further,* That depository banks shall place such securities, accepted for deposit in lieu of a surety or sureties upon depository bonds, in the custody of Federal Reserve banks or branches thereof designated by the judges of the several courts of bankruptcy, subject to the orders of such judges. All national banking associations designated as depositories, pursuant to the provisions of this section, are authorized to give such security as may be required. All pledges of securities heretofore made for the purposes herein named are ratified, validated, and approved. (July 1, 1898, ch. 541, § 61, 30 Stat. 562; Aug. 23, 1935, ch. 614, § 340, 49 Stat. 721; June 22, 1938, ch. 575, § 1, 52 Stat. 872; July 7, 1952, ch. 579, § 16a, 66 Stat. 425.)

AMENDMENTS

1952—Act July 7, 1952, substituted "section 1821 of Title 12" for "section 264 of Title 12."

1938—Act June 22, 1938, amended section generally and added the last proviso.

1935—Act Aug. 23, 1935, added the first proviso.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Bond of designated depository under this section, see Gen. Ord. 53, Appendix to this title.

Bonds and notes of United States in lieu of sureties, see section 15 of Title 6, Official and Penal Bonds.

Duty of trustee to deposit money in designated depositories, see section 75 (a) (2) of this title.

Insurance of deposits of insured banks by Federal Deposit Insurance Corporation, see section 1821 of Title 12, Banks and Banking.

Payment of moneys deposited, see Gen. Ord. 29, Appendix to this title.

§ 101a. Deposits in postal savings depositories authorized.

CODIFICATION

Section, act Mar. 3, 1933, ch. 204, § 3, 47 Stat. 1482, authorized deposits of bankrupt funds in postal savings depositories, and is omitted since the postal savings system was discontinued on the 30th day following March 28, 1966, by Pub. L. 89-377, § 1, Mar. 28, 1966, 80 Stat. 92.

§ 102. Expenses of administering estates; unauthorized sharing of fees; withholding allowances.

(a) (1) The actual and necessary costs and expenses incurred by officers, other than referees, in the administration of estates shall, except where other provisions are made for their payment, be reported in detail under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

(2) The actual and necessary office and other expenses of referees shall be allowed when authorized and approved by the Director, including compensation of clerical, stenographic and other assistants of referees at rates to be fixed by the Director, taking into consideration the rates for comparable services prevailing in the respective offices of the clerks of the several district courts, and the costs of establishing and maintaining their offices with equipment and supplies adequate for their efficient and economical operation, including mechanical equipment and devices and law libraries. Such expenses may be allowed when authorized by a judge of the judicial district or districts in which a referee serves in cases of emergency where it is not feasible to secure prior authorization of the Director. The Director, with the approval of the conference, may prescribe such rules and regulations as may be necessary for the purpose of carrying out the provisions of this paragraph.

(3) When, in the opinion of the Director, the public interest requires it, he may, on the recommendation of a referee, which recommendation shall state facts showing the necessity for the same, allow the referee to employ necessary clerical, stenographic, and other assistants. The referee may at his pleasure remove any assistant in his employ. If the office of a referee shall become vacant, the employment of his assistants shall not thereupon be terminated: *Provided, however,* That during such vacancy the Director may terminate the employment of any assistant, if, in his opinion, the services of such assistant are no longer needed.

(4) Referees and special masters under this title shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices in proceedings under this title.

(b) (1) When authorized and approved by the Director, the actual expenses of travel, and the actual expenses for lodging and subsistence not to exceed $7 per day, shall be allowed a referee while absent from his regular place of office on official business.

(2) When authorized and approved by the Director, the assistants of referees shall be entitled to the same travel allowances as are provided for employees of the executive branch of the United States Government under the standardized Government travel regulations issued by the President, while absent from their regular place of employment on official business.

(3) Payment of the expenses allowed or per diem granted under this subdivision and paragraph (2)

of subdivision (a) of this section shall be by or pursuant to the order of the Director.

(c) A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, rendering services in a proceeding under this title or in connection with such proceeding, shall not in any form or guise share or agree to share his compensation for such services with any person not contributing thereto, or share or agree to share in the compensation of any person rendering services in a proceeding under this title or in connection with such proceeding, to which services he has not contributed: *Provided, however*, That an attorney-at-law may share such compensation with a law partner or with a forwarding attorney-at-law, and may share in the compensation of a law partner.

(d) A receiver or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this title or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of the services rendered, the amount requested, and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of subdivision (c) of this section, the court shall withhold all compensation from such petitioner. (July 1, 1898, ch. 541, § 62, 30 Stat. 562; June 22, 1938, ch. 575, § 1, 52 Stat. 872; June 28, 1946, ch. 512, § 11, 60 Stat. 329; July 7, 1952, ch. 579, § 17, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (d). Act July 7, 1952, substituted "subdivision (c) of this section" for "this subdivision."

1946—Subd. (a). Act June 28, 1946, brought all expenditures within the jurisdiction of the Director of the Administrative Office in order to secure uniform supervision together with standard auditing and bookkeeping procedures, and provides for the hiring of clerical assistants by the referee.

Subd. (b). Act June 28, 1946, provided for a maximum of $7 per day for travel and subsistence allowance for referees, makes all expenditures subject to the authorization and approval of the Director, and provides for travel and subsistence allowances for assistants.

1938—Subd. (a), formerly entire section, amended by act June 22, 1938.

Subds. (b)—(d) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22. 1938, known as the Chandler Act, see note under section 1 of this title.

INCREASES IN COMPENSATION RATES

Increases in compensation rates fixed under subd. (a) (2) of this section, see notes under section 603 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Accounts of referees, see Gen. Ord. 26, Appendix to this title.

Appointment of attorneys, see Gen. Ord. 44, Appendix to this title.

Attorney's fees—

Corporate reorganization expenses, see section 641 et seq. of this title.

Provable debts, see section 103 of this title.

Compensation of receivers, custodians, and trustees, see section 76 of this title.

Cost of recording as expense of administration, see section 44 (g) of this title.

Indemnity for expenses, see Gen. Ord. 10, Appendix to this title.

Priority—

Administration expenses, see section 104 of this title.

Attorney's fees for payment of debts, see section 104 of this title.

Proof and allowance of claims, see section 93 of this title.

Referee's salary and expense funds, see section 68 of this title.

Subsistence expenses of officers and employees traveling on official business, per diem allowance, see section 5701 et seq. of Title 5, Government Organization and Employees.

Trustees' expenses as part of expense of administration, see section 75 of this title.

§ 103. Debts which may be proved.

(a) Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) costs taxable against a bankrupt who was at the time of the filing of the petition by or against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a probable[1] debt; (4) an open account, or a contract express or implied; (5) provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments; (6) an award of an industrial-accident commission, body, or officer of any State having jurisdiction to make awards of workmen's compensation in case of injury or death from injury, if such injury occurred prior to adjudication; (7) the right to recover damages in any action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy; (8) contingent debts and contingent contractual liabilities; or (9) claims for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property: *Provided, however*, That the claim of a landlord for damages for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant con-

[1] So in original.

tained in such lease shall in no event be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after bankruptcy, plus an amount equal to the unpaid rent accrued, without acceleration, up to such date: *And provided further,* That in the case of an assignment of any such claim for damages, the court shall, in determining the amount thereof, examine the circumstances of the assignment and the consideration paid or to be paid therefor, and may allow the claim of the assignee in such amount, subject to the provisions of the foregoing proviso of this clause, as will be fair and equitable.

(b) In the interval after the filing of an involuntary petition and before the appointment of a receiver or the adjudication, whichever first occurs, a claim arising in favor of a creditor by reason of property transferred or services rendered by the creditor to the bankrupt for the benefit of the estate shall be provable to the extent of the value of such property or services.

(c) Notwithstanding any State law to the contrary, the rejection of an executory contract or unexpired lease, as provided in this title, shall constitute a breach of such contract or lease as of the date of the filing of the petition initiating a proceeding under this title.

(d) Where any contingent or unliquidated claim has been proved, but, as provided in subdivision (d) of section 93 of this title, has not been allowed, such claim shall not be deemed provable under this title. (July 1, 1898, ch. 541, § 63, 30 Stat. 562; June 7, 1934, ch. 424, § 4 (a), 48 Stat. 923; June 18, 1934, ch. 580, 48 Stat. 991; June 5, 1936, ch. 512, § 1, 49 Stat. 1475; June 22, 1938, ch. 575, § 1, 52 Stat. 873; July 7, 1952, ch. 579, § 18, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (c). Act July 7, 1952, substituted "this title" for "chapters 10, 11, 12 or 13 of this title".

1938—Subd. (a) amended by act June 22, 1938. Clause (7) was formerly (6½). Clause (8) was added. Clause (9) was formerly (7).

Subds. (b) and (c) added by act June 22, 1938.

Subd. (d), formerly (b), amended by act June 22, 1938.

1936—Subd. (a). Act June 5, 1936, inserted proviso in former clause (6½).

1934—Subd. (a). Act June 18, 1934, added last clause of last proviso in former clause (7).

Subd. (a). Act June 7, 1934, added former clauses (6), (6½), and (7).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Arrangement proceedings, claims, see sections 707 and 751 et seq. of this title.

Corporate reorganization proceedings, claims, see sections 506 and 596 et seq. of this title.

Discharge releasing all provable claims, see section 35 (a) of this title.

Proof and allowance of claims, see section 93 of this title.

Real property arrangement proceedings, claims, see sections 806 and 851 et seq. of this title.

Time for filing claims, see section 93 of this title.

Wage earners' plans, proceedings, claims, see sections 1006 and 1041 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 506, 638, 707, 778, 806, 883, 1006, 1044 of this title.

§ 103a. Same; application of section 103.

CODIFICATION

Section, act June 7, 1934, ch. 424, § 4 (b), 48 Stat. 924, related to priority of workmen's compensation claims. It was omitted from this title in the general amendment thereof by act June 22, 1938, ch. 575, 52 Stat. 840. It provided that: "The provisions of clause (6) of section 103 (a) of this title shall apply to estates pending on June 7, 1934, and claims provided for in such clause (6) shall have the priority provided for in clause (7) of section 104 (b) of this title."

§ 104. Debts which have priority.

(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary and expense fund; the filing fees paid by creditors in involuntary cases or by persons other than the bankrupts in voluntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, is recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the trustee's expenses in opposing the bankrupt's discharge or in connection with the criminal prosecution of an offense punishable under chapter 9 of Title 18, or an offense concerning the business or property of the bankrupt punishable under other laws, Federal or State; the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the bankrupt in voluntary and involuntary cases, and to the petitioning creditors in involuntary cases, and if the court adjudges the debtor bankrupt over the debtor's objection or pursuant to a voluntary petition filed by the debtor during the pendency of an involuntary proceeding, for the reasonable costs and expenses incurred, or the reasonable disbursements made, by them, including but not limited to compensation of accountants and appraisers employed by them, in such amount as the court may allow. Where an order is entered in a proceeding under any chapter of this title directing that bankruptcy be proceeded with, the costs and expenses of administration incurred in the ensuing bankruptcy proceeding, including expenses necessarily incurred by a debtor in possession, receiver, or trustee in preparing the schedule and statement required to be filed by section 638, 778, or 883 of this title, shall have priority in advance of payment of the unpaid costs and expenses of administration, including the allowances provided for in such chapter, incurred in the

superseded proceeding and in the suspended bankruptcy proceeding, if any; (2) wages and commissions, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling, or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; and for the purposes of this clause, the term "traveling or city salesman" shall include all such salesmen, whether or not they are independent contractors selling the products or services of the bankrupt on a commission basis, with or without a drawing account or formal contract; (3) where the confirmation of an arrangement or wage earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under chapter 9 of Title 18, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof which are not released by a discharge in bankruptcy: *Provided, however,* That no priority over general unsecured claims shall pertain to taxes not included in the foregoing priority: *And provided further,* That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court; and (5) debts other than for taxes owing to any person, including the United States, who by the laws of the United States is entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law or who is entitled to priority by paragraph (2) of subdivision (c) of section 107 of this title. *Provided, however,* That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

(b) Repealed. July 7, 1952, ch. 579, § 19 (b), 66 Stat. 426.

(July 1, 1898, ch. 541, § 64, 30 Stat. 563; Feb. 5, 1903, ch. 487, § 14, 32 Stat. 800; June 15, 1906, ch. 3333, 34 Stat. 267; May 27, 1926, ch. 406, § 15, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 874; June 28, 1946, ch. 512, § 12, 60 Stat. 330; May 24, 1949, ch. 139, § 131, 63 Stat. 108; July 7, 1952, ch. 579, § 19, 66 Stat. 426; July 30, 1956, ch. 784, § 1, 70 Stat. 725; July 28, 1959, Pub. L. 86–110, § 3, 73 Stat. 260; Sept. 25, 1962, Pub. L. 87–681, § 8, 76 Stat. 571; July 5, 1966, Pub. L. 89–495, § 2, 80 Stat. 268; July 5, 1966, Pub. L. 89–496, § 3, 80 Stat. 271; Nov. 28, 1967, Pub. L. 90–157, § 1, 81 Stat. 511.)

AMENDMENTS

1967—Subd. (a)(1). Pub. L. 90–157 inserted ", including expenses necessarily incurred by a debtor in possession, receiver, or trustee in preparing the schedule and statement required to be filed by section 638, 778, or 883 of this title,".

1966—Subd. (a)(4). Pub. L. 89–496 limited the priority accorded to taxes in the distribution of bankrupt's estates to those taxes which became legally due and owing by the bankrupt and which were not released by a discharge in bankruptcy and provided that no priority over general unsecured claims shall pertain to taxes not included in the foregoing priority.

Subd. (a)(5). Pub. L. 89–495 inserted "other than for taxes" following "debts" and "or who is entitled to priority by paragraph (2) of subdivision (c) of section 107 of this title".

1962—Subd. (a)(1). Pub. L. 87–681 transposed to the beginning of cl. (1) the words "the costs and expenses of administration, including", formerly appearing preceding "the trustee's expenses in opposing the bankrupt's discharge or in connection with the criminal prosecution of an offense punishable under chapter 9 of Title 18" and included as an item of such costs and expenses of administration the reasonable costs and expenses incurred or reasonable disbursements made where court adjudged the debtor bankrupt over the debtor's objection or pursuant to a voluntary petition filed by the debtor during the pendency of an involuntary proceeding, including compensation of accountants and appraisers.

1959—Subd. (a). Pub. L. 86–110 substituted "referees' salary and expense fund" for "referees' salary fund and for the referees' expense fund" in cl. (1).

1956—Subd. (a) (2). Act July 30, 1956, included commissions, and defined "traveling or city salesman".

1952—Subd. (a) (1). Act July 7, 1952, § 19 (a), permitted filing fees advanced by banks to be reimbursed out of the estate, broadened the base of compensable services and added last proviso.

Subd. (b) repealed by act July 7, 1952, § 19 (b).

1949—Subd. (a) (3). Act May 24, 1949, substituted "Chapter 9 of Title 18" in lieu of "this Act."

1946—Subd. (a) (1). Act June 28, 1946, accorded priority to fees for salary and expense funds of referees, as an administration expense, on a parity with other items set forth therein.

1938—Subd. (a), formerly (a) and (b), amended by act June 22, 1938. Clause (1) was formerly clauses (1), (2), and (3), of subd. (b). Clauses (2) and (3) were formerly clauses (5) and (4), respectively, of subd. (b). Clause (4) was formerly subd. (a) and clause (6) of subd. (b). Clause (5) was formerly clause (7) of subd. (b).

Subd. (b), formerly (c), amended by act June 22, 1938.

1926—Act May 27, 1926, amended section generally, which among other changes, amended subd. (a), introductory clause and clause (3) of subd. (b), inserted a new clause (4), changed original clause (4) to (5) and raised the amount mentioned therein from $300 to $600, inserted clause (6), changed former clause (5) to (7), and added a proviso.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–110 effective on the first day of the first fiscal year following July 28, 1959, see section 8 of Pub. L. 86–110, set out as a note under section 68 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act July 30, 1956, provided that: "The amendment made by the first section of this Act [to subsec. (a) (2)] shall apply only with respect to proceedings commenced on or after the date of the enactment of this Act [July 30, 1956]."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Administration expenses, see section 102 of this title.

Arrangement, confirmation, sec. section 761 et seq. of this title.

Attorney's fees, see section 102 of this title.

Crimes and offenses against bankruptcy laws, see section 151 et seq. of Title 18, Crimes and Criminal Procedure.

Debts which may be proved, see section 103 of this title.

Dividends, payment, see section 105 of this title.

Filing fee in bankruptcy, see section 80 of this title.

Indemnity for expenses, see Gen. Ord. 10, Appendix to this title.

Lien for taxes due United States, see section 6321 et seq. of Title 26, Internal Revenue Code.

Opposition by trustee of discharge at expense of estate, see section 75 of this title.

Priority of claims, see section 93 of this title.

Priority of debts of United States due by insolvents or deceased debtors, see section 191 of Title 31, Money and Finance.

Referees' salary and expense funds, see section 68 of this title.

Rights of holders of valid liens, see section 107 of this title.

Wage earner, defined, see sections 1 (32) and 1006 (8) of this title.

Wage earners plans, confirmation, see section 1051 et seq. of this title.

Witnesses, fees and mileage, see section 1821 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 96, 107, 502, 1059 of this title.

§ 105. Declaration and payments of dividends.

(a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividends shall be declared within thirty days after the first date set for the first meeting of creditors, if the money of the estate in excess of the amount necessary to pay the debts which have priority equals 5 per centum or more of the allowed claims and such claims as have not been but probably will be allowed. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal 10 per centum or more, and upon closing the estate. Dividends may be declared oftener and in smaller proportions, if the court shall so order: Unless six months have expired since the first date set for the first meeting, the first dividend, including such sum as would be required to pay a like dividend upon such claims as probably will be allowed, shall not include more than 50 per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority, and the final dividend shall not be declared until three months after the first dividend shall be declared: *Provided,* That after the expiration of six months following the first date set for the first meeting only one dividend need be declared.

(c) The rights of creditors who have received dividends or in whose favor final dividends have been declared shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors, if the estate equals so much, before such other creditors are paid any further dividends.

(d) Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, all creditors with claims allowed by the court of bankruptcy who have not had a dividend paid or declared in their favor by the court without the United States shall first be paid a dividend equal to that paid or declared in such foreign court in favor of other creditors of the same class under this title, before creditors who have had a dividend paid or declared in their favor by such foreign court shall be paid any amount in the court of bankruptcy.

(e) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this title. (July 1, 1898, ch. 541, § 65, 30 Stat. 563; Feb. 5, 1903, ch. 487, § 15, 32 Stat. 800; June 22, 1938, ch. 575, § 1, 52 Stat. 875; July 7, 1952, ch. 579, § 20, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (d). Act July 7, 1952, made more effective the policy of effectuating equal distribution between foreign and domestic creditors.

1938—Subds. (a) and (c)—(e) reenacted without change by act June 22, 1938.

Subd. (b) amended generally by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Debts provable in bankruptcy, see section 103 of this title.

Declaration of dividends by trustee, see section 67 (5) of this title.

Order for Payment of Dividends, see Form 34, Appendix to this title.

Payment of dividends by trustee, see section 75 (a) (11) of this title.

Priority of debts, see section 104 of this title.

Proof and allowance of claims, see section 93 of this title.

Unclaimed dividends, see section 106 of this title.

§ 106. Unclaimed moneys.

(a) Dividends or other moneys which remain unclaimed for sixty days after the final dividend has been declared and distributed shall be paid by the trustee into the court of bankruptcy; and at the same time the trustee shall file with the clerk a list of the names and post-office addresses, as far as known, of the persons entitled thereto, showing the respective amounts payable to them. Such moneys and dividends shall be deposited and withdrawn as provided in section 2042 of Title 28, and shall not be subject to escheat under the laws of any State.

(b) Repealed. Aug. 1, 1956, ch. 819, § 2, 70 Stat. 785.

(July 1, 1898, ch. 541, § 66, 30 Stat. 564; June 22, 1938, ch. 575, § 1, 52 Stat. 875; Aug. 1, 1956, ch. 819, §§ 1, 2, 70 Stat. 785.)

AMENDMENTS

1956—Subd. (a). Act Aug. 1, 1956, § 1 added sentence respecting deposit and withdrawal of unclaimed moneys as provided in section 2042 of Title 28 without being subject to State escheat laws.

Subd. (b). Act Aug. 1, 1956, § 2, related to distribution to creditors of dividends remaining unclaimed for one year and permitted minors to claim dividends one year after arriving at majority.

1938—Subd. (a) amended by act June 22, 1938, to include other moneys as well as dividends, to reduce waiting period from six months to sixty days, and to require filing of list of persons.

Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Amount of dividends generally, see section 105 of this title.

Declaration of dividends by referees, see section 67 (a) (5) of this title.

Order for payment of dividends, see Form 34, Appendix to this title.

Payment of dividends by trustee, see section 75 (a) (11) of this title.

Proof and allowance of claims, see section 93 of this title.

Time of payment of dividends, see section 105 of this title.

§ 107. Liens and fraudulent transfers.

(a) (1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this title by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this title: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this title and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(2) If any lien deemed null and void under the provisions of paragraph (1) of this subdivision, has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any of the nonexempt property of a person before the filing of a petition initiating a proceeding under this title by or against him, such indemnifying transfer or lien shall also be deemed null and void: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this title, and if no arrangement or plan is proposed and confirmed, such transfer or lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(3) The property affected by any lien deemed null and void under the provisions of paragraphs (1) and (2) of this subdivision shall be discharged from such lien, and such property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the trustee or debtor, as the case may be, except that the court may on due notice order any such lien to be preserved for the benefit of the estate, and the court may direct such conveyance as may be proper or adequate to evidence the title thereto of the trustee or debtor, as the case may be: *Provided, however,* That the title of a bona-fide purchaser of such property shall be valid, but if such title is acquired otherwise than at a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property.

(4) The court shall have summary jurisdiction of any proceeding by the trustee or debtor, as the case may be, to hear and determine the rights of any parties under this subdivision. Due notice of any hearing in such proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of such property or lien, and if such value is less than the amount for which such property is indemnity or than the amount of such lien, the transferee or lienholder may elect to retain such property or lien upon payment of its value, as ascertained by the court, to the trustee or debtor, as the case may be, within such reasonable times as the court shall fix.

(5) The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and voided by the trustee or debtor, or, where the property is retained pursuant to the provisions of paragraph (4) of this subdivision, to the extent of the amount paid to the trustee or debtor.

(b) The provisions of section 96 of this title to the contrary notwithstanding and except as otherwise provided in subdivision (c) of this section, statutory liens in favor of employees, contractors, mechanics, or any other class of persons, and statutory liens for taxes and debts owing to the United States or to any State or any subdivision thereof, created or recognized by the laws of the United States or any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition initiating a proceeding under this title by or against him.

(c) (1) The following liens shall be invalid against the trustee:

(A) every statutory lien which first becomes effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution against his property levied at the instance of one other than the lienor;

(B) every statutory lien which is not perfected or enforceable at the date of bankruptcy against one acquiring the rights of a bona fide purchaser from the debtor on that date, whether or not such purchaser exists: *Provided,* That where a statutory lien is not invalid at the date of bankruptcy against the trustee under subdivision (c) of section 110 of this title and is required by applicable lien law to be perfected in order to be valid against a subsequent bona fide purchaser, such a lien may nevertheless be valid under this subdivision if perfected within the time permitted by and in accordance with the requirements of such law: *And provided further,* That if applicable lien law requires a lien valid against the trustee under section 110(c) of this title to be perfected by the seizure of property, it shall instead be perfected

as permitted by this subdivision by filing notice thereof with the court;

(C) every statutory lien for rent and every lien of distress for rent, whether statutory or not. A right of distress for rent which creates a security interest in property shall be deemed a lien for the purposes of this subdivision.

(2) The Court may, on due notice, order any of the aforesaid liens invalidated against the trustee to be preserved for the benefit of the estate and in that event the lien shall pass to the trustee. A lien not preserved for the benefit of the estate but invalidated against the trustee shall be invalid as against all liens indefeasible in bankruptcy, so as to have the effect of promoting liens indefeasible in bankruptcy which would otherwise be subordinate to such invalidated lien. Claims for wages, taxes, and rent secured by liens hereby invalidated or preserved shall be respectively allowable with priority and restricted as are debts therefor entitled to priority under clauses (2), (4), and (5) of subdivision (a) of section 104 of this title, even though not otherwise granted priority.

(3) Every tax lien on personal property not accompanied by possession shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title. Where such a tax lien is prior in right to liens indefeasible in bankruptcy, the court shall order payment from the proceeds derived from the sale of the personal property to which the tax lien attaches, less the actual cost of that sale, of an amount not in excess of the tax lien, to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title. If the amount realized from the sale exceeds the total of such debts, after allowing for prior indefeasible liens and the cost of the sale, the excess up to the amount of the difference between the total paid to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title and the amount of the tax lien, is to be paid to the holder of the tax lien.

(4) Where a penalty not allowable under subdivision (j) of section 93 of this title is secured by a lien, the portion of the lien securing such penalty shall not be eligible for preservation under this subdivision.

(5) This subdivision shall not apply to liens enforced by sale before the filing of the petition, nor to liens against property set aside to the bankrupt as exempt, nor to liens against property abandoned by the trustee or unadministered in bankruptcy for any reason and shall not apply in proceedings under section 205 of this title, nor in proceedings under chapter 10 of this title unless an order has been entered directing that bankruptcy be proceeded with.

(d) (1) For the purposes of, and exclusively applicable to, this subdivision: (a) "Property" of a debtor shall include only his nonexempt property; (b) "debt" is any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent; (c) "creditor" is a person in whose favor a debt exists; (d) a person is "insolvent" when the present fair salable value of his property is less than the amount required to pay his debts; and to determine whether a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts, and also the amount realizable on any unpaid subscription to the partnership of each limited partner; and (e) consideration given for the property or obligation of a debtor is "fair" (1) when, in good faith, in exchange and as a fair equivalent therefor, property is transferred or an antecedent debt is satisfied, or (2) when such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained.

(2) Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition initiating a proceeding under this title by or against him is fraudulent (a) as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent, without regard to his actual intent; or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent; or (c) as to then existing and future creditors, if made or incurred without fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature; or (d) as to then existing and future creditors, if made or incurred with actual intent as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors.

(3) Every transfer made and every obligation incurred by a debtor who is or will thereby be rendered insolvent, within four months prior to the filing of a petition initiating a proceeding under this title by or against him is fraudulent, as to then existing and future creditors: (a) if made or incurred in contemplation of the filing of a petition initiating a proceeding under this title by or against the debtor or in contemplation of liquidation of all or the greater portion of the debtor's property, with intent to use the consideration obtained for such transfer or obligation to enable any creditor of such debtor to obtain a greater percentage of his debt than some other creditor of the same class, and (b) if the transferee or obligee of such transfer or obligation, at the time of such transfer or obligation, knew or believed that the debtor intended to make such use of such consideration. The remedies of the trustee for the avoidance of such transfer or obligation and of any ensuing preference shall be cumulative: *Provided, however,* That the trustee shall be entitled to only one satisfaction with respect thereto.

(4) Every transfer of partnership property and every partnership obligation incurred within one

year prior to the filing of a petition initiating a proceeding under this title by or against the partnership, when the partnership is insolvent or will be thereby rendered insolvent, is fraudulent as to partnership creditors existing at the time of such transfer or obligation, without regard to actual intent if made or incurred (a) to a partner, whether with or without a promise by him to pay partnership debts, or (b) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

(5) For the purposes of this subdivision, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if such transfer is not so perfected prior to the filing of the petition initiating a proceeding under this title, it shall be deemed to have been made immediately before the filing of such petition.

(6) A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this title, which is fraudulent under this subdivision against creditors of such debtor having claims provable under this title, shall be null and void against the trustee, except as to a bona fide purchaser, lienor, or obligee for a present fair equivalent value: *Provided, however,* That the court may, on due notice, order such transfer or obligation to be preserved for the benefit of the estate and, in such event, the trustee shall succeed to and may enforce the rights of such transferee or obligee: *And provided further,* That such purchaser, lienor, or obligee, who without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

(7) Nothing contained in this subdivision shall be construed to validate a transfer which is voidable under section 96 of this title.

(e) For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(f) (1) For the purposes of, and exclusively applicable to, this subdivision: (a) "debtor" shall mean a face-amount certificate company as defined in section 80a–4 of Title 15; (b) "face-amount certificate" shall mean a face-amount certificate as defined in section 80a–2 of Title 15; (c) "depositary" is a person or State agency with whom securities or other property of a debtor is deposited or to whom property of a debtor is transferred, in trust or otherwise, pursuant to the requirements of a State law or an agreement by the debtor providing for the distribution of such property or its proceeds to creditors or security holders of the debtor in the event of the insolvency of the debtor or under other specified circumstances; (d) "deposit creditor" is a creditor who, under the provisions of a State law or agreement providing for a deposit with or transfer to a depositary, has rights as to the securities or property so deposited or transferred which exceed the rights of a general creditor; and (e) "State agency" is an official or agency of a State designated to act as depositary or to distribute property or the proceeds of property held by a depositary.

(2) Every deposit or transfer of securities or other property made by or on behalf of a debtor with or to any depositary for the benefit or protection of or to secure the holder of any security sold by or on behalf of the debtor on or after January 1, 1941, shall be voidable as against the trustee of such debtor if the property of the estate is insufficient for the full payment and discharge of all claims on account of all face-amount certificates sold by or on behalf of the debtor, and such deposit or transfer and every lien created thereby shall thereupon be avoided by the trustee subject to the provisions of paragraph (3) of this subdivision.

(3) In the event any deposit or transfer described in paragraph (2) of this subdivision shall be avoided the trustee shall segregate the property received by the trustee from the depositary and charge the same with the costs and expenses of maintenance and liquidation and distribute the net proceeds thereof to the creditors who would have been entitled thereto under the provisions of the law or agreement providing for the deposit or transfer of the property, and each such creditor shall thereafter be entitled to dividends from the estate only after all creditors of the same rank shall have received the same percentage.

(4) The court shall have summary jurisdiction of any proceedings to hear and determine the rights of any parties under this subdivision and to hear and determine the sufficiency of the property of the estate for the full payment and discharge of all claims on account of all face-amount certificates sold by or on behalf of the debtor. Due notice of any hearing in such proceedings shall be given to every depositary and State agency which is a party in interest.

(5) Where the provisions of subsection (c) of section 28[1] are not applicable, the provisions of this section will not apply. (July 1, 1898, ch. 541, § 67, 30 Stat. 564; Feb. 5, 1903, ch. 487, § 16, 32 Stat. 800; June 25, 1910, ch. 412, § 12, 36 Stat. 842; June 7, 1934, ch. 424, § 5, 48 Stat. 924; June 22, 1938, ch. 575, § 1, 52 Stat. 875; Aug. 22, 1940, ch. 686, title I, § 29 (a), 54 Stat. 835; July 7, 1952, ch. 579, § 21, 66 Stat. 427; July 5, 1966, Pub. L. 89–495, §§ 3, 4, 80 Stat. 268.)

Amendments

1966—Subd. (b). Pub. L. 89–495, § 3, inserted "and except as otherwise provided in subdivision (c) of this section", deleted "landlords," following "mechanics,", and deleted last sentence providing that statutory liens may be valid, even though not perfected before bankruptcy, where Federal or State laws providing for such liens require such liens to be perfected, if perfected within the time permitted by and in accordance with the requirements of such Federal or State laws, except that if such laws require the liens to be perfected by the seizure of

[1] So in original. Reference would seem to be to subsec. (c) of sec. 28 of the Bankruptcy Act, constituting section 51 of this title. However, since that section contains no subsec. (c) and relates to different subject matter, reference to section 80a–28 of Title 15, Commerce and Trade, was probably intended, that being section 28 of the Investment Company Act of 1940, which enacted subdivision (f) of this section.

property, they shall instead be perfected by filing notice thereof with the court, now incorporated in subsec. (c)(1)(B) of this section.

Subd. (c). Pub. L. 89–495, § 4, completely revised the provisions, and among other changes, invalidated against the trustee in par. (1)(A) every statutory lien which first becomes effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution against his property levied at the instance of one other than the lienor, in par. (1)(B) every statutory lien which is not perfected or enforceable at the date of bankruptcy against one acquiring the rights of a bona fide purchaser from the debtor on that date, whether or not such purchaser exists (incorporating the last sentence of subd. (b) into the two provisos of such par. (1)(B)) and statutory liens for rent and liens of distress for rent, whether statutory or not (adding the definition of right of distress for rent) whereas former provisions had also invalidated statutory liens for rent unaccompanied by possession or distraint but common law or statutory liens of distress for rent were postponed and restricted where accompanied by an actual levy of distraint or possession in the lienor; incorporated existing last sentence in par. (2) (adding the remainder thereto); incorporated existing provisions of par. (1) in the first sentence of par (3) (adding the remainder thereto); added the provisions of par. (4); and incorporated existing provisions in par (5) (making the subd. additionally inapplicable to liens against property set aside to the bankrupt as exempt or to liens against property abandoned by the trustee or unadministered in bankruptcy for any reason.

1952—Subd. (a). Act July 7, 1952, § 21 (a), (b), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" wherever appearing in paragraphs (1) and (2).

Subd. (b). Act July 7, 1952, § 21 (c), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title".

Subd. (c). Act July 7, 1952, § 21 (d), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" and provided that the restrictable excess of the lien may be effected for the benefit of the estate.

Subd. (d)(2). Act July 7, 1952, § 21 (e), substituted "initiating a proceeding under this title", in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title".

Subd. (d) (3). Act July 7, 1952, § 21 (f), substituted "initiating a proceeding under this title" for "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" and to clarified fraudulent transfers made with intent to use the consideration to effect a voidable preference.

Subd. (d) (4). Act July 7, 1952, § 21 (g), substituted "initiating a proceeding under this title" for "in bankruptcy or of an original petition under chapters 11 or 12 of this title".

Subd. (d) (5). Act July 7, 1952, § 21 (h), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 11 or 12 of this title" and deleted "and no creditor" following "from the debtor".

Subd. (d) (6). Act July 7, 1952, § 21 (i), inserted first proviso.

1940—Subd. (f). Act Aug. 22, 1940, added subd. (f). It was enacted as part of the Investment Company Act of 1940, section 80a–1 et seq. of Title 15, Commerce and Trade.

1938—Section was amended generally by act June 22, 1938.

1934—Subd. (f) amended generally by act June 7, 1934.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

Effective date of act Aug. 22, 1940, see section 80a–52 of Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Avoidance of preferences by trustee, see section 96 of this title.

Definitions—

Creditor, see section 1 (11) of this title.

Debt, see section 1 (14) of this title.

Insolvent, see section 1 (19) of this title.

Transfer, see section 1 (30) of this title.

Exercise of ancillary jurisdiction, see section 11 (20) of this title.

Fraud as affecting right to discharge, see section 32 of this title.

Lien through legal proceeding as act of bankruptcy, see section 21 (a) of this title.

Plenary jurisdiction, see section 46 of this title.

Preferred creditors, see section 96 of this title.

Priority of debts, see section 104 of this title.

Recovery of property transferred in fraud generally, see section 110 (e) of this title.

Summary jurisdiction generally, see section 46 of this title.

Transfer of property fraudulently as act of bankruptcy, see section 21 (a) of this title.

Trustee having powers of creditor holding lien, see section 110 (c) of this title.

Valid liens payable in ancillary jurisdiction, see section 11 (a) (20) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 46, 104, 638 of this title.

§ 108. Set-offs and counterclaims.

(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b) A set-off or counterclaim shall not be allowed in favor of any debt or of the bankrupt which (1) is not provable against the estate and allowable under subdivision (g) of section 93 of this title; or (2) was purchased by or transferred to him after the filing of the petition or within four months before such filing with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy. (July 1, 1898, ch. 541, § 68, 30 Stat. 565; June 22, 1938, ch. 575, § 1, 52 Stat. 878.)

AMENDMENTS

1938—Act June 22, 1938, amended subd. (b)(1).

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Debts provable in bankruptcy, see section 103 of this title.

Proof and allowance of claims, see section 93 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Counterclaims, see rule 13, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 109. Taking possession of property; receivers.

(a) Whenever a petition is filed to have a person adjudged a bankrupt and an application is made to have a receiver or a marshal take charge of the property of the bankrupt, or any part thereof, prior to the adjudication, the applicant shall file in the same court a bond in such amount as the court shall

fix, with such surety as the court shall approve, conditioned to indemnify the bankrupt for such costs, counsel fees, expenses, and damages as may be occasioned by such seizure, taking, and detention of such property: *Provided,* That such property shall be released, if the bankrupt shall file a counter-bond in the same court in such amount as the court shall fix, with such surety as the court shall approve, conditioned that he account for and turn over such property or pay the value thereof in money at the time of seizure to the trustee, in the event the adjudication is made.

(b) If the petition for adjudication be dismissed, or withdrawn by the petitioners, the court shall fix and allow to the bankrupt, to be paid by the obligors on such bond, the costs, counsel fees, expenses and damages occasioned by such seizure, taking or detention of his property, in the manner provided by subdivision (n) of section 78 of this title.

(c) The judge of any court of bankruptcy which has jurisdiction over a bankrupt's property within its territorial limits may, in aid of a receiver appointed in a bankruptcy proceeding pending in any other court of bankruptcy, appoint for cause shown one or more ancillary receivers. The primary receiver or, if there be more than one primary receiver, then at least one of them, shall be appointed the ancillary receiver, or, if more than one is appointed, one of the ancillary receivers. Ancillary receivers shall be subject to the jurisdiction of the ancillary court, which shall determine and may allow their costs, expenses, and compensation in like manner as provided in the case of receivers.

(d) Upon the filing of a petition under this title, a receiver or trustee, appointed in proceedings not under this title, of any of the property of a bankrupt, an assignee for the benefit of creditors of a bankrupt, or an agent authorized to take possession of or to liquidate any of the property of a bankrupt shall be accountable to the bankruptcy court, in which the proceeding under this title is pending, for any action taken by him subsequent to the filing of such bankruptcy petition, and shall file in such bankruptcy court a sworn schedule setting forth a summary of the property in his charge and of the liabilities of the estate, both as of the time of and since becoming receiver, trustee, assignee, or agent, and a sworn statement of his administration of the estate. Such receiver, trustee, assignee, or agent, with knowledge of the filing of such bankruptcy proceeding, shall not make any disbursements or take any action in the administration of such property without first obtaining authorization therefor from the bankruptcy court. (July 1, 1898, ch. 541, § 69, 30 Stat. 565; June 22, 1938, ch. 575, § 1, 52 Stat. 879; July 7, 1952, ch. 579, § 22, 66 Stat. 429.)

AMENDMENTS

1952—Subd. (d). Act July 7, 1952, conformed the scope of this section to that of section 11 (21) of this title.

1938—Subd. (a), formerly entire section, amended by act June 22, 1938.

Subds. (b)—(d) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Accounts and papers of receivers, see section 77 of this title.

Ancillary receiverships limited, see Gen. Ord. 51, Appendix to this title.

Bond of receiver, see section 78 of this title and Form 23, Appendix to this title.

Compensation of receivers, see section 76 of this title and Gen. Ord 35, Appendix to this title.

Delivery of property by receivers, see section 11 (a) (21) of this title.

Jurisdiction to appoint receivers, see section 11 (a) (3) of this title.

Receivers and marshals as custodians, see Gen. Ord. 40, Appendix to this title.

§ 110. Title to property.

(a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks, and in applications therefor: *Provided,* That in case the trustee, within thirty days after appointment and qualification, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: *Provided,* That rights of action ex delicto for libel, slander, injuries to the person of the bankrupt or of a relative, whether or not resulting in death, seduction, and criminal conversation shall not vest in the trustee unless by the law of the State such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process: *And provided further,* That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been

ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; (6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; (7) contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates; and (8) property held by an assignee for the benefit of creditors appointed under an assignment which constituted an act of bankruptcy, which property shall, for the purposes of this title, be deemed to be held by the assignee as the agent of the bankrupt and shall be subject to the summary jurisdiction of the court.

All property, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance shall vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy.

All property, wherever located, except insofar as it is property which is held to be exempt, in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy.

The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.

(b) The trustee shall assume or reject an executory contract, including an unexpired lease or real property, within sixty days after the adjudication or within thirty days after the qualification of the trustee, whichever is later, but the court may for cause shown extend or reduce the time. Any such contract or lease not assumed or rejected within that time shall be deemed to be rejected. If a trustee is not appointed, any such contract or lease shall be deemed to be rejected within thirty days after the date of the order directing that a trustee be not appointed. A trustee shall file, within sixty days after adjudication or within thirty days after he has qualified, whichever is later, unless the court for cause shown extends or reduces the time, a statement under oath showing which, if any, of the contracts of the bankrupt are executory in whole or in part, including unexpired leases of real property, and which, if any, have been rejected by the trustee. Unless a lease of real property expressly otherwise provides, a rejection of the lease or of any covenant therein by the trustee of the lessor does not deprive the lessee of his estate. A general covenant or condition in a lease that it shall not be assigned shall not be construed to prevent the trustee from assuming the same at his election and subsequently assigning the same; but an express covenant that an assignment by operation of law or the bankruptcy of a specified party thereto or of either party shall terminate the lease or give the other party an election to terminate the same is enforceible. A trustee who elects to assume a contract or lease of the bankrupt and who subsequently, with the approval of the court and upon such terms and conditions as the court may fix after hearing upon notice to the other party to the contract or lease, assigns the contract or lease to a third person, is not liable for breaches occurring after the assignment.

(c) The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitations, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee shall have as of the date of bankruptcy the rights and powers of: (1) a creditor who obtained a judgment against the bankrupt upon the date of bankruptcy, whether or not such a creditor exists, (2) a creditor who upon the date of bankruptcy obtained an execution returned unsatisfied against the bankrupt, whether or not such a creditor exists, and (3) a creditor who upon the date of bankruptcy obtained a lien by legal or equitable proceedings upon all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt upon a simple contract could have obtained such a lien, whether or not such a creditor exists. If a transfer is valid in part against creditors whose rights and powers are conferred upon the trustee under this subdivision, it shall be valid to a like extent against the trustee. In cases where repugnancy or inconsistency exists with reference to the rights and powers in this subdivision conferred, the trustee may elect which rights and powers to exercise with reference to a particular party, a particular remedy, or a particular transaction, without prejudice to his right to maintain a different position with reference to a different party, a different remedy, or a different transaction.

(d) After bankruptcy and either before adjudication or before a receiver takes possession of the property of the bankrupt, whichever first occurs—

(1) A transfer of any of the property of the bankrupt, other than real estate, made to a person acting in good faith shall be valid against the trustee if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien upon the property so transferred;

(2) A person indebted to the bankrupt or holding property of the bankrupt may, if acting in good faith, pay such indebtedness or deliver

such property, or any part thereof, to the bankrupt or upon his order, with the same effect as if the bankruptcy were not pending;

(3) A person having actual knowledge of such pending bankruptcy shall be deemed not to act in good faith unless he has reasonable cause to believe that the petition in bankruptcy is not well founded;

(4) The provisions of paragraphs (1) and (2) of this subdivision shall not apply where a receiver or trustee appointed by a United States or State court is in possession of all or the greater portion of the nonexempt property of the bankrupt;

(5) A person asserting the validity of a transfer under this subdivision shall have the burden of proof. Except as otherwise provided in this subdivision and in subdivison (g) of section 44 of this title, no transfer by or in behalf of the bankrupt after the date of bankruptcy shall be valid against the trustee: *Provided, however,* That nothing in this title shall impair the negotiability of currency or negotiable instruments.

(e) (1) A transfer made or suffered or obligation incurred by a debtor adjudged a bankrupt under this title which, under any Federal or State law applicable thereto, is fraudulent as against or voidable for any other reason by any creditor of the debtor, having a claim provable under this title, shall be null and void as against the trustee of such debtor.

(2) All property of the debtor affected by any such transfer shall be and remain a part of his assets and estate, discharged and released from such transfer and shall pass to, and every such transfer or obligation shall be avoided by, the trustee for the benefit of the estate: *Provided, however,* That the court may on due notice order such transfer or obligation to be preserved for the benefit of the estate and in such event the trustee shall succeed to and may enforce the rights of such transferee or obligee. The trustee shall reclaim and recover such property or collect its value from and avoid such transfer or obligation against whoever may hold or have received it, except a person as to whom the transfer or obligation specified in paragraph (1) of this subdivision is valid under applicable Federal or State laws.

(3) For the purpose of such recovery or of the avoidance of such transfer or obligation, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(f) The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value. Whenever a sale of real or personal property of a bankrupt is made by or through an auctioneer employed by the court, receiver, or trustee, the auctioneer must be a duly licensed or authorized auctioneer in the place where the sale is to be conducted.

(g) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(h) Repealed. July 7, 1952, ch. 579, § 23 (g), 66 Stat. 430.

(i) Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the arrangement or plan, the title to the property dealt with shall revest in the bankrupt or debtor, or vest in such other person as may be provided by the arrangement or plan or in the order confirming the arrangement or plan. (July 1, 1898, ch. 541, § 70, 30 Stat. 565; Feb. 5, 1903, ch. 487, § 16, 32 Stat. 800; May 27, 1926, ch. 406, § 16, 44 Stat. 667; June 22, 1938, ch. 575, § 1, 52 Stat. 879; Mar. 18, 1950, ch. 70, § 2, 64 Stat. 23; July 7, 1952, ch. 579, § 23, 66 Stat. 429; Sept. 25, 1962, Pub. L. 87–681, §§ 9, 10, 76 Stat. 571, 572; July 5, 1966, Pub. L. 89–495, § 5, 80 Stat. 269.)

AMENDMENTS

1966—Subd. (c). Pub. L. 89–495 inserted clauses (1) and (2) granting the trustee as of the date of bankruptcy the rights and powers of a creditor who obtained a judgment against the bankrupt upon the date of bankruptcy, whether or not such a creditor exists, and of a creditor who upon the date of bankruptcy obtained an execution returned unsatisfied, against the bankrupt, whether or not such a creditor exists, designated existing provisions as clause (3), inserting therein language respecting status of a creditor of the bankrupt upon a simple contract, recognized certain transfers, valid against creditors, as valid against trustees, and authorized the trustee to take repugnant or inconsistent positions in exercising rights and powers with reference to particular parties, particular remedies, or particular transactions.

1962—Subd. (b). Pub. L. 87–681, § 9, authorized the trustee to assume or reject an executory contract within thirty days after the qualification of the trustee when it is later than sixty days after the adjudication, eliminated from the provision deeming an executory contract or lease not assumed or rejected as rejected the clause "whether or not a trustee has been appointed or has qualified", inserted provision deeming an executory contract or lease to be rejected within thirty days after date of order directing a trustee not to be appointed and authorized the trustee to file a statement under oath concerning executory and rejected contracts within thirty days after the qualification of the trustee when it is later than sixty days after the adjudication.

Subd. (f). Pub. L. 87–681, § 10, substituted the requirement that the auctioneer be a duly licensed or authorized auctioneer in the place where the sale is to be conducted for former provision that the auctioneer, if an individual or a partnership, be a bona fide resident and citizen of the judicial district in which the property to be sold is situated, or, if a corporation, be lawfully domesticated and authorized to transact such business in the State in which the judicial district is located.

1952—Subd. (a). Act July 7, 1952, § 23 (a)—(d), made it clear that a trustee in bankruptcy is vested with the title of the bankrupt in property which is located without, as well as within, the United States.

Subd. (c). Act July 7, 1952, § 23 (e), clarified the fact that a trustee has the rights of a lien creditor upon property in which the bankrupt has an interest or as to which the bankrupt may be the ostensible owner.

Subd. (e) (2). Act July 7, 1952, § 23 (f), provided that a transfer or obligation which is void or voidable against the trustee may be preserved for the benefit of the estate.

Subd. (h) repealed by act July 7, 1952, § 23 (g).

1950—Subd. (c). Act Mar. 18, 1950, placed the trustee in bankruptcy in the position of a lien creditor with respect to all of the bankrupt's property.

1938—Subd. (a) amended by act June 22, 1938. Clauses (7) and (8) added. Clauses (2), (3), (5), and (6) amended. Clauses (1) and (4) reenacted without change.

Subds. (b)—(d) added by act June 22, 1938.

Subds. (e), (f), (h), and (i), formerly (e), (b), (d), and (f), respectively, amended by act June 22, 1938.

Subd. (g), formerly (c), reenacted without change by act June 22, 1938.

1926—Subd. (a) (2). Act May 27, 1926, added "and in applications for patents, copyrights, and trademarks" and the proviso following such words.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECT OF 1950 AMENDMENT

For effect of act Mar. 18, 1950, see note set out under section 96 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS; SEPARABILITY PROVISIONS OF 1950 AMENDMENT

For repeals and separability provisions of act Mar. 18, 1950, see note set out under section 96 of this title.

CROSS REFERENCES

Ancillary jurisdiction, see section 11 (a) (20) of this title.

Appointment of appraiser, see Form 12, Appendix to this title.

Appointment of trustee, see section 72 of this title.

Auctioneers, accountants, and appraisers, see Gen. Ord. 45, Appendix to this title.

Compensation of trustee, see sections 76 and 112 of this title, and Gen. Ord. 35, Appendix to this title.

Date of bankruptcy defined, see section 1 (13) of this title.

Debts dischargeable in bankruptcy, see section 35 of this title.

Duties of trustee generally, see section 75 of this title and Gen. Ord. 17, Appendix to this title.

Execution of transfers of property in foreign countries, see section 25 (a) (5) of this title.

Exempt property, see section 24 of this title.

Jurisdiction and powers of court generally, see section 11 of this title.

Liens and fraudulent transfers, see section 107 of this title.

Notice of proposed sales of property, see section 94 (a) (4) of this title.

Preferred creditors, see section 96 of this title.

Qualifications of trustees, see section 73 of this title.

Redemption of property and compounding of claims, see Gen. Ord. 28, Appendix to this title.

Sale of property, see Gen. Ord 18, Appendix to this title.

Schedule B-1 statement of all property of bankrupt, see Form 1, Appendix to this title.

Statement of affairs of bankrupt, see Forms 2 and 3, Appendix to this title.

Suits by and against bankrupts, see section 29 of this title.

Title of trustee—

Corporate reorganization, see section 586 of this title.

Real property arrangement, see section 841 of this title.

Voidable preferences, see section 96 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 46, 107, 502 of this title.

§ 111. Clerks' indexes; certificates of search; dockets.

The clerks of the several district courts of the United States shall prepare and keep in their respective offices until no longer needed in conducting current business complete and convenient indexes of all proceedings and discharges under this title heretofore or hereafter filed in the said courts and shall, when requested so to do, issue certificates of search certifying as to whether or not any such proceedings or discharges have been filed. The clerks shall be entitled to receive for such certificates the same fees as may be allowed by law for certificates as to judgments in such courts. Such indexes and dockets shall at all times be open to inspection and examination by all persons without any fee or charge therefor. (July 1, 1898, ch. 541, § 71, as added Feb. 5, 1903, ch. 487, § 17, 32 Stat. 800, and amended June 22, 1938, ch. 575, § 1, 52 Stat. 882; Oct. 25, 1951, ch. 562, § 2 (3), 65 Stat. 639.)

AMENDMENTS

1951—Act Oct. 25, 1951, inserted "until no longer needed in conducting current business".

1938—Act June 22, 1938, amended section generally and, among other changes, substituted "under this title heretofore or hereafter filed in said courts" for "in bankruptcy filed prior to July 1, 1898, or thereafter filed in said courts" in the last sentence thereof and "to receive for such certificates the same fees as may be allowed by law for certificates as to judgments in such courts" for "to charge and collect for such certificates the same fees as allowed by law on February 5, 1903, for certificates as to judgments in said courts" after "shall be entitled" in the second sentence thereof.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

District court fees generally, see section 1914 of Title 28, Judiciary and Judicial Procedure.

Duties of clerks generally, see section 79 of this title.

Fees for copies furnished by clerk, see Gen. Ord. 35, Appendix to this title.

Management and disposition of records, see chapters 29 and 31 of Title 44, Public Printing and Documents.

§ 112. Limitation of compensation of officers of court.

No receiver, marshal, or trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services as required by this title, than that expressly authorized and prescribed in this title.

No referee shall receive any compensation for his services under this title other than his salary; and allowances made to a referee for compensation or expense while acting as a conciliation commissioner under section 203 of this title, or as a referee or special master under any chapter or section of this title, shall be paid to the clerk, and by him transmitted to the Treasury of the United States for deposit in the referees' salary and expense fund. (July 1, 1898, ch. 541, § 72, as added Feb. 5, 1903, ch. 487, § 18, 32 Stat. 800, and amended June 25, 1910, ch. 412, § 13, 36 Stat. 842; June 22, 1938, ch. 575, § 1, 52 Stat. 883; June 28, 1946, ch. 512, § 13, 60 Stat. 330; July 28, 1959, Pub. L. 86-110, § 4, 73 Stat. 260.)

AMENDMENTS

1959—Pub. L. 86-110 substituted "referees' salary and expense fund" for "referees' salary fund and referees' expense fund, respectively" in second par.

1946—Act June 28, 1946, added second paragraph which reiterates that salaries of referees shall be full compensation and that any other compensation or expenses allowances received while acting as a conciliation commissioner, referee, or special master shall be covered into the Treasury.

1938—Act June 22, 1938, substituted "No" for "Neither the" at the beginning of the sentence and added "as required by this title" following "his services" in the first paragraph thereof.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–110 effective on the first day of the first fiscal year following July 28, 1959, see section 8 of Pub. L. 86–110, set out as a note under section 68 of this title.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Compensation of—

Referees generally, see section 68 of this title.

Trustees, receivers, and marshals, see section 76 of this title.

Rules of courts fixing compensation, see Gen. Ords. 10 and 35, Appendix to this title.

Chapter 8.—PROVISIONS FOR THE RELIEF OF DEBTORS

Sec.
201. Additional jurisdiction.
202. Compositions and extensions.
202a Personal representatives.
203, 203a. Omitted.
204. Repealed.
205. Reorganization of railroads engaged in interstate commerce.
(a) Petition for reorganization by railroad, subsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property.
(b) Plan of reorganization, contents; "securities", "stockholders", "creditors", "claims" defined; suspension of statutes of limitation.
(c) Proceedings after approval of petition; orders of State regulatory bodies.
(d) Time for filing plan of reorganization; hearings by Commission; certification of approval to court.
(e) Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property.
(f) Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities.
(g) Dismissal of proceedings because of undue delay in reorganization.
(h) Revenue acts inapplicable to issuance, etc., of securities.
(i) Transfer of title between receivers and trustees or to debtor; "Federal court" defined.
(j) Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected.
(k) Certified copy of order confirming plan or directing conveyance of property as evidence.
(l) Jurisdiction of court, duties of debtor and rights of creditors same as in voluntary bankruptcy.
(m) "Railroad corporation" and "person" defined.
(n) Claims of employees for personal injuries and claims of sureties as preferred claims; change in wages or working conditions regulated; moving shops, etc., regulated.
Sec.
205. Reorganization of railroads engaged in interstate commerce.—Continued
(o) Abandonment or sale of lines or property.
(p) Solicitation of proxies or authorizations.
(q) Application of law granting powers to Commission.
(r) Separability clause.
(s) Pending proceedings as governed by amendment of section.
205a. Same; removal to district court.
206. Additional jurisdiction.
207. Corporate reorganization.
208. Petition subsequent to certification of reorganization plan.
(a) Duty of Commission to report changes, development, etc., to court; remand of plan to Commission; procedure of subsequent proceedings; referral of petition.
(b) Supplemental report and order of Commission; certification of modified plan; transcript of proceeding denying modification; review by court.

§ 201. Additional jurisdiction.

CODIFICATION

This section, act July 1, 1898, ch. 541, § 73, as added by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1467, and sections 30, 31, 202, 206, 207 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title. by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVINGS CLAUSE

Continuance of this section in force with respect to certain proceedings, see sections 799, 926, and 1086 of this title.

§ 202. Compositions and extensions.

CODIFICATION

This section, act July 1, 1898, ch. 541, § 74, as added by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1467, and amended by acts June 7, 1934, ch. 424, § 2, 48 Stat. 922; May 15, 1935, ch. 114, § 2, 49 Stat. 246, and sections 30, 31, 201, 206, 207 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

DISTRIBUTION

Subject matter of the various subdivisions comprising this section were distributed by act June 22, 1938, as follows:

Section 202, subdivisions:	Present sections
a	707, 722—725, 753, 806, 822—826, 858, 1006, and 1023—1025
b	732, 733, 737, 743, 837 (1), and 845
c	734, 735, 834, 835, and 1032
d	713, 736, 738, 813, 836, and 1033
e	737, 761, 762, 837, 866, 868, and 1052
f	737 (3), 837 (3), and 1033
g	766, 867, 872, 1051, 1056 (a), and 1056 (b)
h	756, 757, 861, 1037, and 1046
i	767, 873, and 1057
j	755, 767, 768, 872, 1058, and 1059
k	786, 911, and 1071
l	727, 776, 777, 779, 827, 881, 882, and 884
m	711, 712, 716, 741, 752, 811, 812, 816, 843, 857, 883, 906, 907, 1011, 1012, 1016, 1036, and 1041
n	714, 814, and 1014
o	731, 831, and 1031
p	779 and 884

SAVINGS CLAUSE

Continuance of this section in force with respect to certain proceedings, see sections 799, 926, and 1086 of this title.

§ 202a. Personal representatives.

Section 202 of this title shall include the personal representative of a deceased individual for the purpose of effecting settlement or composition with the creditors of the estate: *Provided, however,* That such personal representative shall first obtain the consent and authority of the court which has assumed jurisdiction of said estate to invoke the relief provided by this title. (June 7, 1934, ch. 424, § 2, 48 Stat. 922.)

REFERENCES IN TEXT

Section 202 of this title, referred to in the text, was amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, the Chandler Act. See distribution table under section 202.

CODIFICATION

This section was not enacted as a part of the Bankruptcy Act which comprises this title.

§§ 203, 203a. Omitted.

CODIFICATION

Section 203, act July 1, 1898, ch. 541, § 75, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1470, and amended June 7, 1934, ch. 424, §§ 8, 9, 48 Stat. 925; June 28, 1934, ch. 869, 48 Stat. 1289; May 15, 1935, ch. 114, § 3, 49 Stat. 246; Aug. 28, 1935, ch. 792, §§ 1–6, 49 Stat. 942–945; Mar. 4, 1938, ch. 41, §§ 1, 2, 52 Stat. 84, 85; June 22, 1938, ch. 575, § 2 (b), 52 Stat. 939; Mar. 4, 1940, ch. 39, §§ 1, 2, 54 Stat. 40; Mar. 11, 1944; ch. 87, 53 Stat. 113; June 3, 1946, ch. 280, 60 Stat. 230; Apr. 21, 1948, ch. 225, 62 Stat. 198, related to agricultural compositions and extensions, and is omitted since the time for filing a petition under this section expired Mar. 1, 1949.

Section 203a, act June 7, 1934, ch. 424, § 6, 48 Stat. 924, granted franking privileges to conciliation commissioners appointed under section 203 of this title.

§ 204. Repealed. June 22, 1938, ch. 575, § 4, 52 Stat. 940.

Section, act July 1, 1898, ch. 541, § 76, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1474, and amended June 7, 1934, ch. 424, § 10, 48 Stat. 925, extended the extension provisions of section 203 to persons secondarily liable for debt.

Effective date and construction of repealing act, see note under section 1 of this title.

§ 205. Reorganization of railroads engaged in interstate commerce.

(a) Petition for reorganization by railroad, subsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property.

Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commission (hereinafter called the "Commission"). When any railroad, although engaged in interstate commerce, lies wholly within one State, the proceedings shall be brought in the United States district court for the district in which its principal operating office has been located during the preceding six months or the greater portion thereof. The petition shall be accompanied by payment to the clerk of a filing fee of $150. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which the order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a court of the United States would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. Process of the court shall extend to and be valid when served in any judicial district. The Supreme Court of the United States shall promulgate rules relating to the service of process outside of the district in which the proceeding is pending, and any other rules which it may deem advisable in order to aid district courts and courts of appeal in exercising the jurisdiction herein conferred upon them. The railroad corporation shall be referred to in the proceedings as a "debtor". Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which the other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of the other debtor; and upon the filing of the petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it if not so satisfied, and thereupon the court, if it approves the petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders, as the court has with respect to the other debtor. Creditors of any railroad corporation, having claims aggregating not less than 5 per centum of all the indebtedness of the corporation as shown in the latest annual report which it has filed with the Commission at the time when the petition is filed, may, if the corporation has not filed a petition under this section, file with the court in which the corporation might file a petition under this section, a petition stating that the corporation is insolvent or unable to meet its debts as they mature and that the creditors have claims aggregating not less than 5 per centum of all such indebtedness of the corporation and propose that it shall effect a reorganization; copies of the petition shall be filed at the same time with the Commission and served upon the corporation. The corporation shall, within ten days after such service, answer the petition. If the answer admits the jurisdiction of the court and the material allegations of the petition, the judge shall enter an order approving the petition as properly filed if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if not so satisfied. If the answer denies either the jurisdiction of the court or any material allegation of the petition, the judge shall summarily determine the issues presented by

the pleadings without the intervention of a jury, and if he finds that the material allegations are sustained by the proofs and that the petition complies with this section and has been filed in good faith, the judge shall enter an order approving the petition; otherwise, he shall dismiss the petition. If such a petition is so approved, the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section. If a petition is dismissed, neither the petition nor the answer of a debtor constitute an act of bankruptcy or an admission of insolvency or of inability to meet maturing obligations or be admissible in evidence, without the debtor's consent, in any proceedings then or thereafter pending or commenced under this title or in any State or United States court. If, in any case in which the issues have not already been tried under the provisions of this subdivision, any of the creditors, prior to the hearing provided for in paragraph (1) of subsection (c) of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and, unless the material allegations of the petition are sustained by the proofs, shall dismiss the petition.

(b) Plan of reorganization, contents; "securities," "stockholders," "creditors," "claims" defined; suspension of statutes of limitation.

A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

The adoption of an executory contract or unexpired lease by the trustee or trustees of a debtor shall not preclude a rejection of such contract or lease in a plan of reorganization approved hereunder, and any claim resulting from such rejection shall not have priority over any other claims against the debtor because such contract or lease had been previously adopted. The term "securities" shall include evidences of indebtedness either secured or unsecured, bonds, stock, certificates of beneficial interest therein, certificates of beneficial interest in property, options, and warrants to receive, or to subscribe for, securities. The term "stockholders" shall include the holders of voting-trust certificates. The term "creditors"shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this title, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character. For all purposes of this section unsecured claims, which would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the day of the approval of the petition, shall be entitled to such priority and the holders of such claims shall be treated as a separate class or classes of creditors. In case an executory contract or unexpired lease of property shall be rejected, or shall not have been adopted by a trustee appointed under this section, or shall have been rejected by a receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, or shall be rejected by any plan, any person injured by such nonadoption or rejection shall for all purposes of this section be deemed to be a creditor of the debtor to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings. The provisions of section 96 of this title shall apply to a proceeding under this section. For all purposes of this section any creditor or stockholder may act in person or by an attorney at law or by a duly authorized agent or committee subject to the provisions of subdivision (p) of this section. The running of all statutes of limitation shall be suspended during the pendency of a proceeding under this section.

(c) Proceedings after approval of petition; orders of State regulatory bodies.

After approving the petition:

(1) The judge shall forthwith (and in pending proceedings immediately upon August 27, 1935) require the debtor to give such notice as the order may direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such period and in such newspapers as the judge may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof the judge shall appoint one or more trustees of the debtor's property. Such appointments shall become effective upon ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. Where a trustee is appointed who within one year prior thereto has been an officer, director, or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith, the judge, subject to ratification by the Commission as herein provided, shall appoint another trustee or trustees who shall not have had any such affiliations: *Provided,* That the appointment of such additional trustee or trustees shall not be required for a debtor the annual operating revenues of which were less than $1,000,000 for the previous calendar year.

(2) The judge shall fix the amount of the bond of every trustee. He may thereafter terminate any such appointments on cause shown, and may in that event and in the event of a vacancy from any other cause, in the manner and within the qualifications herein provided for the appointment of trustees, appoint a substitute trustee or trustees, and in the same manner and within the same qualifications may appoint an additional trustee, and shall fix the amount of the bond of every such substitute or additional trustee or trustees. The judge shall in his discretion confirm the appointment of such legal counsel for the trustees as they shall select, with power of removal. The trustee or trustees and their counsel shall receive only such compensation from the estate of the debtor as the judge may from time to time allow within such maximum limits as may be approved by the Commission as reasonable. The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by the Interstate Commerce Act as now or hereafter amended, the power to operate the business of the debtor. In operating the business of the debtor with respect to safety, location of tracks, and terminal facilities, the trustee or trustees shall be subject to lawful orders of State regulatory bodies of statewide jurisdiction to the same extent as would the debtor if a petition respecting it had not been filed under subsection (a) of this section except that (A) any such order which would require the expenditure, or the incurring of an obligation for the expenditure, of money from the debtor's estate shall not become effective (a) unless the trustee or trustees, with the approval of the court, shall consent thereto, or (b) unless the Commission, upon appropriate application or applications by an interested party or interested parties, shall find that compliance with the order will not impair the ability of the trustee or trustees to perform his or their duties to the public, will not constitute an undue burden upon interstate commerce, will be compatible with the public interest, and will not interfere with the formulation and approval of a satisfactory plan of reorganization for the debtor, and (B) compliance shall be made with any applicable provision of the Interstate Commerce Act. Prior to the appointment of a trustee, the debtor on behalf of the court shall continue in the possession of the property and shall operate the business thereof during such period, and shall have all the title to the property and shall exercise all power consistent with the provisions of this section, subject at all times to the control of the judge, and to such limitations, restrictions, terms, and conditions as he may from time to time impose and prescribe.

(3) The judge may, upon not less than fifteen days' notice published in such manner and in such newspapers as the judge may in his discretion determine, which notice so determined shall be sufficient, for cause shown, and with the approval of the Commission, in accordance with section 20a of Title 49, as now or hereafter amended, authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, or receivership charges, as might in an equity receivership be lawful. Where such certificates are authorized to provide funds to pay for the acquisition, assembly or installation of safety equipment or materials related thereto, or for the purpose of reimbursing the trustee or trustees for funds so expended, the judge may direct (without limitation of his power to make such direction in the absence of this provision) that the certificates shall have such lien on the property of the debtor and shall be entitled to such priority in payments over existing obligations, secured or unsecured, and receivership charges and present or future duties, debts or taxes or other obligations in favor of or payable to any State or any subdivision, agency or instrumentality thereof and interest or penalties, and to such parity with all or any portion of the other costs or expenses of administration or operation as in the particular case the judge may find equitable at the time of authorizing the issuance of such certificates, regardless of whether such obligations, charges, costs or expenses, duties, debts, or

taxes constitute or are secured by liens on real or personal property or shall have become payable before or after the issuance of such certificates.

(4) The judge shall require the officers of the debtor or the trustee or trustees, at such time or times as the judge may direct, and in lieu of the schedules required by section 25 of this title, to file with the court such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan; and shall direct the officers of the debtor, or the trustee or trustees, within such time as the judge shall set, to prepare and file with the court a list of all known bondholders and creditors of the debtor, and the amounts and character of their debts, claims, and securities, and the last known post-office address or place of business of each bondholder and creditor, and a list of all known stockholders of the debtor, with the last known post-office address or place of business of each, which lists the judge may require to be brought down to date at any time. The contents of such lists shall not constitute admissions by the debtor or the trustees in a proceeding under this section or otherwise.

(5) It shall be the duty of anyone having information as to the names and addresses of the holders of any securities of the debtor to divulge such information to the trustee or trustees, upon written request therefor and, upon petition by any party in interest, and after hearing, the judge may order the production of any such information by anyone having and refusing to divulge it to any trustee, upon written request therefor. The judge may direct that the cost of preparing such information shall be borne by the debtor's estate.

(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor, until abandonment of such line is authorized in accordance with the provisions of section 1 of Title 49, or until such operation pursuant to this paragraph is otherwise lawfully terminated. During any such operation, the lessor shall be deemed to be a carrier subject to all applicable provisions of the Interstate Commerce Act, as amended, and shall be entitled to receive just, reasonable, and equitable divisions of rates, fares, or charges applicable to the transportation of persons or property over its line or lines of railroad and the lines of the lessee or other carriers, and the provisions of section 15 (6) of Title 49, as now or hereafter amended, shall apply to said divisions whether or not joint rates covering such transportation have been established.

(7) The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, the manner in which such claims may be filed or evidenced and allowed, and for the purposes of the plan and its acceptance, after notice and hearing, the division of creditors and stockholders into classes according to the nature of their respective claims and interests. Such division shall not provide for separate classification unless there be substantial differences in priorities, claims, or interests. The trustee or trustees under any mortgage, deed of trust, or indenture outstanding against the property may, within the time prescribed, file a verified claim in behalf of all bonds or securities outstanding under such mortgage, deed of trust, or indenture, in which event it shall be unnecessary for the holders of such bonds or securities to file claims in their own behalf, but nothing herein shall constitute such trustee or trustees the representative or representatives of such holders for the purpose of accepting or rejecting any plan of reorganization.

(8) The judge shall cause reasonable notice of the period in which claims may be filed, of hearings on application for the dismissal of the proceedings, or for the final allowance of fees or expenses to be given creditors and stockholders by publication or otherwise.

(9) The judge shall direct the trustee or trustees, and may request the Commission through such of its agencies as it may designate, to report to him any facts pertaining to irregularities, fraud, misconduct, or mismanagement, as a consequence of which the debtor may have a cause of action arising therefrom against any person or corporation.

(10) The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate.

(11) The Commission may direct such of its agencies as it may designate to file in the proceedings before the Commission a report, and additional or supplemental reports at such time or times as the Commission shall designate, of such data with reference to the property, business, earnings, and corporate organization of the debtor and such other facts as the Commission, after hearing if it deems necessary, shall determine to be necessary or helpful information for the purposes of the preparation of reorganization plans,

and for the purpose of aiding in determining the method or formula of allocating earnings permitted by paragraph (10) of this subdivision. Such report or reports shall be prima facie evidence of the facts therein stated in any proceeding under this section. The actual cost of preparing said report or reports shall be certified by the Commission and shall be borne by the debtor's estate.

(12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subdivision and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subdivision.

(13) The judge may on his own motion or at the request of the Commission refer any matters for consideration and report, either generally or upon specified issues, to one of several special masters who shall have been previously designated to act as special masters in any proceedings under this section by order of any court of appeals and may allow such master a reasonable compensation for his services and actual and reasonable expenses. The court of appeals of each circuit shall designate three or more members of the bar as such special masters whom they deem qualified for such services, and shall from time to time revise such designations by changing the persons designated or their number, as the public interest may require: *Provided, however,* That there shall always be three of such special masters qualified for appointment in each circuit who shall hear any matter referred to them under this section by a judge of any district court. The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene. The judge may, after hearing, make reasonable rules defining the matters upon which notice shall be given to other than interveners and the manner of giving such notice.

(d) Time for filing plan of reorganization; hearings by Commission; certification of approval to court.

The debtor, after a petition is filed as provided in subdivision (a) of this section, shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed, or if heretofore approved, then within six months of August 27, 1935, and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months. Such plan shall also be filed with the Commission at the same time. Such plans may likewise be filed at any time before, or with the consent of the Commission during, the hearings hereinafter provided for, by the trustee or trustees, or by or on behalf of the creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission by any party in interest. After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subdivisions (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

(e) Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property.

Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable

treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subdivision (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in paragraph (12) of subdivision (c) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is given power to approve the same.

If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. If the proceedings are referred back to the Commission, it shall proceed to a reconsideration of the proceedings under the provisions of subdivision (d) of this section. If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subdivision (c) of this section, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided,* That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, or that at the time of the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: *Provided further,* That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests. For the purpose of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States, or any officer or agency he may designate, is authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission.

Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subdivision holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subdivision holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided,* That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1)—(3) of the first paragraph of this subdivision: *Provided further,* That if, in any reorganization proceeding under this section, the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against, the debtor, as creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance, certified to the court, of a lesser amount by the President of the United States or the officer or agency designated by him pursuant to the provisions of the preceding paragraph hereof: *Provided further,*

That if the President of the United States or such officer or agency shall fail to accept or reject such lesser amount for more than ninety days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed. If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts.

(f) Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities.

Upon confirmation by the judge, the provisions of the plan and of the order of confirmation shall, subject to the right of judicial review, be binding upon the debtor, all stockholders thereof, including those who have not, as well as those who have, accepted it, and all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it. Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. The property dealt with by the plan, when transferred and conveyed to the debtor or to the other corporation or corporations provided for by the plan, or when retained by the debtor pursuant to the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, and the debtor shall be discharged from its debts and liabilities, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the judge may require the trustee or trustees appointed hereunder, the debtor, any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may require the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, and making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Upon confirmation of a plan the Commission shall, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of the Interstate Commerce Act as now or hereafter amended. The provisions of sections 77a to 77aa of Title 15 shall not apply to the issuance, sale, or exchange of any of the following securities, which securities and transactions therein shall, for the purposes of said sections, be treated as if they were specifically mentioned in sections 77c and 77d of Title 15, respectively: (1) All securities issued pursuant to any plan of reorganization confirmed by the judge in accordance with the provisions of this section; (2) all securities issued pursuant to such plan for the purpose of raising money for working capital and other purposes of such plan; (3) all securities issued by the debtor or by the trustee or trustees pursuant to clause (3) of subdivision (c) of this section; (4) all certificates of deposit representing securities of, or claims against, the debtor, with the exception of such certificates of deposit as are issued by committees not subject to subdivision (p) of this section. The provisions of subsection (a) of section 78n of Title 15 shall not be applicable with respect to any action or matter which is within the provisions of subdivision (p) of this section.

(g) Dismissal of proceedings because of undue delay in reorganization.

If in the light of all the existing circumstances there is undue delay in a reasonably expeditious reorganization of the debtor, the judge, in his discretion, shall, on motion of any party in interest or on his own motion, after hearing and after consideration of the recommendation of the Commission, dismiss the proceedings. Upon the filing of such an order of dismissal, all right, title, or interest of the trustee or trustees shall vest by operation of law in the debtor unless otherwise provided by such order.

(h) Revenue acts inapplicable to issuance, etc., of securities.

The provisions of subdivisions (1)—(3) of schedule A of title VIII of the Revenue Act of 1926, as amended by sections 721, 722, and 723 of the Revenue Act of 1932, and the provisions of subdivisions (8) and (9) of the same schedule A, as added by sections 724 and 725 of the Revenue Act of 1932, and any amendments thereto unless specifically providing to

the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any plan of reorganization confirmed under the provisions of this section.

(i) Transfer of title between receivers and trustees or to debtor; "Federal court" defined.

If a receiver or trustee of all or any part of the property of a debtor has been appointed by a Federal or State court, whether before or after August 27, 1935, a petition or answer may be filed under this section at any time thereafter by such debtor, or its creditors as provided in subdivision (a) of this section, and if such petition is approved, the trustee or trustees appointed under this section, or the debtor until such trustee or trustees are appointed, shall be entitled forthwith to possession of and be vested with title to such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver or receivers or prior trustee or trustees and for the payment of such reasonable administrative expenses and allowances in the prior proceedings as may be fixed by the court appointing such receiver or trustee. Whether or not a receiver or trustee has been appointed by a Federal or State court prior or subsequent to the institution of a proceeding under this section and upon the dismissal of such proceeding under this section, the judge may include in the order of dismissal appropriate provisions directing the trustee or trustees, or the debtor if no trustee has been appointed, at the time of such order of dismissal, to transfer possession of the debtor's property within the territorial jurisdiction of such Federal or State court to the prior receiver or trustee, if a prior receiver or trustee has been so appointed by such Federal or State court, or to a receiver or trustee appointed by such Federal or State court, upon such terms as the court in the proceeding under this section may deem equitable for the protection of the obligations incurred by any trustee or trustees appointed under this section and for the payment of administrative expenses and allowances in the proceedings hereunder. Upon the filing of such order of dismissal all title to the property in the trust estate shall vest as therein provided. For the purposes of this section the words "Federal court" shall include the district courts of the United States and of the Territories and possessions to which this title is or may hereafter be applicable.

(j) Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected.

In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: *Provided,* That suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated. Proceedings under this section prior to its amendment by Act of August 27, 1935, or under this section as amended by such Act, shall not be grounds for the removal of any cause of action to the United States District Court which was not removable before March 3, 1933 and any order removing any cause of action or enjoining the prosecution of any such cause of action in any court is null and void and any cause of action heretofore removed from a State court on account of this section prior to its amendment by Act of August 27, 1935, shall be remanded to the court from which it was removed. The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section.

(k) Certified copy of order confirming plan or directing conveyance of property as evidence.

A certified copy of the final order confirming a plan of reorganization, or of any other order or decree entered in a proceeding under this section, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order or decree was made. A certified copy of an order directing the transfer and conveyance of the property dealt with by the plan as provided in subdivision (f) of this section, or as specified in an order dismissing the proceedings as provided in subdivision (i) of this section, shall be evidence of the transfer and conveyance of title accordingly, and if recorded shall impart the same notice that a deed, if recorded, would impart.

(*l*) Jurisdiction of court, duties of debtor and rights of creditors same as in voluntary bankruptcy.

In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

(m) "Railroad corporation" and "person" defined.

The term "railroad corporation" as used in this section means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment. Wherever used in this section the term "person" shall include an individual, corporation, partnership, association, joint-stock company, unincorporated organization, or a government or political subdivision thereof.

(n) Claims of employees for personal injuries and claims of sureties as preferred claims; change in wages or working conditions regulated; moving shops, etc., regulated.

In proceedings under this section, and in equity receiverships of railroad corporations now or hereafter pending in any court of the United States, claims for personal injuries to employees of a railroad corporation, claims of personal representatives of deceased employees of a railroad corporation, arising under State or Federal laws, and claims now or hereafter payable by sureties upon supersedeas, appeal, attachment, or garnishment bonds, executed by sureties without security, for and in any action brought against such railroad corporation or trustees appointed pursuant to this section, shall be preferred and paid out of the assets of such railroad corporation as operating expenses of such railroad. No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in the Railway Labor Act, as amended June 21, 1934, or as it may be hereafter amended. No reorganization effected under this title and no order of the court or Commission in connection therewith shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1929, against such carrier or against one of its predecessors in title, requiring the maintenance of offices, shops, and roundhouses at any place, where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title.

(*o*) Abandonment or sale of lines or property.

The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by the Interstate Commerce Act, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subdivision at public or private sale and subject to or free from liens. The proceeds derived from any such sales shall be received by the trustee or trustees subject, in case the property was sold free from lien, to any liens thereon at the time of sale, and shall be applied or disposed of in such manner as the judge by further order shall direct. The expense of such sale shall be borne in such manner as the judge may determine to be equitable. The judge may order the trustee or trustees of the debtor to deposit such proceeds with any mortgage trustee entitled thereto, to be applied in payment of all or part of such mortgage.

(p) Solicitation of proxies or authorizations.

It shall be unlawful for any person, during the pendency of proceedings under this section or of receivership proceedings against a railroad corporation in any State or Federal court, (a) to solicit, or permit the use of his name to solicit, from any creditor or shareholder of any railroad corporation by or against whom such proceedings have been instituted, any proxy or authorization to represent any such creditor or shareholder in such proceedings or in any matters relating to such proceedings, or to vote on his behalf for or against, or to consent to or reject, any plan of reorganization proposed in connection with such proceedings; or (b) to use, employ, or act under or pursuant to any such proxy or authorization from any such creditor or shareholder which has been solicited or obtained prior to the institution of such proceedings; or (c) to solicit the deposit by any such creditor, or shareholder, of his claim against or interest in such railroad corporation, or any instrument evidencing the same, under any agreement authorizing anyone other than such depositor to represent such depositor in such proceedings or in any matters relating to such proceedings, including any matters relating to the deposited security or claim; or to vote such claim or interest or to consent to or reject any such plan of reorganization; or (d) to use, employ, or act under or pursuant to any such agreement with such depositor which has been solicited or obtained prior to the institution of such proceedings; unless and until, upon proper application by any person proposing to make such solicitation or to use, employ, or act under or pursuant to such proxies, authorizations, or deposit agreements, and after consideration of the terms and conditions (including provisions governing the compensation and expenses to be received by the applicant, its agents and attorneys, for their services) upon which it is proposed to make such solicitation or to use, employ, or act under or pursuant to such proxies, authorizations, or deposit agreements, the Commission after hearing by order authorizes such solicitation, use, employment, or action: *Provided, however,* That nothing contained in this section shall be applicable to or construed to prohibit any person, when not part of an organized effort, from acting in his own interest, and not for the interest of any other, through a representative or otherwise, or from authorizing a representative to act for him in any of the foregoing matters, or to prohibit groups of not more than twenty-five bona fide holders of securities or claims or groups of mutual institutions from acting together for their own interests and not for others through representatives or otherwise or from authorizing representatives of such groups to act for them in respect to any of the foregoing matters. The Commission shall make such order only if it finds that the terms and conditions upon which such solicitation, use, employment or action is proposed are reasonable,

fair, and in the public interest, and conform to such rules and regulations as the Commission may provide. The Commission shall have the power to make such rules and regulations respecting such solicitation, use, employment, or action and with respect to the terms and the provisions of such proxies, authorizations, and deposit agreements, and with respect to such other matters in connection with the administration of this subdivision as it deems necessary or desirable to promote the public interest, and to insure proper practices in the representation of creditors and stockholders through the use of such proxies, authorizations, or deposit agreements and in the solicitation thereof. It shall be unlawful for any person to solicit any such proxy, authorization, or the deposit of any such claim or interest or to use, employ, or act under or pursuant to any such proxy, authorization, or deposit agreement which has been solicited or obtained prior to the institution of such proceedings in violation of the rules and regulations so prescribed.

Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application shall be made under oath, signed by, or on behalf of, the applicant by a duly authorized agent having knowledge of the matters therein set forth. The Commission may modify any order authorizing such solicitation, use, employment, or action by a supplemental order, but no such modification shall invalidate action previously taken, or rights or obligations which have previously arisen, in conformity with the Commission's prior order or orders authorizing such solicitation, use, employment, or action.

The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subdivision or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath, or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any such facts, conditions, practices, or matters as it may deem necessary or proper to aid in the enforcement of the provisions of this subdivision, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this subdivision relates.

Any person who willfully violates any provision of this subdivision, or any rule or regulation made thereunder the violation of which is made unlawful, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed hereunder or under any rule or regulation authorized hereby, which statement is false or misleading with respect to any material fact, shall be guilty of a misdemeanor, and on conviction in any United States court having jurisdiction, shall be punished by a fine of not less than $1,000 nor more than $10,000 or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

The provisions of this subdivision shall not be applicable to any person or committee which has begun to solicit, obtain, or use proxies, authorizations, or deposit agreements prior to August 27, 1935, in connection with proceedings under this section as in force prior to such date or receivership proceedings against a railroad then pending in any State or Federal court, unless such person or committee makes application to the Commission and receives authority to act as in this subdivision provided, in which event the provisions of this subdivision shall be applicable to such person or committee, but such authorization shall not be upon terms which shall invalidate any action theretofore taken, or any rights or obligations which have theretofore arisen: *Provided,* That with respect to committees which are not subject to this subdivision the judge shall scrutinize and may disregard any limitations or provisions of any deposit agreements, committee, or other authorizations affecting any creditor or stockholder acting under this section and may enforce an accounting thereunder or restrain the exercise of any power which he finds to be unfair or not consistent with public policy, including the collection of unreasonable amounts for compensation and expenses.

(q) Application of law granting powers to Commission.

The provisions of section 12 of Title 49 shall be applicable to enable the Commission to perform its duties under this section and the provisions of such section shall apply to the debtor, any subsidiary or affiliated company, or any other person as herein defined.

(r) Separability clause.

If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of this section, or application of such provision to other persons or circumstances, shall not be affected thereby.

(s) Pending proceedings as governed by amendment of section.

Proceedings pending under this section on August 27, 1935, shall continue under, and be governed by, the provisions of this section as amended by Act of August 27, 1935: *Provided,* That the amendment of this section by Act of August 27, 1935, shall not invalidate any action taken before August 27, 1935, pursuant to this section as it existed prior to such date. (July 1, 1898, ch. 541, § 77, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1474, and amended Aug. 27, 1935, ch. 774, 49 Stat. 911; June 26, 1936, ch. 833, 49 Stat. 1969; Aug. 11, 1939, ch. 689, 53 Stat. 1406; June 25, 1948, ch. 646, § 32 (a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 24, 1951, ch. 543, § 1, 65 Stat. 606; July 11, 1958, Pub. L. 85–515, 72 Stat. 357; Aug. 28, 1958, Pub. L. 85–824, 72 Stat. 984; Sept. 25, 1962, Pub. L. 87–681, § 11, 76 Stat. 572.)

REFERENCES IN TEXT

Interstate Commerce Act, referred to in subds. (c) (2), (6), (f), and (o), is classified to chapters 1, 8, 12, 13, and 19 of Title 49, Transportation.

Railway Labor Act, referred to in subd. (n), is classified to chapter 8 of Title 45, Railroads.

CODIFICATION

References to the United States District Court for the District of Columbia and to the United States Court of Alaska, formerly set out in the definition of "Federal court" in subsec. (i), have been omitted since both such courts now are included within "district courts of the United States" as set out in subsec. (i). See section 132 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1962—Subd. (a) Pub. L. 87-681 increased from $100 to $150 the filing fee to be paid the clerk, eliminated after $100 the clause "which shall be in addition to the fees required to be collected by the clerk under other provisions of this title" and substituted "United States district court", "a court of the United States", "United States court" and "courts of appeal" for "Federal district court", "Federal court", "Federal court" and "circuit courts of appeal", respectively.

1958—Subd. (c) (2). Pub. L. 85-824 inserted provision making trustee operating business of debtor, with respect to safety, location of tracks, and terminal facilities, subject to lawful orders of State regulatory bodies to same extent as would debtor if petition had not been filed.

Subd. (c) (6). Pub. L. 85-515 required lessee to continue operation on or for the account of the lessor until such operation is otherwise terminated, and to provide that during such operation the lessor shall be deemed a carrier and entitled to receive just, reasonable, and equitable divisions of rates, fares, or charges.

1951—Subd. (c) (3). Act Oct. 24, 1951, permitted the financing of safety equipment by a railroad by directing that certificates issued for such purpose may be given priority over existing obligations, receivership charges, and past or future state or local taxes, and also shall be entitled to such parity with costs of administration and operation as the judge finds equitable.

1939—Subd. (n) amended by act Aug. 11, 1939.

1936—Subd. (e) amended by act June 26, 1936.

CHANGE OF NAME

Section 32 (a) of act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Section 32 (b) of act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" in lieu of "Supreme Court of the District of Columbia".

EFFECTIVE DATE OF 1951 AMENDMENT

Section 2 of act Oct. 24, 1951, provided that: "This Act [amendment of subd. (c) (3) of this section] shall take effect immediately upon the date of its approval and shall apply to any authorization given by the judge, regardless of whether such authorization shall have been given before or shall be given after such date. Neither the enactment of this Act [amendment of subd. (c) (3) of this section] nor anything herein contained shall be construed as implying that, prior to the date of approval of this Act [Oct. 24, 1951], the judge was not vested with the power which is expressly granted to him by this Act [amendment of subd. (c) (3) of this section]."

REPEALS

Insofar as subd. (h) of this section related exclusively to Internal Revenue it was repealed and incorporated as section 1808 (e) of Title 26, Internal Revenue Code. Section 1808 (e) was repealed by section 7851 of Title 26, I. R. C. 1954, and is now covered by section 4382 of such Title 26.

CLAIMS OF UNITED STATES

By Executive Order No. 7263, promulgated January 4, 1936, the Secretary of the Treasury was designated and authorized to act in respect of the interest or claims, within the purview of subd. (e) of this section, as amended, of the United States, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6 (a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F. R. 4633, 71 Stat. 647, set out as a note under section 601 of Title 15, Commerce and Trade, abolished the Reconstruction Finance Corporation.

CROSS REFERENCES

Delivery and accounting for property, see section 11 (a) (21) of this title.

Railroads, exception from becoming bankrupts, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 107, 205a, 208, 506 of this title; title 26 sections 108, 302, 354, 371, 373, 374, 4382.

§ 205a. Same; removal to district court.

Proceedings under section 205 of this title shall not be grounds for the removal of any cause of action to the United States district court which was not removable before the passage and approval of said section, and any cause of action removed prior to June 7, 1934, from a State court on account of said section shall be remanded to the court from which it was removed, and such order of removal vacated. (June 7, 1934, ch. 424, § 7, 48 Stat. 924.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Later provisions concerning removal of causes, see subd. (j) of section 205 of this title.

§ 206. Additional jurisdiction.

CODIFICATION

This section, act July 1, 1898, ch. 541, § 77A, as added by act June 7, 1934, ch. 424, § 1, 48 Stat. 912, and sections 30, 31, 201, 202, and 207 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, otherwise known as the Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVINGS CLAUSE

Continuance of this section in force with respect to certain proceedings, see section 676 of this title.

§ 207. Corporate reorganization.

CODIFICATION

This section, act July 1, 1898, ch. 541, § 77B, as added by act June 7, 1934, ch. 424, § 1, 48 Stat. 912, and amended by acts Aug. 20, 1935, ch. 577, 49 Stat. 664; Aug. 29, 1935, ch. 809, 49 Stat. 965; Aug. 12, 1937, ch. 589, § 1, 50 Stat. 622, and sections 30, 31, 201, 202, and 206 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, otherwise known as the Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

DISTRIBUTION

Subject matter of the various subdivisions of this section was distributed by act June 22, 1938, as follows:

Section 207, subdivisions:	Present sections
a	511, 515, 526—532, 536, 537, 542, 543, 544, and 662.
b	506, 507, 602, 609, 612, 616, and 661.
c	516, 517, 556, 559, 560, 561, 562, 563, 564, 571, 586—589, 591, 596, 597, 606, 607, 636, 637, 638, 641—643, 647, and 650.
d	570.
e	577—579, and 599.
f	621—624, and 667.
g	624.
h	626, 627, 628, and 664.
i	644, 645, 646, 657, 658, and 659.

Section 207, subdivisions—Con.	Present sections
k	502, 636, and 638.
l	672.
m	672.
n	663.
o	512, 514, and 600.

SAVINGS CLAUSE

Continuance of this section in force with respect to certain proceedings, see section 676 of this title.

§ 208. Petition subsequent to certification of reorganization plan.

(a) Duty of Commission to report changes, developments, etc., to court; remand of plan to Commission; procedure of subsequent proceedings; referral of petition.

Notwithstanding any other provision of law—

(1) with respect to any plan of reorganization or modified plan of reorganization approved by the Interstate Commerce Commission under the provisions of section 205 of this title, subsequent to April 9, 1948, it shall be the duty of the Commission, upon petition of any party to the proceeding filed at any time more than eighteen months after certification by the Commission to the court of the plan or of an order disposing of a like petition, but before any order confirming the plan shall have been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, to report to the court in which consideration of such plan is then pending, any changes, facts, or developments which have occurred since the approval of such plan by the Commission, which were not provided for in the plan, and which in the opinion of the Commission make it necessary or expedient for the Commission to reexamine or reconsider and, if necessary, to revise such plan in order to insure that such plan, if consummated and put into effect, shall then, in the opinion of the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section and section 205 of this title. Upon the filing of any such report by the Commission with the court, the court shall remand the plan to the Commission for such reexamination, reconsideration, and possible revision;

(2) if, with respect to any plan of reorganization or modified plan of reorganization approved by the Commission subsequent to April 9, 1948, the court before which such plan is then pending, for approval or confirmation, no order of confirmation having been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, upon petition of any party to the proceeding and either with or without a hearing, shall find that changes, facts, or developments have occurred since the approval of such plan by the Commission which were not provided for in the plan and which make it necessary or expedient, in the opinion of the court, that the Commission reexamine and reconsider and revise such plan in order to insure that the plan consummated and put into effect shall then, in the opinion of the court and the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section, and section 205 of this title, the court shall return the plan to the Commission for such reexamination, reconsideration and possible revision;

(3) with respect to any plan of reorganization or modified plan of reorganization which, on April 9, 1948, is before any district court for approval or confirmation, no order of confirmation having been entered, or, such order having been entered, if an appeal from said order is pending in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such an appeal or to file such petition has not expired, it shall be the duty of the Commission, upon petition of any party to the proceeding, to report to such court any changes, facts, or developments which have occurred since December 31, 1939, which were not provided for in the plan and which, in the opinion of the Commission, make it necessary or expedient for the Commission to reexamine or reconsider and, if necessary, to revise such plan in order to insure that if consummated and put into effect, such plan shall then, in the opinion of the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section and section 205 of this title. Upon the filing of any such report by the Commission with the court, the court shall remand the plan to the Commission for such reexamination, reconsideration, and possible revision;

(4) in the event of the return of a plan to the Commission pursuant to the provisions of this subdivision, the proceedings with respect thereto shall be governed by the provisions of subdivision (d) of section 205 of this title;

(5) each petition filed under the provisions of paragraph (1) or (3) of this subdivision shall be filed with the court before which is pending the plan which is the subject of the petition and such petition shall be referred by the court to the Commission. Upon the filing of such petition with the court all further proceedings for confirmation of the plan shall be suspended pending disposition of the petition by the Commission and certification of its action thereon to the court.

(b) Supplemental report and order of Commission; certification of modified plan; transcript of proceeding denying modification; review by court.

As to any plan so returned to the Commission by the court, the Commission, upon further hearing at which all parties may appear and submit evidence as to prospective earning power and other relevant facts, and upon consideration of all changes, facts, and developments which have occurred since the

date of approval of the plan by the Commission (or which have occurred since December 31, 1939, in the case of plans which on April 9, 1948, were pending before, but had not been confirmed by, the court by order which shall have become final), including, without limitation, for such period total railway operating revenues, operating expenses and other charges, net earnings, the full effect of amortization deductions on earnings of past and future years, improvements to property, the effect of released collateral through past or future payments of loans, cash and net current assets, retirements and purchases of debt, including retirements and purchases at a discount that have been made or that can reasonably be made, adjustment and reduction of interest rates on outstanding debt that may be made, shall, in a supplemental report and order, modify, or refuse to modify, any plan which it has approved, stating the reasons for such modification or for its refusal to modify the plan. The Commission, if it modifies the plan, shall certify the modified plan to the court, together with a transcript of the proceeding before it and a copy of its report and order approving the modified plan. Thereafter proceedings upon the plan shall be governed by the provisions of subdivision (e) of section 205 of this title, and of this section. If the Commission refuses to modify the plan, it shall transmit to the court a copy of its report and order, together with a transcript of the proceedings before it. Thereafter, if the court shall find that the refusal of the Commission to modify the plan is based on sufficient findings and is supported by the record, the proceeding upon the plan shall continue as if the plan had not been returned to the Commission; otherwise the court shall return the plan to the Commission for further consideration. Upon such consideration, the Commission shall again certify the plan to the court with such modifications, if any, as it may find necessary, and thereafter further proceedings upon the plan shall be as provided in subdivision (e) of section 205 of this title and in this section. (Apr. 9, 1948, ch. 180, § 3, 62 Stat. 167; June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

This section was not enacted as a part of the Bankruptcy Act which comprises this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

SEPARABILITY CLAUSE

For separability of provisions of act Apr. 9, 1948, see note set out under section 20b of Title 49, Transportation.

Chapter 9.—COMPOSITION OF INDEBTEDNESS OF LOCAL TAXING AGENCIES

Sec.
301 to 303. Unconstitutional.
401. Jurisdiction; saving clause.
402. Definitions.
403. Composition.
(a) Petition; plan of composition; creditors.
(b) Hearing.
(c) Ancillary injunctions; preliminary stay of other proceedings.
(d) Acceptance of plan by creditors.
Sec.
403. Composition—Continued
(e) Fraudulent practices; confirmation of plan; sufficiency of findings; modifications; appeal.
(f) Final decree; validity of securities delivered under plan.
(g) Evidence of proceedings.
(h) Laws affected.
(i) Effect on State powers.
(j) Effect of partial completion or execution of plan.
404. Repealed.

CHAPTER RENUMBERED

This chapter, formerly chapter 10, was renumbered chapter 9 by act June 22, 1938, ch. 575, § 3 (a), 52 Stat. 939, which provided that the Bankruptcy Act of 1898 as amended by act Aug. 16, 1937, ch. 657, 50 Stat. 653, should be "further amended by striking out the heading 'Chapter X' before section 81 of said act [sec. 401 of this title] and inserting in lieu thereof 'Chapter IX'."

§§ 301 to 303. Unconstitutional.

CODIFICATION

Former chapter 9 of this title, sections 301—303, as added by act May 24, 1934, ch. 345, 48 Stat. 798, and amended by acts Apr. 10, 1936, ch. 186, 49 Stat. 1198 and Apr. 11, 1936, ch. 210, 49 Stat. 1203, entitled "Provisions for the Emergency Temporary Aid of Public Debtors," extended the benefits of the Bankruptcy Act to political subdivisions of state. It was declared unconstitutional by the Supreme Court in *Ashton* v. *Cameron County Water Improvement Dist. No. 1*, Tex. 1936, 56 S. Ct. 892, 298 U. S. 513, 80 L. Ed. 1309, 31 Am. Bankr. Rep., N. S., 96.

§ 401. Jurisdiction; saving clause.

This title and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such agencies or instrumentalities from any income-producing property, whether or not secured by a lien upon such property: (1) Drainage, drainage and levee, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts, such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts, such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts, such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities:

or (6) incorporated authorities, commissions, or similar public agencies organized for the purpose of constructing, maintaining, and operating revenue-producing enterprises; or (7) any county or parish or any city, town, village, borough, township, or other municipality: *Provided, however,* That if any provision of this chapter, or the application thereof to any such agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different circumstances, shall not be affected by such holding. (July 1, 1898, ch. 541, § 81, as added Aug. 16, 1937, ch. 657, 50 Stat. 654, and amended June 28, 1940, ch. 438, § 1, 54 Stat. 667; July 1, 1946, ch. 532, § 1, 60 Stat. 409.)

AMENDMENTS

1946—Act July 1, 1946, made section applicable to any type of revenue bond issued by a city, town, county, etc., and to "authorities".

1940—Act June 28, 1940, inserted "any county or parish or" in clause (7), formerly (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403 of this title.

§ 402. Definitions.

The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

The term "petitioner" shall include any agency or instrumentality referred to in section 401 of this title.

The term "security" shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

The term "creditor" means the holder of a security or securities.

Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

The term "security affected by the plan" means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

The singular number includes the plural and the masculine gender the feminine. (July 1, 1898, ch. 541, § 82, as added Aug. 16, 1937, ch. 657, 50 Stat. 654, and amended July 1, 1946, ch. 532, § 1, 60 Stat. 409.)

AMENDMENTS

1946—Act July 1, 1946, struck out "taxing" preceding "agency" in second sentence.

§ 403. Composition.

(a) Petition; plan of composition; creditors.

Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of this title. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) have accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

Whenever the petition seeks to effect a plan for the composition of obligations represented by securities, or evidences in any form of rights to payment, issued by the petitioner to defray the cost of local improvements and which are payable solely out of the proceeds of special assessments or special taxes levied by the petitioner, or issued by the petitioner to finance one or more revenue-producing enterprises payable solely out of the revenues of such enterprise or enterprises, it shall be sufficient if the petitioner aver that the property liable for, or the revenues pledged to the payment of such securities, principal, and interest is not of sufficient value, or that the revenues of the enterprise or enterprises are inadequate to pay same, and that the accrued interest on such securities is past due and in default; and the list of creditors to be filed with such petition need contain only the known claimants of rights based on those securities evidencing the obligations sought to be composed under this chapter, and such list shall include separately the names and addresses of those creditors who have accepted the plan of composition. If the plan of composition sought to be effected requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some of the lands will be different from the proportion in effect at the time the petition is filed, a list of the record owners or holders of title, legal or equitable, to any real estate adversely affected in the proceeding shall also be filed with the petition, and such record owners or holders of title shall be notified in the manner provided in this section for creditors and be entitled to hearing by the court upon reasonable application therefor.

The "plan of composition", within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

(b) Hearing.

Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed, at least sixty days before the date fixed for the hearing.

At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interest: *Provided, however,* That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

At the hearing or a continuance thereof the judge may refer any special issues of fact to a referee in bankruptcy or a special master for consideration, the taking of testimony, and a report upon such special issues of fact, if the judge finds that the condition of his docket is such that he cannot take such testimony without unduly delaying the dispatch of other business pending in his court, and if it appears that such special issues are necessary to the determination of the case. Only under special circumstances shall references be made to a special master who is not a referee in bankruptcy. A general reference of the case to a master shall not be made, but the reference, if any, shall be only in the form of requests for findings of specific facts.

The court may allow reasonable compensation for the services performed by such referee in bankruptcy or special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing: *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States court of appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

Such compensation of referees in bankruptcy and special masters shall not be governed by section 68 of this title.

On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has

not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

(c) Ancillary injunctions; preliminary stay of other proceedings.

Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

Any agency or instrumentality referred to in section 401 of this title may file a petition for a preliminary stay with the court referred to in subdivision (a) of this section stating (a) that the petitioner is insolvent or unable to meet its debts as they mature; (b) that it desires to effect a plan for the composition of its debts, a copy of which is filed and submitted with the petition; (c) that a creditor of the petitioner holding a security affected by the plan or a person claiming to be such a creditor (naming him and giving his address and the name and address of his attorney of record, if any), is attempting or threatening to obtain payment of said security in preference to other creditors by means of the commencement or continuation of a suit or process of the class hereinbefore in this subdivision described; (d) that efforts are being made in good faith to the end that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) shall accept it in writing; (e) that there is a reasonable prospect of such acceptance within a reasonable time; (f) that upon such acceptance the petitioner intends to file a petition under subdivision (a) of this section; and (g) that the petitioner prays that the judge will upon notice enjoin or stay the commencement or continuation of said suit or process. A single petition may seek the preliminary stay of several suits or processes brought or threatened by the same or different creditors or persons claiming to be creditors. The petition shall be accompanied by the filing fee required in subdivision (a) of this section, unless such fee shall have been paid upon the filing of an earlier petition for a preliminary stay involving the same plan, and no further fee shall be required upon the subsequent filing of a petition under subdivision (a) of this section. Upon such petition the judge shall fix a time and place for hearing and direct that notice thereof shall be given in such manner as he shall prescribe to said creditor or person claiming to be a creditor and to any other person deemed by him to be interested. After such hearings, and upon being satisfied of the truth of the allegations of the petition, the judge may, in his discretion, except where rights have become vested, enjoin or stay the commencement and continuation of said suit or process until a date fixed by him in his order not exceeding sixty days from the date of entry thereof. The judge shall retain jurisdiction to vacate said injunction or stay, or to extend the period thereof for one additional period of not exceeding sixty days, upon good cause shown.

(d) Acceptance of plan by creditors.

The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: *Provided, however,* That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

(e) Fraudulent practices; confirmation of plan; sufficiency of findings; modifications; appeal.

Before concluding the hearing, the judge shall carefully examine all of the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if the fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and the creditors thereof, or any of such creditors—either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue—and shall take evidence under oath to make certain whether or not any such practice obtains or might obtain.

After such examination the judge shall make an adjudication of this issue, as a separate part of his interlocutory decree, and if it be found that any such practice exists, he shall forthwith dismiss the proceeding and tax all of the costs against such fiscal

agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, or against the petitioner, unless such plan be modified within the time to be allowed by the judge so as to eliminate the possibility of any such practice, in which event the judge may proceed to further consideration of the confirmation of the plan. If it be found that no such practice exists, then the judge may proceed to further consideration of the confirmation of the plan.

At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if he finds and is satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding. No case shall be reversed or remanded for want of specific or detailed findings unless it is found that the evidence is insufficient to support one or more of the general findings required in this section.

Before a plan is confirmed, changes and modifications may be made therein with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided, however,* That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

(f) Final decree; validity of securities delivered under plan.

If an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it. If securities are deposited by the petitioner with the court or disbursing agent for delivery to the creditors, such final decree shall not be entered unless the court finds and adjudicates that said securities have been lawfully authorized and, upon delivery, will constitute valid obligations of the petitioner, and that the provisions made to pay and secure payment thereof are valid.

(g) Evidence of proceedings.

A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly, and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

(h) Laws affected.

This chapter shall not be construed as to modify or repeal any prior existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided, however,* That the initiation of proceedings or the filing of a petition under section 80 of this Act shall not constitute a bar to the same agency or instrumentality initiating a new proceeding under section 401 of this title.

(i) Effect on State powers.

Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor: *Provided, however,* That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

(j) Effect of partial completion or execution of plan.

The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this title by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred before or after the filing of said

petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition. (July 1, 1898, ch. 541, § 83, as added Aug. 16, 1937, ch. 657, 50 Stat. 655, and amended June 22, 1938, ch. 575, § 3 (b), 52 Stat. 940; Mar. 4, 1940, ch. 41, § 1, 54 Stat. 44; June 28, 1940, ch. 438, §§ 2, 3, 54 Stat. 668, 669; July 1, 1946, ch. 532, § 1, 60 Stat. 409; June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

Section 80 of this Act, referred to in subd. (h), was formerly classified to section 303 of this title but was declared unconstitutional by the Supreme Court in *Ashton* v. *Cameron County Water Improvement Dist. No. 1*, Tex. 1936, 56 S. Ct. 892, 298 U. S. 513, 80 L. Ed. 1309, 31 Am. Bankr. Rep. N. S. 96.

AMENDMENTS

1946—Subd. (a). Act July 1, 1946, added a sentence to second paragraph to clarify the procedure to be followed in filing a list of the record owners and holders of title to lands affected by a plan of composition.

Subd. (b). Act July 1, 1946, provided that only references on special issues of fact, as distinguished from general references, may be made to a referee in bankruptcy or a special master for the taking of testimony and a report on the specific facts.

Subd. (c). Act July 1, 1946, added the last paragraph to permit an agency or instrumentality to file an application for a temporary stay of proceeding against it, prior to the filing of a petition for the composition of its indebtedness.

Subd. (e). Act July 1, 1946, added a new sentence at the end of the third paragraph to provide that no case shall be reversed or remanded for want of specific or detailed findings unless it is ascertained that the evidence is insufficient to support one or more of the general findings required.

Subd. (f). Act July 1, 1946, added last sentence to provide that the court must determine the validity of the new bonds which the final decree will require the creditors to accept, and the validity of the provisions for payment of the new bonds.

Subd. (i). Act July 1, 1946, added proviso that only under Federal law could a creditor be forced to accept a composition without his consent.

1940—Subd. (a). Act Mar. 4, 1940, inserted second paragraph. Section 2 of said act provided that said second paragraph of subd. (a) should be deemed to be additional and cumulative and not in diminution of any of the powers conferred by this title.

Subds. (b) and (e) amended generally by sections 2 and 3, respectively, of act June 28, 1940.

1938—Act June 22, 1938, the Chandler Act, added subd. (j). For effective date, construction, etc., of said act see note under section 1 of this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

CROSS REFERENCES

Interlocutory decisions of district courts appealable to courts of appeals, see section 1292 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 2 provides that there shall be one form of action to be known as "civil action". See Title 28, Appendix, Judiciary and Judicial Procedure.

§ 404. Repealed. July 1, 1946, ch. 532, § 2, 60 Stat. 416.

Section, act July 1, 1898, ch. 541, § 84, as added Aug. 16, 1937, ch. 657, 50 Stat. 659, and amended June 28, 1940, ch. 438, § 4, 54 Stat. 670; June 22, 1942, ch. 434, 56 Stat. 377, provided for termination of jurisdiction of courts under section 401 of this title on June 30, 1946, except in respect of proceedings begun before that date.

Chapter 10.—CORPORATE REORGANIZATIONS

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PRIOR PROVISIONS

Prior provisions on the subject of this chapter were contained in former section 207 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 107, 788 of this title; title 26 section 371.

SUBCHAPTER I.—CONSTRUCTION

§ 501. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 101, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 502. Application of other provisions.

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar, as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That section 46, subdivisions (h) and (n) of section 93, section 104, and subdivision (f) of section 110 of this title, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 528 of this title, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 527 or 528 of this title except where an adjudication had previously been entered. (July 1, 1898, ch. 541, § 102, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Somewhat similar provisions were contained in former section 207 (k) of this title.

SUBCHAPTER II.—DEFINITIONS

§ 506. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against a debtor or its property, except stock, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(2) "commission" shall mean any commission or public authority created by any law of the United States or of any State, having regulatory jurisdiction over a public-utility corporation;

(3) "corporation" shall mean a corporation, as defined in this title, which could be adjudged a bankrupt under this title, and any railroad corporation excepting a railroad corporation authorized to file a petition under section 205 of this title;

(4) "creditor" shall mean the holder of any claim;

(5) "debtor" shall mean a corporation by or against which a petition has been filed under this chapter;

(6) "debts" shall include all claims;

(7) "executory contracts" shall include unexpired leases of real property;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting-trust certificates, constituting claims against a debtor or claims secured by a lien upon any of its property;

(9) "petition" shall mean a petition filed under this chapter by a debtor, creditors, or indenture trustee proposing that a plan of reorganization be effected;

(10) "plan" shall mean a plan of reorganization proposed in a proceeding under this chapter;

(11) "securities" shall include notes, bonds, and other evidences of indebtedness, either secured or unsecured, and stock;

(12) "stock" shall include membership, shares, and similar interests in a debtor, certificates and other evidences of such membership, shares or interests, and voting-trust certificates;

(13) "subsidiary" shall mean a corporation substantially all of whose properties are operated under lease or operating agreement, or the majority of whose stock having power to vote for the election of directors, trustees, or other similar controlling bodies is owned, directly or indirectly, through an intervening corporation or other medium, by another parent corporation, a petition by or against which has been approved.

(July 1, 1898, ch. 541, § 106, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Pars. (1), (4) were from part of former section 207 (b) of this title.

Par. (5) was from part of former section 207 (a) of this title.

Par. (11) was from part of former section 207 (b) of this title.

CROSS REFERENCES

Corporations—

Capability of being adjudged a bankrupt, see section 22 of this title.

Definition of, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4382.

§ 507. Creditors affected by plan; determination.

Creditors or stockholders or any class thereof shall be deemed to be "affected" by a plan only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor or stockholder or class is so affected. (July 1, 1898, ch. 541, § 107, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second sentence of former section 207 (b) of this title.

SUBCHAPTER III.—JURISDICTION AND POWERS OF COURT

§ 511. Exclusive jurisdiction over debtor and property.

Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located. (July 1, 1898, ch. 541, § 111, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Approval of petition as conclusive determination of jurisdiction, see section 549 of this title.

Delivery and accounting for property, see section 11 (a) (21) of this title.

§ 512. Matters prior to approval of petition; jurisdiction, powers and duties.

Prior to the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication. (July 1, 1898, ch. 541, § 112, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (o) of this title.

CROSS REFERENCES

Jurisdiction in ordinary bankruptcy proceedings, see sections 11 and 46 of this title.

§ 513. Same; temporary stay of actions.

Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor. (July 1, 1898, ch. 541, § 113, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Stay of actions upon approval of petition, see sections 516 and 548 of this title.

§ 514. Matters upon approval of petition; jurisdiction, powers, and duties.

Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication. (July 1, 1898, ch. 541, § 114, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (o) of this title.

CROSS REFERENCES

Approval of petition as conclusive determination of jurisdiction, see section 549 of this title.

§ 515. Same; jurisdiction as in insolvency.

Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature. (July 1, 1898, ch. 541, § 115, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

§ 516. Same; additional jurisdiction over administration of estate.

Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties in this chapter conferred and imposed upon him and the court—

(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable;

(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; and

(4) in addition to the relief provided by section 29 of this title, enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or

proceeding to enforce a lien upon the property of the debtor.

(5) notwithstanding any other provisions of this chapter, the title of any owner, whether as trustee or otherwise, to aircraft, aircraft engines, propellers, appliances, and spare parts (as any of such are defined in the Civil Aeronautics Act of 1938, as now in effect or hereafter amended) leased, subleased, or conditionally sold to any air carrier which is operating pursuant to a certificate of convenience and necessity issued by the Civil Aeronautics Board, and any right of such owner or of any other lessor to such air carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide.

(6) Notwithstanding any other provisions of this chapter, the title of any owner, whether as trustee or otherwise, to vessels (as the term is defined in the Ship Mortgage Act, 1920, as now in effect or hereafter amended) leased, subleased, or conditionally sold to any water carrier which holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any right of such owner or of any other lessor to such water carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide.

(July 1, 1898, ch. 541, § 116, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, and amended Sept. 4, 1957, Pub. L. 85–295, 71 Stat. 617; Oct. 17, 1968, Pub. L. 90–586, § 2, 82 Stat. 1149.)

REFERENCES IN TEXT

Civil Aeronautics Act of 1938, referred to in par. (5), was classified to chapter 9 of Title 49, Transportation, and is now covered by chapter 20 of Title 49.

The Ship Mortgage Act, 1920, referred to par. (6), is act June 5, 1920, ch. 250, 41 Stat. 988, which is classified to section 911 et seq. of Title 46, Shipping.

AMENDMENTS

1968—Par. (6). Pub. L. 90–586 added par. (6).

1957—Par. (5). Pub. L. 85–295 added par. (5).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from clause (5) of the first sentence of former section 207 (c) of this title.

Par. (2) was from clause (3) of the first sentence of former section 207 (c) of this title.

Par. (3) was from clause (3½) of the first sentence of former section 207 (c) of this title.

Par. (4) was from clause (10) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Definition of executory contract, see section 506 of this title.

Rejection of executory contract as breach thereof, see section 103 of this title.

Stay of actions—

Approval of petition as stay, see section 548 of this title.

Prior to approval of petition, see section 513 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 664 of this title.

§ 517. Reference to referee or special master; appointment of receiver.

The judge may, at any stage of a proceeding under this chapter, refer the proceeding to a referee in bankruptcy to hear and determine any and all matters not reserved to the judge by the provisions of this chapter, or to a referee as special master, to hear and report generally or upon specified matters. Only under special circumstances shall references be made to a special master who is not a referee. The appointment of a receiver in a proceeding under this chapter shall be by the judge. (July 1, 1898, ch. 541, § 117, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, and amended June 28, 1946, ch. 512, § 14, 60 Stat. 331.)

AMENDMENTS

1946—Act June 28, 1946, provided that only under unusual circumstances should special references be made to anyone other than a referee.

EFFECTIVE DATES; REPEAL; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from clause (11) of the first sentence of former section 207 (c) of this title.

§ 518. Repealed. July 7, 1952, ch. 579, § 24, 66 Stat. 440.

Section, act July 1, 1898, ch. 541, § 118, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, related to transfer of proceedings to another district.

EFFECTIVE DATE OF REPEAL

Repeal of section effective three months after July 7, 1952, see note under section 1 of this title.

§ 519. Extensions of time.

Whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time. (July 1, 1898, ch. 541, § 119, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 520. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter. (July 1, 1898, ch. 541, § 120, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

General provisions concerning notices, see section 607 of this title.

§ 521. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 121, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Allowances, appeal from orders concerning, see section 650 of this title.

Appeals in bankruptcy proceedings, generally, see sections 47 and 48 of this title.

SUBCHAPTER IV.—PETITION

§ 526. Filing petition; persons entitled.

A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter. (July 1, 1898, ch. 541, § 126, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

§ 527. Same; pending bankruptcy proceeding.

A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation. (July 1, 1898, ch. 541, § 127, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Prior proceedings pending, filing petition, see section 656 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 636, 638, and 644 of this title.

§ 528. Same; original petition.

If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction. (July 1, 1898, ch. 541, § 128, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second sentence of former section 207 (a) of this title.

CROSS REFERENCES

Prior proceedings pending, filing petition, see sections 527 and 656 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 529, 636, 637, and 638 of this title.

§ 529. Same; subsidiary corporation.

If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 528 of this title or in the court which has approved the petition by or against its parent corporation. (July 1, 1898, ch. 541, § 129, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

§ 530. Contents.

Every petition shall state—

(1) that the corporation is insolvent or unable to pay its debts as they mature;

(2) the applicable jurisdictional facts requisite under this chapter;

(3) the nature of the business of the corporation;

(4) the assets, liabilities, capital stock, and financial condition of the corporation;

(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter 11 of this title; and

(8) the desire of the petitioner or petitioners that a plan be effected.

(July 1, 1898, ch. 541, § 130, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 531 of this title.

§ 531. Same; additional contents of creditors' or indenture trustee's petition.

A creditors' or indenture trustee's petition shall, in addition to the allegations required by section 530 of this title, state—

(1) that the corporation was adjudged a bankrupt in a pending proceeding in bankruptcy; or

(2) that a receiver or trustee has been appointed for or has taken charge of all or the greater portion of the property of the corporation in a pending equity proceeding; or

(3) that an indenture trustee or a mortgagee under a mortgage is, by reason of a default, in possession of all or the greater portion of the property of the corporation; or

(4) that a proceeding to foreclose a mortgage or to enforce a lien against all or the greater portion of the property of the corporation is pending; or

(5) that the corporation has committed an act of bankruptcy within four months prior to the filing of the petition.

(July 1, 1898, ch. 541, § 131, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

§ 532. Fees for filing.

The filing of a petition under this chapter shall be accompanied by payment to the clerk of a filing fee of $120 if no bankruptcy proceeding is pending, otherwise $70. Where $120 has been paid and an adjudication is entered under this chapter, $50 thereof shall be distributed by the clerk as in the case of a bankruptcy proceeding; but, if the proceeding under this chapter is dismissed and no order of adjudication is entered thereunder, such sum of $50 shall be refunded to the person paying it. (July 1, 1898, ch. 541, § 132, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886, and amended June 11, 1960, Pub. L. 86-504, § 2, 74 Stat. 198.)

AMENDMENTS

1960—Pub. L. 86-504 substituted "$120" for "$100" in two instances, and "$50" for "$30" in two instances.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the fourth sentence of former section 207 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 728 of this title.

§ 533. Service of copy of petition and subpena on debtor.

Upon the filing of a petition by creditors or an indenture trustee, a copy thereof, together with a subpena returnable within ten days or such longer time as the court for cause shown may have fixed, shall be served upon the debtor, as provided in subdivision (a) of section 41 of this title for service of a petition and subpena for involuntary bankruptcy. (July 1, 1898, ch. 541, § 133, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER V.—ANSWER

§ 536. Debtor's answer.

Within ten days after the service of the subpena and of a copy of the petition, or within such further time as the court may for cause shown allow, an answer controverting the facts alleged in the petition may be filed by the debtor. (July 1, 1898, ch. 541, § 136, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Approval or dismissal of petition after debtor's answer, see sections 542 and 543 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

§ 537. Creditor's, indenture trustee's, or stockholder's answer.

Prior to the first date set for the hearing provided in section 561 of this title, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor. (July 1, 1898, ch. 541, § 137, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Approval or dismissal of petition after answer, see section 544 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

SUBCHAPTER VI.—APPROVAL OR DISMISSAL OF PETITION

§ 541. Petition of debtor.

Upon the filing of a petition by a debtor, the judge shall enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 141, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

§ 542. Failure of debtor to answer; non-controversial answer.

If an answer is not filed by a debtor to a petition against it, or if the answer filed does not controvert any material allegation of the petition, the judge shall enter an order approving the petition if satisfied that it complies with the requirements of this

chapter and has been filed in good faith, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 142, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Right of debtor to answer, see section 536 of this title.

§ 543. Controversial answer by debtor; determination of issues.

If the answer of a debtor shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 143, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Right of debtor to answer, see section 536 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

§ 544. Controversial answer by creditor, indenture trustee, or stockholder; determination of issues.

If an answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 144, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

CROSS REFERENCES

Right to answer, see section 537 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

§ 545. Finality of determinations.

If any issue raised in an answer filed under section 536 or 537 of this title has, after hearing upon notice to the debtor, creditors, indenture trustees, and stockholders entitled to controvert the allegations of the petition, already been tried and finally determined under the provisions of section 543 or 544 of this title, such final determination shall be conclusive for all purposes under this chapter. (July 1, 1898, ch. 541, § 145, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 546. Good faith of petition.

Without limiting the generality of the meaning of the term "good faith", a petition shall be deemed not to be filed in good faith if—

(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

(2) adequate relief would be obtainable by a debtor's petition under the provisions of chapter 11 of this title; or

(3) it is unreasonable to expect that a plan of reorganization can be effected; or

(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding.

(July 1, 1898, ch. 541, § 146, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 547. Amendment of petition to comply with provisions governing arrangements.

A petition filed under this chapter improperly because adequate relief can be obtained by the debtor under chapter 11 of this title may, upon the application of the debtor, be amended to comply with the requirements of chapter 11 of this title for the filing of a debtor's petition, and shall thereafter for the purposes of chapter 11 of this title be deemed to have been originally filed thereunder. (July 1, 1898, ch. 541, § 147, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 548. Order of approval as stay of other proceedings.

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property. (July 1, 1898, ch. 541, § 148, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Power of judge to stay actions—

Prior to approval of petition, see section 513 of this title.

Upon approval of petition, see section 516 of this title.

§ 549. Final order of approval as determinative of court's jurisdiction.

An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court. (July 1, 1898, ch. 541, § 149, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Jurisdiction of court generally, see section 511 et seq. of this title.

SUBCHAPTER VII.—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 621, 622 of this title.

§ 556. Appointment of trustees; continuance of debtor in possession.

Upon the approval of a petition, the judge shall, if the indebtedness of a debtor, liquidated as to amount and not contingent as to liability, is $250,000 or over, appoint one or more trustees. Any trustee appointed under this chapter shall be disinterested and shall have the qualifications prescribed in section 73 of this title, except that the trustee need not reside or have his office within the district. If such indebtedness is less than $250,000, the judge may appoint one or more such trustees or he may continue the debtor in possession. In any case where a trustee is appointed the judge may, for the purposes specified in section 589 of this title, appoint as an additional trustee a person who is a director, officer, or employee of the debtor. (July 1, 1898, ch. 541, § 156, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 558 of this title.

§ 557. Attorney for trustee.

An attorney appointed to represent a trustee under this chapter shall also be a disinterested person: *Provided, however*, That for any specified purposes other than to represent a trustee in conducting the proceeding under this chapter the trustee may, with the approval of the judge, employ an attorney who is not disinterested. (July 1, 1898, ch. 541, § 157, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Employment of persons to assist trustee, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 558 of this title.

§ 558. Interest of persons.

A person shall not be deemed disinterested, for the purposes of sections 556 and 557 of this title, if—

(1) he is a creditor or stockholder of the debtor; or

(2) he is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the date of the filing of the petition was the underwriter of any securities of the debtor; or

(3) he is, or was within two years prior to the date of the filing of the petition, a director, officer, or employee of the debtor or any such underwriter, or an attorney for the debtor or such underwriter; or

(4) it appears that he has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such underwriter, or for any reason an interest materially adverse to the interests of any class of creditors or stockholders.

(July 1, 1898, ch. 541, § 158, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 562 of this title.

§ 559. Termination of trustee's appointment or debtor's possession.

Where the indebtedness of a debtor is less than $250,000, the judge may at any time terminate the appointment of a trustee and restore the debtor to the possession of its property, or, if the debtor has been continued in possession, terminate its possession and appoint a trustee. (July 1, 1898, ch. 541, § 159, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 560. Appointment of additional trustees; removal and substitution of trustees; hearings, time and notice.

In any case, the judge at any time, without or upon cause shown, may appoint additional trustees and cotrustees, or remove trustees and appoint substitute trustees; and upon each such appointment the judge shall fix a hearing to be held within thirty days to consider objections to the retention in office of the trustee. At least ten days' notice of the hearing shall be given to the persons designated in section 561 of this title. (July 1, 1898, ch. 541, § 160, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888, and amended Sept. 25, 1962, Pub. L. 87-681, § 12, 76 Stat. 574.)

AMENDMENTS

1962—Pub. L. 87-681 provided for the appointment of additional cotrustees and for hearings upon all appointments.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 561. Hearing; time and notice.

The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate. (July 1, 1898, ch. 541, § 161, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 537, 560, 562 of this title.

§ 562. Same; objections to trustee or possession of debtor.

At the hearing required by section 561 of this title, or at any adjournment thereof, or, upon application, at any other time, the judge may hear objections to the continuance of the debtor in possession, or to the retention in office of a trustee upon the ground that he is not qualified or not disinterested as provided in section 558 of this title. (July 1, 1898, ch. 541, § 162, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 563. Schedules; debtor continued in possession.

Upon the approval of a petition, where the debtor is continued in possession, the debtor shall, at the expense of the estate, prepare, make oath to, and file in court, within such time as the court shall fix—

(1) a schedule of its property, showing the location, quantity, and money value thereof;

(2) a schedule of its creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and post-office address or place of business of each creditor; and

(3) a schedule of its stockholders of each class showing the number and kind of shares registered in the name of each stockholder, and the last-known post-office address or place of business of each stockholder.

(July 1, 1898, ch. 541, § 163, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (4) of the first sentence of former section 207 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 566 of this title.

§ 564. Same; debtor not continued in possession.

Upon the approval of a petition, where a debtor is not continued in possession, the court shall fix a time within which the trustee shall prepare and file in court a list of the creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and the post-office address or place of business of each creditor; and a list of the debtor's stockholders of each class, showing the number and kind of shares registered in the name of each stockholder and the last-known post-office address or place of business of each stockholder. (July 1, 1898, ch. 541, § 164, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (4) of the first sentence of former section 207 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 566 of this title.

§ 565. Information of third persons as to security holders.

If in any case it appears that a person, other than the debtor or its trustee, has in his possession or under his control a list of security holders of the debtor or information in respect to their names, addresses, or the securities held by any of them, and such list or information is necessary in order to disclose the names and addresses of the beneficial owners of such securities, or to prepare or complete the schedules required to be filed under section 563 of this title or the lists required to be filed under section 564 of this title, the court shall direct such person, after a hearing upon notice to him, to produce such list or a true and correct copy thereof, or to furnish such information, or to permit the inspection or use thereof, as may be deemed by the court necessary for the foregoing purposes. (July 1, 1898, ch. 541, § 165, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 566 of this title.

§ 566. Impounding schedules, lists, copies, or information; inspection or use.

The court may, upon cause shown, direct the impounding of the schedules, lists, copies, or information filed under sections 563, 564, and 565 of this title, but shall permit their inspection or use by the trustee, any indenture trustee or any creditor or stockholder upon such terms as the court may prescribe: *Provided,* That the court may refuse to permit such inspection by any creditor or stockholder who acquired his claim or stock within three months preceding the filing of the petition under this chapter or during the pendency of the proceeding. (July 1, 1898, ch. 541, § 166, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 567. Powers and duties; trustee.

The trustee upon his appointment and qualification—

(1) shall, if the judge shall so direct, forthwith investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and report thereon to the judge;

(2) may, if the judge shall so direct, examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters or any of them;

(3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate;

(4) may, subject to the approval of the judge, employ such person or persons as the judge may deem necessary for the purpose of assisting the trustee in performing the duties imposed upon him under this chapter;

(5) shall, at the earliest date practicable, prepare and submit a brief statement of his investigation of the property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, in such form and manner as the judge may direct, to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate; and

(6) shall give notice to the creditors and stockholders that they may submit to him suggestions for the formulation of a plan, or proposals in the form of plans, within a time therein named.

(July 1, 1898, ch. 541, § 167, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Employment of officers of debtor, see section 591 of this title.

Operation of business and management of property, see section 589 of this title.

Plan, preparation and filing, see section 569 of this title.

Reports, see section 590 of this title.

Schedules and lists, preparation and filing, see section 564 of this title.

Title, rights, and powers of trustees, see section 586 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 568 of this title.

§ 568. Same; disinterested person where debtor is in possession.

If a debtor is continued in possession, the judge may at any time appoint a disinterested person as examiner to prepare and file a plan and to perform the duties imposed upon a trustee under paragraphs (1)—(5) of section 567 of this title, or to perform any of such duties. (July 1, 1898, ch. 541, § 168, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 569. Preparation, filing, and hearing on plan; trustee appointed.

Where a trustee has been appointed the judge shall fix a time within which the trustee shall prepare and file a plan, or a report of his reasons why a plan cannot be effected, and shall fix a subsequent time for a hearing on such plan or report and for the consideration of any objections which may be made or of such amendments or plans as may be proposed by the debtor or by any creditor or stockholder. (July 1, 1898, ch. 541, § 169, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Creditors and stockholders, trustee to notify of right to propose plans, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 572, 574 of this title.

§ 570. Same; debtor continued in possession.

Where a debtor is continued in possession, a plan or plans may be filed, within a time fixed by the judge—

(1) by the debtor;

(2) by any creditor or indenture trustee;

(3) by any stockholder, if the debtor is not found to be insolvent;

(4) by the examiner, if so directed by the judge.

The judge shall fix a subsequent time for a hearing on such plans and for the consideration of any objections or amendments thereto. (July 1, 1898, ch. 541, § 170, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 572, 574 of this title.

§ 571. Notice and time of hearing on plan.

Notice of the time of any hearing, as provided in section 569 or 570 of this title, shall be given to the debtor, the creditors and stockholders, the indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the court may designate. The judge may, upon the application of the trustee, any creditor, indenture trustee, or stockholder, advance the time of such hearing. (July 1, 1898, ch. 541, § 171, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

This section was from part of clause (7) of former section 207 (c) of this title.

§ 572. Submission of plans to Securities and Exchange Commission for report.

After the hearing, as provided in section 569 or 570 of this title, and before the approval of any plan, as provided in section 574 of this title, the judge may, if the scheduled indebtedness of the debtor does not exceed $3,000,000, and shall, if such indebtedness exceeds $3,000,000, submit to the Securities and Exchange Commission for examination and report the plan or plans which the judge regards as worthy of consideration. Such report shall be advisory only. (July 1, 1898, ch. 541, § 172, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 574, 575 of this title.

§ 573. Approval of plan; order to await report of Commission.

The judge shall not enter an order approving a plan submitted to the Securities and Exchange Commission until after the Securities and Exchange Commission has filed its report thereon or has notified the judge that it will not file a report, or until the expiration of such reasonable time for the filing of such report as the judge has fixed, whichever first occurs. (July 1, 1898, ch. 541, § 173, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 574. Same; entry of order and fixing time for acceptance of plan.

After the hearing, as provided in section 569 or 570 of this title, and, if a plan has been submitted to the Securities and Exchange Commission, as provided in section 572 of this title, then after the filing of the report or notice that it will not be filed, or after the expiration of the time for its filing, whichever first occurs, the judge shall enter an order approving the plan or plans which in his opinion comply with the provisions of section 616 of this title, and which are fair and equitable, and feasible, and shall fix a time within which the creditors and stockholders affected thereby may accept the same. (July 1, 1898, ch. 541, § 174, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Acceptance of plan—

Confirmation, acceptance as prerequisite, see sections 579 and 621 of this title.

Form and manner, see section 579 of this title.

Approval of plan, public utility, see section 577 of this title.

Confirmation of plan by judge, see section 621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 572, 577, 578, 580 of this title.

§ 575. Submission of information to creditors and stockholders after approval.

Upon the approval of a plan by the judge, the trustee or the debtor in possession shall transmit, by mail or otherwise, to all creditors and stockholders who are affected by any such plan—

(1) the plan or plans so approved, together with a summary thereof approved by the judge;

(2) the opinion of the judge, if any, approving the plan, or plans, or a summary thereof approved by the judge;

(3) the report, if any, filed in the proceeding by the Securities and Exchange Commission, as provided in section 572 of this title, or a summary thereof prepared by the Securities and Exchange Commission; and

(4) such other matters as the judge may deem necessary or desirable for the information of creditors and stockholders.

(July 1, 1898, ch. 541, § 175, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10 §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 576 of this title.

§ 576. Soliciting acceptance of plan before order of approval.

No person shall, without the consent of the court, solicit any acceptance, conditional or unconditional, of any plan, or any authority, conditional or unconditional, to accept any plan, whether by proxy, deposit, power of attorney or otherwise, until after the entry of an order approving such plan and the transmittal thereof to the creditors and stockholders, as provided in section 575 of this title; and any such authority or acceptance given, procured, or received by reason of a solicitation prior to such approval and transmittal shall be invalid, unless such consent of the court has been so obtained. (July 1, 1898, ch. 541, § 176, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Form and manner of acceptance, see section 579 of this title.

Good faith of acceptance—

Disqualification of votes in absence of, see section 603 of this title.

Prerequisite to confirmation, see section 621 of this title.

Time for acceptance, see section 574 of this title.

§ 577. Approval of plan for public utility.

In case a debtor is a public-utility corporation, subject to the jurisdiction of a commission having regulatory jurisdiction over the debtor, a plan shall not be approved, as provided in section 574 of this title, until—

(1) it shall have been submitted to each such commission;

(2) an opportunity shall have been afforded each such commission to suggest amendments or offer objections to the plan; and

(3) the judge shall have considered such amendments or objections at a hearing at which such commission may be heard.

(July 1, 1898, ch. 541, § 177, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the first sentence of paragraph (2) of former section 207 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 578 of this title.

§ 578. Same; intrastate public utility.

In case a debtor is a public utility corporation, wholly intrastate, subject to the jurisdiction of a State commission having regulatory jurisdiction over such debtor, a plan shall not be approved, as provided in section 574 of this title, unless such State commission shall have first certified its approval of such plan as to the public interest therein and the fairness thereof. Upon its failure to certify its approval or disapproval within thirty days, or such further time as the court may prescribe, after the submission of the plan to it, as provided in section 577 of this title, the public interest shall, for the purposes of such approval and of the confirmation of the plan, not be deemed to be affected by the plan. (July 1, 1898, ch. 541, § 178, as added June 22, 1938, ch 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second sentence of paragraph (2) of former section 207 (e) of this title.

§ 579. Acceptance of plan; hearing for confirmation.

After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 603 of this title, or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of section 616 of this title, the judge shall fix a hearing, upon notice to the debtor, creditors, stockholders, inden-

ture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the judge may designate, for the consideration of the confirmation of the plan and of such objections as may be made to the confirmation. (July 1, 1898, ch. 541, § 179, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

This section was from part of paragraph (1) of former section 207 (e) of this title.

CROSS REFERENCES

Acceptance of plan—
- Alteration or modification of plan, see sections 622 and 623 of this title.
- Classification of creditors and stockholders, see section 597 of this title.
- Good faith as prerequisite to confirmation, see section 621 of this title.
- Good faith, disqualification of votes in absence, see section 603 of this title.
- Indenture trustee, see section 598 of this title.
- Rejected executory contract holder, see section 602 of this title.
- Soliciting acceptance before approval, see section 576 of this title.
- Time for acceptance, see section 574 of this title.
- United States as creditor, see section 599 of this title.

Confirmation of plan by judge, see section 621 of this title.

§ 580. Same; effect of order of approval on right to object to confirmation.

The order of the judge approving a plan, as provided in section 574 of this title, shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan. (July 1, 1898, ch. 541, § 180, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER VIII.—TITLE, RIGHTS, AND POWERS OF TRUSTEES AND DEBTORS IN POSSESSION

§ 586. Trustee; title.

A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under section 72 of this title would have. (July 1, 1898, ch. 541, § 186, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (2) of the first sentence of former section 207 (c) of this title.

§ 587. Same; rights, powers, and duties.

Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 72 of this title, and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor. (July 1, 1898, ch. 541, § 187, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (2) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Generally, see section 567 of this title.

§ 588. Debtor in possession; title, rights, duties, and powers.

A debtor continued in possession of its property shall have all the title, be vested with all the rights, be subject to all the duties, and exercise all the powers of a trustee appointed under this chapter, subject, however, at all times to the control of the judge and to such limitations, restrictions, terms, and conditions as the judge may from time to time prescribe. (July 1, 1898, ch. 541, § 188, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

§ 589. Operation of business and management of property; reports.

A trustee or debtor in possession, upon authorization by the judge, shall operate the business and manage the property of the debtor during such period, limited or indefinite, as the judge may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate. (July 1, 1898, ch. 541, § 189, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 556 of this title.

§ 590. Reports; form; contents; inspection; distribution.

The reports of the trustee or debtor in possession shall be in such form and contain such information as the court may prescribe and shall at all times be open to the examination of any party in interest. The court shall direct copies or summaries of annual

reports, and may direct copies or summaries of other reports, to be mailed to the creditors, stockholders, and indenture trustees, and may also direct the publication of summaries of any such reports in such newspaper or newspapers of general circulation as the court may designate. The Securities and Exchange Commission may recommend the form of such reports and summaries. (July 1, 1898, ch. 541, § 190, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 591. Employment of officers of debtor.

A trustee or debtor in possession may employ officers of the debtor at rates of compensation to be approved by the court. No person shall become an officer or director of the debtor, to fill a vacancy or otherwise, without the prior approval of the court. (July 1, 1898, ch. 541, § 191, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

SUBCHAPTER IX.—CREDITORS AND STOCKHOLDERS

§ 596. Filing and allowing proofs of claims; objections to allowances.

After the approval of the petition the judge shall prescribe the manner in which and fix a time within which the proofs of claim of creditors and of the interests of stockholders may be filed and allowed. Objections by any party in interest to the allowance of any such claims or interests shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 196, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (6) of the first sentence of former section 207 (c) of this title.

§ 597. Classification of creditors and stockholders.

For the purposes of the plan and its acceptance, the judge shall fix the division of creditors and stockholders into classes according to the nature of their respective claims and stock. For the purposes of such classification, the judge shall, if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the judge may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value. (July 1, 1898, ch. 541, § 197, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (6) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Acceptance of plan—
- Form and manner, see section 579 of this title.
- Indenture trustee, acceptance by, see section 598 of this title.
- Rejected executory contract holder, see section 602 of this title.
- United States as creditor, see section 599 of this title.

§ 598. Claims by indenture trustee for all holders under trust.

An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included. (July 1, 1898, ch. 541, § 198, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

§ 599. United States as creditor.

If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,* That if the Secretary of the Treasury shall fail to accept or reject a plan for more than ninety days after receipt of written notice so to do from the court to which the plan has been proposed, accompanied by a certified copy of the plan, his consent shall be conclusively presumed. (July 1, 1898, ch. 541, § 199, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of paragraph (1) of former section 207 (e) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 621 of this title.

§ 600. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, before the approval of the petition, as in a bankruptcy proceeding before adjudication and, upon the approval of the petition, as in a bankruptcy proceeding upon adjudication. (July 1, 1898, ch. 541, § 200, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (o) of this title.

§ 601. Provability of claims arising after petition.

All claims arising after the filing of a petition under this chapter and before the qualification of a receiver or trustee or before the petition is approved and the debtor continued in possession, whichever first occurs, shall be provable. (July 1, 1898, ch. 541, § 201, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 602. Rejection of executory contract or unexpired lease; assignment of future rent claim.

In case an executory contract shall be rejected pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to such date of surrender or reentry: *Provided,* That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 202, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (b) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

Creditor, definition of, see section 506 of this title.

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 603. Disqualification of votes on acceptance in absence of good faith.

If the acceptance or failure to accept a plan by the holder of any claim or stock is not in good faith, in the light of or irrespective of the time of acquisition thereof, the judge may, after hearing upon notice, direct that such claim or stock be disqualified for the purpose of determining the requisite majority for the acceptance of a plan. (July 1, 1898, ch. 541, § 203, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Confirmation, good faith of acceptance as prerequisite, see section 621 of this title.

Form and manner, generally, of acceptance, see section 579 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 579 of this title.

§ 604. Surrender, etc., of claims upon distribution under plan.

Upon distribution, as provided in section 624 of this title, the judge may, upon notice to all persons affected, fix a time, to expire not sooner than five years after the final decree closing the estate, within which, as provided in the plan or final decree—

(1) the creditors, other than holders of securities, shall file, assign, transfer, or release their claims; and

(2) the holders of securities shall present or surrender their securities. After such time no such claim or stock shall participate in the distribution under the plan.

(July 1, 1898, ch. 541, § 204, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 605 of this title.

§ 605. Same; unclaimed cash and securities.

The securities or cash remaining unclaimed at the expiration of the time fixed as provided in section 604 of this title, or of any extension thereof, shall become the property of the debtor or of the new corporation acquiring the assets of the debtor under the plan, as

the case may be, free and clear of any and all claims and interests. (July 1, 1898, ch. 541, § 205, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 606. Persons entitled to hearings.

The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees. (July 1, 1898, ch. 541, § 206, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

CROSS REFERENCES

Labor unions, organization and membership, see section 672 of this title.

§ 607. Intervention of parties; notices generally.

The judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter. Except where otherwise provided in this chapter, the judge may from time to time enter orders designating the matters in respect to which, the persons to whom, and the form and manner in which notice shall be given. (July 1, 1898, ch. 541, § 207, as added June 22, 1938, ch. 575, § 1 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

CROSS REFERENCES

Notices, general provisions concerning, see section 520 of this title.

§ 608. Intervention of Securities and Exchange Commission.

The Securities and Exchange Commission shall, if requested by the judge, and may, upon its own motion if approved by the judge, file a notice of its appearance in a proceeding under this chapter. Upon the filing of such a notice, the Commission shall be deemed to be a party in interest, with the right to be heard on all matters arising in such proceeding, and shall be deemed to have intervened in respect of all matters in such proceeding with the same force and effect as if a petition for that purpose had been allowed by the judge; but the Commission may not appeal or file any petition for appeal in any such proceeding. (July 1, 1898, ch. 541, § 208, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 609. Representation in proceedings.

Any creditor or stockholder may in a proceeding under this chapter act in person, by an attorney at law, or by a duly authorized agent or committee. (July 1, 1898, ch. 541, § 209, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (b) of this title.

§ 610. Same; statement by attorney.

An attorney for creditors or stockholders shall not be heard unless he has first filed with the court a statement setting forth the names and addresses of such creditors or stockholders, the nature and amounts of their claims or stock, and the time of acquisition thereof, except as to claims or stock alleged to have been acquired more than one year prior to the filing of the petition. (July 1, 1898, ch. 541, § 210, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 611. Same; statement by committees, etc., and indenture trustees.

Every person or committee, representing more than twelve creditors or stockholders, and every indenture trustee, who appears in the proceeding shall file with the court a statement, under oath, which shall include—

(1) a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors or stockholders;

(2) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or formed or agreed to act;

(3) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the proceeding of any indenture trustee, a showing of the amounts of claims or stock owned by such person, the members of such committee or

such indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof; and

(4) a showing of the claims or stock represented by such person or committee and the respective amounts thereof, with an averment that each holder of such claims or stock acquired them at least one year before the filing of the petition or with a showing of the times of acquisition thereof. (July 1, 1898, ch. 541, § 211, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 612. Same; regulation by court.

The judge may examine and disregard any provision of a deposit agreement, proxy, power or warrant of attorney, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, by the terms of which an agent, attorney, indenture trustee, or committee purports to represent any creditor or stockholder, may enforce an accounting thereunder, may restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claim or stock acquired by such person or committee in contemplation or in the course of the proceeding under this chapter to the actual consideration paid therefor. (July 1, 1898, ch. 541, § 212, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 613 of this title.

§ 613. Same; establishment of compliance with laws.

Without limiting the powers of the judge under section 612 of this title, an agent, indenture trustee, or committee, purporting to represent creditors or stockholders, shall not be heard or allowed to intervene in a proceeding under this chapter until such person or persons shall have satisfied the court that they have complied with all applicable laws regulating the activities and personnel of such persons. (July 1, 1898, ch. 541, § 213, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—PROVISIONS OF PLAN

§ 616. Provisions of plan.

A plan of reorganization under this chapter—

(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

(2) may deal with all or any part of the property of the debtor;

(3) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(4) may provide for the rejection of any executory contract except contracts in the public authority;

(5) shall specify what claims, if any, are to be paid in cash in full;

(6) shall specify the creditors or stockholders or any class of them not to be affected by the plan and the provisions, if any, with respect to them;

(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or (b) by a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such claims; or (d) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;

(8) shall provide for any class of stockholders which is affected by the plan and does not accept the plan by the majority of the stock required under this chapter, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan, either as provided in the plan or in the order confirming the plan, (a) by the sale of such property at not less than a fair upset price; or (b) by appraisal and payment in cash of the value of their stock; or (c) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection: *Provided, however,* That such protection shall not be required if the judge shall determine that the debtor is insolvent;

(9) may include, where any indebtedness is created or exended under the plan for a period of more than five years, provisions for the retirement of such indebtedness by stated or determinable payments out of a sinking fund or otherwise, (a) if secured, within the expected useful life of the security therefor, or (b) if unsecured, or if the expected useful life of the security is not fairly ascertainable, then within a specified reasonable time, not to exceed forty years;

(10) shall provide adequate means for the execution of the plan, which may include: the retention by the debtor of all or any part of its property; the sale or transfer of all or any part of its property to one or more other corporations

theretofore organized or thereafter to be organized; the merger or consolidation of the debtor with one or more other corporations; the sale of all or any part of its property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancelation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the amendment of the charter of the debtor; the issuance of securities of the debtor or such other corporations for cash, for property, in exchange for existing securities, in satisfaction of claims or stock or for other appropriate purposes;

(11) shall include provisions which are equitable, compatible with the interests of creditors and stockholders, and consistent with public policy, with respect to the manner of selection of the persons who are to be directors, officers, or voting trustees, if any, upon the consummation of the plan, and their respective successors;

(12) shall provide for the inclusion in the charter of the debtor, or any corporation organized or to be organized for the purpose of carrying out the plan, of—

(a) provisions prohibiting the debtor or such corporation from issuing non-voting stock, and providing, as to the several classes of securities of the debtor or of such corporation possessing voting power, for the fair and equitable distribution of such power among such classes, including, in the case of any class of stock having a preference over other stock with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and

(b) (1) provisions which are fair and equitable and in accordance with sound business and accounting practice, with respect to the terms, position, rights, and privileges of the several classes of securities of the debtor or of such corporation, including, without limiting the generality of the foregoing, provisions with respect to the issuance, acquisition, purchase, retirement or redemption of any such securities, and the declaration and payment of dividends thereon; and (2) in the case of a debtor whose indebtedness, liquidated as to amount and not contingent as to liability, is $250,000 or over, provisions with respect to the making, not less than once annually, of periodic reports to security holders which shall include profit and loss statements and balance sheets prepared in accordance with sound business and accounting practice;

(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose; and

(14) may include any other appropriate provisions not inconsistent with the provisions of this chapter.

(July 1, 1898, ch. 541, § 216, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from clauses (1) and (2) of the first sentence of former section 207 (b) of this title.

Par. (2) was from part of clause (10) of the first sentence of former section 207 (b) of this title.

Par. (3) was from clause (3) of the first sentence of former section 207 (b) of this title.

Par. (4) was from clause (6) of the first sentence of former section 207 (b) of this title.

Par. (5) was from clause (8) of the first sentence of former section 207 (b) of this title.

Par. (6) was from clause (7) of the first sentence of former section 207 (b) of this title.

Par. (7) was from clause (5) of the first sentence of former section 207 (b) of this title.

Par. (8) was from clause (4) of the first sentence of former section 207 (b) of this title.

Par. (10) was from clause (9) of the first sentence of former section 207 (b) of this title.

Par. (14) was from part of clause (10) of the first sentence of former section 207 (b) of this title.

CROSS REFERENCES

Compensation and allowances, general provisions, see section 641 et seq. of this title.

Rejection of executory contracts as breach thereof, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 574, 579 of this title.

SUBCHAPTER XI.—CONFIRMATION AND CONSUMMATION OF PLAN

§ 621. Confirmation by court.

The judge shall confirm a plan if satisfied that—

(1) the provisions of subchapters VII and X of this chapter and section 599 of this title have been complied with;

(2) the plan is fair and equitable, and feasible;

(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this title;

(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge; and

(5) the identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, upon the consummation of the plan, have been fully disclosed, and that the appointment of such persons to such offices, or their continuance therein, is equitable, compatible

with the interests of the creditors and stockholders and consistent with public policy.
(July 1, 1898, ch. 541, § 221, as added June 22, 1938, ch. 575, § 1, 52 Stat. 897.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from clauses (2), (3), and (4) of the first sentence of former section 207 (f) of this title.

Par. (2) was from clause (1) of the first sentence of former section 207 (f) of this title.

Par. (3) was from clause (6) of the first sentence of former section 207 (f) of this title.

Par. (4) was from clause (5) of the first sentence of former section 207 (f) of this title.

CROSS REFERENCES

Acceptance of plan—
Altered or modified plan, see sections 622 and 623 of this title.
Form and manner, see section 579 of this title.
Good faith, disqualification of votes in absence, see section 603 of this title.
Time for acceptance, see section 574 of this title.
United States as creditor, see section 599 of this title.
Application of internal revenue laws to issuance, transfer or exchange of securities, or to conveyances to effectuate plan of reorganization, see section 4382 of Title 26, Internal Revenue Code.
Approval of plan by judge, see section 574 of this title.
Compensation and allowances, general provisions, see section 641 et seq. of this title.
Executory contracts—
Court, power to reject, see section 516 of this title.
Rejected holder of, as creditor, see section 602 of this title.
Hearing for confirmation of plan, see section 579 of this title.

§ 622. Alteration or modification of plan.

A plan may be altered or modified, with the approval of the judge, after its submission for acceptance and before or after its confirmation if, in the opinion of the judge, the alteration or modification does not materially and adversely affect the interests of creditors or stockholders. If the judge finds that the proposed alteration or modification, filed with his approval, does materially and adversely affect the interests of creditors or stockholders, he shall fix a hearing for the consideration, and a subsequent time for the acceptance or rejection, of such alteration or modification. The requirements in regard to notice of hearing, to submission to the Securities and Exchange Commission, to acceptance, to filing and hearing of objections to confirmation and to the confirmation, as prescribed in subchapter VII of this chapter in regard to the plan proposed to be altered or modified, shall be complied with.
(July 1, 1898, ch. 541, § 222, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance, by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

This section was from part of the second sentence of former section 207 (f) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

§ 623. Same; acceptance by creditors and stockholders.

Any creditor or stockholder who has previously accepted the plan proposed to be altered or modified and who does not file a written rejection of the proposed alteration or modification within the time fixed by the judge, shall be deemed to have accepted the alteration or modification and the plan so altered or modified unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 223, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the second sentence of former section 207 (f) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

§ 624. Effect of confirmation.

Upon confirmation of a plan—

(1) the plan and its provisions shall be binding upon the debtor, upon every other corporation issuing securities or acquiring property under the plan, and upon all creditors and stockholders, whether or not such creditors and stockholders are affected by the plan or have accepted it or have filed proofs of their claims or interests and whether or not their claims or interests have been scheduled or allowed or are allowable;

(2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan, including, in the case of a public-utility corporation, the procuring of authorization, approval, or consent of each commission having regulatory jurisdiction over the debtor or such other corporation;

(3) if the judge shall so direct, there shall be deposited and distributed, in such manner as the judge may direct, the moneys for all payments which by the provisions of the plan or under this chapter are required to be made in each; and

(4) distribution shall be made, in accordance with the provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession and are not contingent, unliquidated or disputed.

(July 1, 1898, ch. 541, § 224, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898, and amended July 7, 1952, ch. 579, § 25, 66 Stat. 430.)

AMENDMENTS

1952—Par. (4). Act July 7, 1952, substituted "and are not contingent, unliquidated or disputed" for "as fixed claims or stock, liquidated in amount and not disputed".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938 known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from former section 207 (g) of this title.

Par. (2) was from part of former section 207 (f) of this title.

CROSS REFERENCES

Creditors, surrender, etc., of claims, see section 604 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 625, 629 of this title.

§ 625. Objections to distribution.

Where the claims or stock specified in paragraph (4), clause (b), of section 624 of this title are objected to by any party in interest, the objection shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 225, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 626. Property to be free of claims; exceptions.

The property dealt with by the plan, when transferred by the trustee to the debtor or other corporation or corporations provided for by the plan, or when transferred by the debtor in possession to such other corporation or corporations, or when retained by the debtor in possession, as the case may be, shall be free and clear of all claims and interests of the debtor, creditors, and stockholders, except such claims and interests as may otherwise be provided for in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of such property. (July 1, 1898, ch. 541, § 226, as added June 22, 1938, ch. 575, § 1, 52 Stat 898.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (h) of this title.

§ 627. Execution of instruments, satisfaction of liens, etc.

The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan. (July 1, 1898, ch. 541, § 227, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (h) of this title.

§ 628. Final decree on consummation of plan.

Upon the consummation of the plan, the judge shall enter a final decree—

(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

(2) discharging the trustee, if any;

(3) making such provisions by way of injunction or otherwise as may be equitable; and

(4) closing the estate.

(July 1, 1898, ch. 541, § 228, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second and third sentences of former section 207 (h) of this title.

§ 629. Acts deemed consummating plan; order declaring consummation; substantial alteration or modification.

(a) A plan shall be deemed to have been substantially consummated if, insofar as applicable, each of the following events has occurred:

(1) transfer, sale or other disposition of all or substantially all of the property dealt with by the plan pursuant to the provisions of the plan;

(2) assumption of operation of the business and management of all or substantially all of the property dealt with by the plan by the debtor or by the corporation used for the purpose of carrying out the plan; and

(3) commencement of the distribution to creditors and stockholders, affected by the plan, of the cash and securities specified in the plan as provided for in section 624 of this title.

(b) Upon notice to the trustee, the debtor, the Securities and Exchange Commission and such other persons as the judge may designate, the trustee, the debtor in possession, the corporation to which the assets of the debtor are to be transferred under the plan, or any other party in interest may apply to the judge for an order declaring the plan to have been substantially consummated under the provisions of subdivision (a) of this section.

(c) When a plan has been substantially consummated as defined in subdivision (a) of this section, or an order has been entered under subdivision (b) of this section, the plan may not thereafter be altered or modified if the proposed alteration or modification materially and adversely affects the participation provided for any class of creditors or stockholders by the plan. (July 1, 1898, ch. 541, § 229, as added July 7, 1952, ch. 579, § 26, 66 Stat. 431.)

EFFECTIVE DATE

Section effective three months after July 7, 1952, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance, by any officer, employee or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER XII.—DISMISSALS AND ADJUDICATIONS

§ 636. Failure to effectuate plan or consummation.

If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

(1) where the petition was filed under section 527 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 528 of this title, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. (July 1, 1898, ch. 541, § 236, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Somewhat similar provisions were contained in former section 207 (c) (8) and (k) of this title.

§ 637. Dismissal of original petition; discharge of trustee and closing of estate.

Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 528 of this title, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as otherwise provided by section 659 of this title. (July 1, 1898, ch. 541, § 237, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (c) (8) of this title.

§ 638. Procedure upon order directing that bankruptcy be proceeded with.

(a) Reinstatement of bankruptcy proceeding; trustee; filing of separate debt schedule; tax claims; provable claims; date for first meeting of creditors; disallowance of untimely claims.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) where the petition was filed under section 527 of this title, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 528 of this title, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved;

(2) a trustee shall be elected or appointed pursuant to section 72 of this title and shall supersede any trustee previously appointed;

(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by it while continued in possession and before the qualification of a receiver or trustee, if any, under this chapter, and if a receiver or trustee has qualified, the schedule and statement shall be filed by such receiver or trustee for any obligations incurred and contracts assumed or entered into by him; and

(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 527 of this title and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purpose of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors; but if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title, shall not be allowed in the reinstated bankruptcy proceeding.

(b) Executory contracts; rejection.

Any contract which is entered into or assumed by a debtor in possession, receiver, or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

(c) Filing of claims.

Upon the filing of the schedule and statement required by subdivision (a) of this section, the court shall make an order directing the claims against the debtor in possession, receiver, or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision (a) of this section and claims arising from rejection of executory contracts under subdivision (b) of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession, receiver, or trustee shall be proved and filed in the manner provided in section 93 of this title.

(d) Disallowance of untimely claims; surplus.

Claims directed to be filed under subdivision (c) of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession, receiver, or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision (c) and claims not allowable under paragraph (4) of subdivision (a) of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case. (July 1, 1898, ch. 541, § 238, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899, and amended, July 7, 1952, ch. 579, § 27, 66 Stat. 431; Nov. 28, 1967, Pub. L. 90-157, § 2, 81 Stat. 512.)

AMENDMENTS

1967—Subd. (a). Pub. L. 90-157 designated existing provisions as subd. (a), provided for election of trustees in par. (2), added par. (3), redesignated former par. (3) as (4), inserted therein the phrase "except as otherwise provided in this section," and deleted "and owing to" preceding "the United States".

Subds. (b)-(d). Pub. L. 90-157 added subds. (b)-(d).

1952—Par. (3). Act July 7, 1952, permitted claims to be filed within six months rather than three months when bankruptcy ensues upon the failure of the plan and to make claims for taxes receive parallel treatment.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Somewhat similar provisions were contained in former section 207 (c) (8) and (k) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

SUBCHAPTER XIII.—COMPENSATION AND ALLOWANCES

CROSS REFERENCES

Confirmation of plan, reasonableness of allowances as prerequisite, see section 621 of this title.

Plan, provisions for payment of compensation and allowances, see section 616 of this title.

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 659 of this title.

§ 641. Petitioning creditors; court officers; attorneys therefor.

The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by a special master;

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor; and

(5) by the attorney for the petitioning creditors.

Such compensation of referees and trustees shall not be governed by sections 68 and 76 of this title. (July 1, 1898, ch. 541, § 241, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

§ 642. Representatives and other parties in interest; attorneys therefor.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission.

(July 1, 1898, ch. 541, § 242, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

§ 643. Creditors and stockholders; attorneys therefor.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto. (July 1, 1898 ch. 541, § 243, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

§ 644. Petition filed in pending bankruptcy proceeding.

Where a petition is filed under section 527 of this title, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in the pending bankruptcy proceeding—

(1) by a marshal, receiver, or trustee, as provided in subdivision (g) of section 76 of this title, and the attorneys for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this title to compensation or reimbursement in such bankruptcy proceeding.

(July 1, 1898, ch. 541, § 244, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 207 (i) of this title.

CROSS REFERENCES

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

§ 645. Same; referee in bankruptcy.

Where a petition is filed in a pending bankruptcy proceeding, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 68 of this title. (July 1, 1898, ch. 541, § 245, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 207 (i) of this title.

CROSS REFERENCES

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

§ 646. Dismissal of proceeding or adjudication of bankruptcy.

Upon the dismissal of a proceeding under this chapter, or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof, and for the payment of all proper costs and expenses incurred by officers in such proceedings. (July 1, 1898, ch. 541, § 246, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 207 (i) of this title.

CROSS REFERENCES

Dismissal of proceeding and reinstatement of bankruptcy, see section 648 of this title.

§ 647. Hearing of applications.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate, except that notice need not be given to any class of creditors or stockholders which does not participate under the plan as confirmed by the court from which no appeal is pending and the time allowed for appeal has expired. In the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unsecured creditors, and may be given to such other classes of creditors or other persons as the judge may designate. In the case of the dismissal of a proceeding under this chapter and the entry of an

order therein directing that bankruptcy be proceeded with, notice of the hearing to consider allowances need not be given to stockholders. (July 1, 1898, ch. 541, § 247, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901, and amended Sept. 25, 1962, Pub. L. 87-681, § 13, 76 Stat. 574.)

AMENDMENTS

1962—Pub. L. 87-681 provided that notice need not be given to any class of creditors or stockholders which does not participate under the plan as confirmed by the court from which no appeal is pending and the time allowed for appeal has expired.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

This section was from former section 207 (c) (7) of this title.

§ 648. Dismissal of proceeding and reinstatement of bankruptcy; charging of allowances in bankruptcy.

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, receiver, or trustee in the bankruptcy proceeding for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this title fixing their compensation in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 248, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Dismissal of proceeding or adjudication of bankruptcy, see section 646 of this title.

§ 649. Statement of claims or stock acquired or transferred after commencement of proceeding.

Any persons seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred. (July 1, 1898, ch. 541, § 249, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 650. Appeals.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers. (July 1, 1898, ch. 541, § 250, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901, and amended June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Appeals generally, see section 521 of this title.

SUBCHAPTER XIV.—PRIOR PROCEEDINGS

§ 656. Right to petition for reorganization during pendency of prior proceedings.

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made. (July 1, 1898, ch. 541, § 256, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Bankruptcy pending, filing petition, see section 527 of this title.

§ 657. Trustee or debtor in possession vested with rights of prior fiduciary.

The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage. (July 1, 1898, ch. 541, § 257, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (i) of this title.

§ 658. Protection of obligations of prior fiduciary; payment of costs and expenses.

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the judge. (July 1, 1898, ch. 541, § 258, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (i) of this title.

CROSS REFERENCES

Bankruptcy, compensation and allowances when superseded by reorganization, see sections 644 and 645 of this title.

§ 659. Reinstatement of prior proceeding on dismissal of reorganization; reorganization allowances and obligations.

Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated, and the judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in subchapter XIII of this chapter, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by the trustee or debtor in possession, and for the payment of the costs and expenses of the proceedings. (July 1, 1898, ch. 541, § 259, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the second sentence of former section 207 (i) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title.

SUBCHAPTER XV.—GENERAL PROVISIONS

§ 661. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims and interests provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 261, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the last sentence of former section 207 (b) of this title.

§ 662. Petition as act of bankruptcy if dismissed.

If a proceeding under this chapter shall be dismissed, the filing of the petition shall not constitute an act of bankruptcy by the debtor. (July 1, 1898 ch. 541, § 262, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (a) of this title.

§ 663. Inapplicability to National Housing Act insured mortgage.

Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any corporation under a mortgage insured pursuant to the National Housing Act and Acts amendatory thereof and supplementary thereto. Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any corporation under a mortgage insured pursuant to title XI of the National Housing Act. (July 1, 1898, ch. 541, § 263, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902, and amended Nov. 3, 1966, Pub. L. 89–754, title V, § 504(c), 80 Stat. 1278.)

REFERENCES IN TEXT

The National Housing Act, referred to in the text, is classified principally to chapter 13 of Title 12, Banks and Banking.

Title XI of the National Housing Act, referred to in the text, is classified to subchapter IX–B of chapter 13 (section 1749aaa et seq.) of Title 12, Banks and Banking.

AMENDMENTS

1966—Pub. L. 89–754 provided for inapplication of chapter to creditors of corporation under a mortgage insured pursuant to provsions relating to mortgage insurance for group practice facilities.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (n) of this title.

§ 664. Unregistered securities; use of mails and interstate commerce.

(a) The provisions of section 77e of Title 15 shall not apply to—

(1) any security issued by the receiver, trustee, or debtor in possession pursuant to paragraph (2) of section 516 of this title; or

(2) any transaction in any security issued pursuant to a plan in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the plan, and (b) transactions by a dealer as to

securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the plan.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of Title 15. (July 1, 1898, ch. 541, § 264, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

Definition of "Securities Act of 1933" has been omitted at the end of subd. (b) of this section as unnecessary in view of translations in text to Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the last sentence of former section 207 (h) of this title.

CROSS REFERENCES

Definitions generally, see section 506 et seq. of this title.

§ 665. Securities and Exchange Commission; notices, information and assistants.

(a) In addition to the notices elsewhere expressly provided the Securities and Exchange Commission shall be given notice of all other steps taken in connection with a proceeding under this chapter. Any notice which this chapter requires to be given to the Securities and Exchange Commission shall be deemed to have been sufficiently given if it is given by registered first-class mail, postage prepaid, addressed to the Securities and Exchange Commission at Washington, District of Columbia, or at such other place as the Securities and Exchange Commission shall designate by written notice filed in the proceeding and served upon the parties thereto. The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Securities and Exchange Commission copies of (1) every petition filed under this chapter; (2) the answers thereto, if any; (3) the orders approving or dismissing petitions; (4) the orders appointing trustees or continuing debtors in possession; (5) the orders determining the time within which the claims of creditors may be filed and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and stock; (6) copies of [1] plans, alterations or modifications in plans, and any notices of hearings on the plans, alterations, or modifications; (7) the orders approving any plan or plans or alterations or modifications in plans; (8) the orders confirming plans, together with copies of such plans; (9) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; (10) the orders adjudging debtors to be solvent or insolvent; (11) the orders directing that bankruptcy be proceeded with, or adjudging the debtors bankrupt and directing that bankruptcy be proceeded with, or dismissing proceedings; (12) and such other papers filed in the proceedings as the Securities and Exchange Commission may request or which the court may direct be transmitted to it. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters enumerated, shall also be transmitted to the Securities and Exchange Commission.

(b) The provisions of section 78d (b) of Title 15 shall be applicable with respect to the power of the Securities and Exchange Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this chapter. (July 1, 1898, ch. 541, § 265, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903, and amended July 7, 1952, ch. 579, § 28 66 Stat. 431; Sept. 25, 1962, Pub. L. 87-681, §§ 14, 15, 76 Stat. 574.)

AMENDMENTS

1962—Subd. (a)(6). Pub. L. 87-681, § 14, incorporated the provision of former cl. (7) respecting alteration or modification in plans and provided for notices of hearings on the plans, alterations, or modifications.

Subd. (a)(7). Pub. L. 87-681, § 15, incorporated the provision of former cl. (6) respecting orders approving any plan or plans and eliminated provision for copies of alterations or modifications, now incorporated in cl. (6).

1952—Subd. (a) (11). Act July 7, 1952, made it clear that the "order" either directs reinstatement of a suspended bankruptcy proceeding or an adjudication in bankruptcy or a dismissal of proceeding in the case of an original petition.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 666 of this title.

§ 666. Secretary of Treasury; notices and information to.

In addition to the notices elsewhere expressly provided, the clerk and, in the case of a reference, the referee, after such reference, shall forthwith transmit to the Secretary of the Treasury copies of all petitions, answers, orders, and applications, as more specifically enumerated in section 665 of this title, and copies of such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct be transmitted to him. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters so enumerated, shall also be transmitted to the Secretary of the Treasury. Any order fixing the time for confirming a plan which affects claims or stock of the United States shall include a

[1] So in original.

notice to the Secretary of the Treasury of not less than thirty days. (July 1, 1898, ch. 541, § 266, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 667. Taxes; exemption from stamp taxes.

The issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan confirmed under this chapter, shall be exempt from any stamp taxes now or hereafter imposed under the laws of the United States or of any State. (July 1, 1898, ch. 541, § 267, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the last sentence of former section 207 (f) of this title.

CROSS REFERENCES

Exemption from taxation of securities issued, transferred, or exchanged pursuant to reorganization plan, see section 4382 of Title 26, Internal Revenue Code.

§ 668. Same; income or profit from modification of indebtedness.

Except as provided in section 670 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in a plan under this chapter, or by a corporation organized or made use of for effectuating a plan under this chapter by reason of a modification in or cancelation in whole or in part of any of the indebtedness of the debtor in a proceeding under this chapter. (July 1, 1898, ch. 541, § 268, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676 of this title.

§ 669. Same; plan to avoid taxes; objection to confirmation.

Where it appears that a plan has for one of its principal purposes the avoidance of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury, or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the plan, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the plan. (July 1, 1898, ch. 541, § 269, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676 of this title.

§ 670. Same; income tax property basis adjustment.

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section. (July 1, 1898, ch. 541, § 270, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904, and amended July 1, 1940, ch. 500, § 1, 54 Stat. 709.)

AMENDMENTS

1940—Act July 1, 1940, added "but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan" to the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 668, 676 of this title; title 26 sections 372, 373, 1018.

§ 671. Same; assessment and payment or acceptance of plan by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor or the corporation organized or made use of for effectuating a plan under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 271, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 672. Labor and company unions; right to organize or join.

The right of employees or of persons seeking employment on the property of a debtor under the jurisdiction of the court to join a labor organization of their choice, or to refuse to join or remain members of a company union, shall be free from interference, restraint, or coercion by the court, a debtor, or trustee. It shall be the duty of a debtor or trustee to report to the judge any agreement restricting or interfering with such right, and the judge shall thereupon enter an appropriate order for the termination of such agreement and for notice to the employees that the same is no longer binding upon them. No funds of the estate shall be used by a debtor or a trustee for the purpose of maintaining company unions. (July 1, 1898, ch. 541, § 272, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from subds. (*l*) and (m) of former section 207 of this title.

CROSS REFERENCES

Hearing on soundness of plan, right of labor union, see section 606 of this title.

National Labor Relations Act to prevail over provisions of this section, see section 165 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 165.

SUBCHAPTER XVI.—WHEN CHAPTER TAKES EFFECT

§ 676. Proceedings to which chapter applies.

(a) This chapter shall apply to debtors by whom or against whom petitions are filed on and after the effective date of this amendatory Act and to the creditors and stockholders thereof, whether their rights, claims, or interests of any nature whatsoever have been acquired or created before or after such date;

(b) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on such date, and a petition may be filed under this chapter notwithstanding the pendency on such date of a proceeding in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment application has been made in a court of the United States or of any State;

(c) the provisions of sections 206 and 207 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act, except that—

(1) if the petition in such proceedings was approved within three months prior to the effective date of this amendatory Act, the provisions of this chapter shall apply in their entirety to such proceedings; and

(2) if the petition in such proceedings was approved more than three months before the effective date of this amendatory Act, the provisions of this chapter shall apply to such proceedings to the extent that the judge shall deem their application practicable; and

(3) sections 668 and 670 of this title shall apply to any plan confirmed under section 207 of this title before the effective date of this amendatory Act and to any plan which may be confirmed under section 207 of this title on and after such effective date, except that the exemption provided by section 668 of this title may be disallowed if it shall be made to appear that any such plan had for one of its principal purposes the avoidance of income taxes, and except further that where such plan has not been confirmed on and after such effective date, section 669 of this title shall apply where practicable and expedient.

(July 1, 1898, ch. 541, § 276, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

CHANDLER ACT, EFFECTIVE DATE; CONSTRUCTION

Section 7 of act June 22, 1938, provided that: "This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of act June 22, 1938, see note under section 1 of this title.

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SUBCHAPTER I.—CONSTRUCTION

§ 701. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 301, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 702. Application of other provisions.

The provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 722 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 721 or 722 of this title except where an adjudication had previously been entered. (July 1, 1898, ch. 541, § 302, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER II.—DEFINITIONS

§ 706. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his unsecured debts, upon any terms;

(2) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock

and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(3) "debtor" shall mean a person who could become a bankrupt under section 22 of this title and who files a petition under this chapter;

(4) "executory contracts" shall include unexpired leases of real property; and

(5) "petition" shall mean a petition filed under this chapter by a debtor proposing an arrangement.

(July 1, 1898, ch. 541, § 306, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Paragraph (3) was from fifth sentence of former section 202 (a) of this title.

§ 707. Creditors; debts; claims.

Unless inconsistent with the context and for the purposes of an arrangement providing for an extension of time for payment of debts in full and applicable exclusively to the debts to be extended—

(1) "creditors" shall include the holders of all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent; and

(2) "debts" or "claims" shall include all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent.

(July 1, 1898, ch. 541, § 307, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from sixth sentence of former section 202 (a) of this title.

Par. (2) was from second sentence of former section 202 (a) of this title.

§ 708. Creditors affected by arrangement; determination.

A creditor shall be deemed to be "affected" by an arrangement only if his interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor is so affected. (July 1, 1898, ch. 541, § 308, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER III.—JURISDICTION, POWERS, AND DUTIES OF THE COURT

§ 711. Exclusive jurisdiction of debtor and property.

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located. (July 1, 1898, ch. 541, § 311, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title.

§ 712. Jurisdiction, powers, and duties.

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed; or

(2) where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 312, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (m) of this title.

§ 713. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties conferred and imposed upon it by this chapter—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) upon such notice as the court may prescribe and upon cause shown, authorize the receiver or trustee, or the debtor in possession, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the court may approve;

(3) whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time.

(July 1, 1898, ch. 541, § 313, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (3) was from last sentence of former section 202 (d) of this title.

§ 714. Stay of actions.

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the com-

mencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor. (July 1, 1898, ch. 541, § 314, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (n) of this title.

§ 715. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter. (July 1, 1898, ch. 541, § 315, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 716. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 316, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (m) of this title.

SUBCHAPTER IV.—PETITION AND STAY

§ 721. Filing petition; pending bankruptcy proceeding.

A debtor may file a petition under this chapter in a pending bankruptcy proceeding either before or after his adjudication. (July 1, 1898, ch. 541, § 321, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 30 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 712, 725, 741, 752, 776, 777, 778, 786, 794 of this title.

§ 722. Same; original petition.

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication. (July 1, 1898, ch. 541, § 322, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

CROSS REFERENCES

Amendment of petition in corporate reorganization proceeding to comply with requirements of this chapter, see section 547 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 712, 726, 741, 752, 776, 777, 778, 780, 786, 794 of this title.

§ 723. Contents of petition.

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature, and shall set forth the provisions of the arrangement proposed by him, or, that he intends to propose an arrangement pursuant to the provisions of this chapter. (July 1, 1898, ch. 541, § 323, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907, and amended Aug. 23, 1958, Pub. L. 85–732, § 1, 72 Stat. 820.)

AMENDMENTS

1958—Pub. L. 85–732 added: "or, that he intends to propose an arrangement pursuant to the provisions of this chapter".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

§ 724. Statements and fees accompanying petition.

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statements of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) payment to the clerk of the fees, if not already paid, required by this title.

(July 1, 1898, ch. 541, § 324, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907, and amended July 7, 1952, ch. 579, § 29, 66 Stat. 432.)

AMENDMENTS

1952—Act July 7, 1952, incorporated former pars. (1) and (2) into par. (1), added a proviso, and renumbered former par. (3) to be par. (2).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Former par. (2) was from first sentence of former section 202 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 776 of this title.

§ 725. Petition in pending bankruptcy proceedings as stay.

A petition filed under section 721 of this title shall not act as a stay of adjudication or of the administration of the estate, but the court may, upon application of the debtor and upon notice to all parties in interest, including the creditors' committee and the receiver or trustee, if any such has been appointed, grant a stay of adjudication or of the administration of the estate upon such terms as may be proper for the protection of the estate and for indemnity against loss thereto or diminution thereof. (July 1, 1898, ch. 541, § 325, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

§ 726. Bond of debtor in original petition.

Where a petition is filed under section 722 of this title, the court may, upon hearing and after notice to the debtor and to such other persons as the court may direct, order the debtor to file a bond or undertaking, with such sureties as may be approved by the court and in such amount as the court may fix, to indemnify the estate against subsequent loss thereto or diminution thereof until, in the event of the entry of an order of adjudication under this chapter, the entry of such order. (July 1, 1898, ch. 541, § 326, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 727 of this title.

§ 727. Same; failure to file bond.

Upon failure of the debtor to comply with such order for indemnity, as prescribed in section 726 of this title, the court may, after hearing upon notice to the debtor, the creditors' committee, if any has been appointed, and to such other persons as the court may direct, either adjudge the debtor a bankrupt and direct that bankruptcy be proceeded with pursuant to the provisions of this title or dismiss the proceedings under this chapter, as in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 327, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (*l*) of this title.

§ 728. Dismissal proceedings; amended petition.

The judge may, upon application of the Securities and Exchange Commission or any party in interest, and upon such notice to the debtor, to the Securities and Exchange Commission, and to such other persons as the judge may direct, if he finds that the proceedings should have been brought under chapter 10 of this title, enter an order dismissing the proceedings under this chapter, unless, within such time as the judge shall fix, the petition be amended to comply with the requirement of chapter 10 of this title for the filing of a debtor's petition or a creditors' petition under such chapter, be filed. Upon the filing of such amended petition, or of such creditors' petition, and the payment of such additional fees as may be required to comply with section 532 of this title, such amended petition or creditors' petition shall thereafter, for all purposes of chapter 10 of this title, be deemed to have been originally filed under such chapter. (July 1, 1898, ch. 541, § 328, as added July 7, 1952, ch. 579, § 30, 66 Stat. 432.)

EFFECTIVE DATE

Section effective three months after July 7, 1952, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10 §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER V.—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

§ 731. Reference to referee.

The clerk shall, unless the judge or judges direct otherwise, refer the proceeding to a referee. (July 1, 1898, ch. 541, § 331, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85–732, § 2, 72 Stat. 820; June 23, 1959, Pub. L. 86–64, § 4, 73 Stat. 109.)

AMENDMENTS

1959—Pub. L. 86–64 substituted provisions requiring the clerk, unless the judge or judges direct otherwise, to refer the proceeding to a referee for provisions which permitted the judge at any stage of the proceeding to refer it to a referee either generally or specially, and which required the clerk to refer the case if the judge or judges were absent at the time of the filing of the petition from the district or the division in which the petition was filed.

1958—Pub. L. 85–732 authorized the judge to refer the proceeding generally or specially and required the clerk forthwith to refer the case in absence of judges.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (*o*) of this title.

§ 732. Appointment of receiver or continuance of trustee in possession.

The court may, upon the application of any party in interest, appoint, if necessary, a receiver of the property of the debtor, or, if a trustee in bankruptcy has previously been appointed shall continue such trustee in possession. (July 1, 1898, ch. 541, § 332, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (b) of this title.

§ 733. Appointment of appraisers.

The court may, upon the application of the receiver, trustee, or any party in interest, appoint, if not previously appointed, one or more appraisers who shall prepare and file under oath an inventory and appraisal of the property of the debtor, and may prescribe how such inventory and appraisal shall be made. (July 1, 1898, ch. 541, § 333, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 734. Meeting of creditors; time.

Not less than twenty-five nor more than forty days after the petition is filed the court shall hold a first meeting of creditors. (July 1, 1898, ch. 541, § 334, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 3, 72 Stat. 820; Nov. 13, 1963, Pub. L. 88-175, § 1, 77 Stat. 330; Nov. 28, 1967, Pub. L. 90-156, § 1, 81 Stat. 510.)

AMENDMENTS

1967—Pub. L. 90-156 substituted provisions requiring the court to hold a first meeting of creditors not less than twenty-five nor more than forty days after the petition is filed for provisions that required notice by mail to be given within ten days after the petition is filed to the debtors, the creditors, and other parties in interest of the first meeting of creditors to be held not less than 15 nor more than 30 days after the date of the mailing of such notice, and the requirement that the last date for filing claims be set forth in such notice.

1963—Pub. L. 88-175 inserted "first" preceding "meeting of creditors" and required the last date for filing claims to be set forth in the notice.

1958—Pub. L. 85-732 substituted requirement that notice be given within ten days after filing of petition for a meeting to be held not less than fifteen nor more than thirty days after date of mailing the notice for requirement that first meeting of creditors be called promptly upon ten days' notice by mail.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (c) of this title and second sentence of former section 30 (a) of this title.

§ 735. Same; contents of notice and accompanying information.

(1) The notice of such meeting of creditors shall be accompanied by a copy of the proposed arrangement, if filed, a summary of the liabilities and a summary of the appraisal, if one has been made, or, if not made, a summary of the assets.

(2) If the notice of such meeting is not accompanied by a copy of the proposed arrangement, the court, at such meeting, shall fix a time within which the proposed arrangement shall be filed and shall adjourn the meeting for at least fifteen days after the date so fixed, or, if the proposed arrangement is filed at or before such meeting, shall adjourn the meeting for at least fifteen days. At least ten days before such adjourned date, the court shall mail notice of the adjourned meeting, together with a copy of the proposed arrangement, to the creditors and other parties in interest.

(3) The notice of such meeting of creditors as hereinbefore provided may also name the time for the filing of the application to confirm the arrangement and the time for the hearing of the confirmation and of such objections as may be made to the confirmation. (July 1, 1898, ch. 541, § 335, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 4, 72 Stat. 820.)

AMENDMENTS

1958—Pub. L. 85-732 designated existing provisions as subdivisions (1) and (3) and added subd. (2).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (c) of this title.

§ 736. Same; conduct and business generally.

At such meeting, or at any adjournment thereof, the judge or referee—

(1) shall preside;

(2) may receive proofs of claim and allow or disallow them;

(3) shall examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding; and

(4) shall receive and determine the written acceptances of creditors on the proposed arrangement, if a copy thereof shall have accompanied the notice of such meeting or adjourned meeting. Such acceptances may be obtained by the debtor before or after the filing of a petition under this chapter.

(July 1, 1898, ch. 541, § 336, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 5, 72 Stat. 820.)

AMENDMENTS

1958—Par. (4). Pub. L. 85-732 inserted the words "if a copy thereof shall have accompanied the notice of such meeting or adjourned meeting".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from second sentence of former section 30 (a) of this title.

Par. (3) was from first sentence of former section 202 (d) of this title and second sentence of former section 30 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 761 of this title.

§ 737. Same; conduct and business after acceptance of arrangement.

At such meeting, or at any adjournment thereof, the judge or referee shall, after the acceptance of the arrangement—

(1) designate the receiver or trustee, if any, or the debtor or a person specially appointed as disbursing agent to distribute, subject to the control of the court, the consideration, if any, to be deposited by the debtor; and, if a disbursing agent is so appointed, require such person to give bond with a surety to be approved by the court in such amount as the court shall fix, and fix the amount or rate of his compensation, not in excess of the compensation allowable to a receiver serving as a mere custodian under this title;

(2) fix a time within which the debtor shall deposit, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to the creditors, the money necessary to pay all debts which have priority, unless such priority creditors shall have waived their claims on such deposit, or consented in writing to any provision of the arrangement for otherwise dealing with such claims, and the money necessary to pay the costs and expenses of the proceeding; and

(3) fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof or any objections to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it.

(July 1, 1898, ch. 541, § 337, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended July 7, 1952, ch. 579, § 31, 66 Stat. 432; Aug. 23, 1958, Pub. L. 85–732, § 6, 72 Stat. 821; Nov. 28, 1967, Pub. L. 90–158, § 1, 81 Stat. 516.)

AMENDMENTS

1967—Pub. L. 90–158 provided for the designation of the debtor or a specially appointed disbursing agent to distribute the consideration deposited by the debtor, required the disbursing agent to give bond with a surety, fixed the compensation of the designated individual, and eliminated the requirement that the debtor deposit the actual and necessary expenses, including fees and expenses of attorneys, accountants and agents, in such amounts as the court may allow.

1958—Par. (2). Pub. L. 85–732 included in the expenses of the proceedings, fees and expenses of attorneys, accountants and agents of a creditors' committee.

1952—Par. (2). Act July 7, 1952 substituted "in such amount * * * expenses incidental thereto; and" for "incurred in connection with the proceedings and the arrangement by the committee of creditors and the attorneys or agents of such committee, in such amount as the court may allow; and".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from former section 202 (b) of this title.

Par. (2) was from second clause of first sentence of former section 202 (e) of this title.

Par. (3) was from former section 202 (f) of this title and former section 30 (c) of this title.

§ 738. Same; election of creditors' committee; nomination of trustee.

At such meeting, the creditors may elect a committee, if none has previously been elected under this title, and, if a trustee has not previously been elected or appointed, may nominate a trustee who shall thereafter qualify in case it shall become necessary to administer the estate in bankruptcy as provided under this chapter. (July 1, 1898, ch. 541, § 338, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909, and amended July 7, 1952, ch. 579, § 32, 66 Stat. 432; Nov. 28, 1967, Pub. L. 90–158, § 2, 81 Stat. 516.)

AMENDMENTS

1967—Pub. L. 90–158 provided for the election of a committee in place of appointment, and the qualification of a trustee, rather than appointment, subsequent to the nomination of such trustee.

1952—Act July 7, 1952, inserted "designation or" proceeding "appointed under this title".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second clause of first sentence of former section 202 (d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 739 of this title.

§ 739. Same; functions; administrative expenses.

(1) The functions of a committee elected as provided in section 738 of this title may include the following: (a) to examine into the conduct of the debtor's affairs and the causes of his insolvency or inability to pay his debts as they mature; (b) to consider whether the arrangement proposed by the debtor is for the best interests of the creditors and is feasible; (c) to negotiate with the debtor concerning the terms of the proposed arrangement and to advise the creditors of its recommendations with respect thereto; (d) to report to the creditors from time to time concerning the progress of the proceeding; (e) to collect and file with the court acceptance of the arrangement proposed; and (f) perform such other services as may contribute to the confirmation of the arrangement.

(2) A committee elected as provided in section 738 of this title may employ such agents, attorneys, and accountants as may be necessary to assist in the performance of its functions. Expenses of the committee for such assistance, whether incurred before or after the filing of the petition under this chapter, shall be allowed as an expense of administration to the extent deemed reasonable and necessary by the court, provided the arrangement is confirmed. Such expenses incurred by the committee before its election in accordance with section 738 of this title shall not be disallowed because of a change in the committee's composition, provided a majority of the committee when it incurred the expense continue as members of the elected committee. (July 1, 1898, ch. 541, § 339, as added Nov. 28, 1967, Pub. L. 90–158, § 3, 81 Stat. 517.)

SUBCHAPTER VI.—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 741. In general.

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and, subject to the approval of the court, their fees, and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 341, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 742. Continuance of debtor in possession.

Where no receiver or trustee is appointed, the debtor shall continue in possession of his propetry[1] and shall have all the title and exercise all the powers of a trustee appointed under this title, subject, however, at all times to the control of the court and to such limitations, restrictions, terms, and conditions as the court may from time to time prescribe. (July 1, 1898, ch. 541, § 342, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 743. Operation of business and management of property; reports.

The receiver or trustee, or the debtor in possession, shall have the power, upon authorization by and subject to the control of the court, to operate the business and manage the property of the debtor during such period, limited or indefinite, as the court may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate. (July 1, 1898, ch. 541, § 343, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (b) of this title.

§ 744. Issuance of certificates of indebtedness.

During the pendency of a proceeding for an arrangement, or after the confirmation of the arrangement where the court has retained jurisdiction, the court may upon cause shown authorize the receiver or trustee, or the debtor in possession, to issue certificates of indebtedness for cash, property, or other consideration approved by the court, upon such terms and conditions and with such security and priority in payment over existing obligations as in the particular case may be equitable. (July 1, 1898, ch. 541, § 344, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 793 of this title.

SUBCHAPTER VII.—CREDITORS AND CLAIMS

§ 751. Classification of creditors.

For the purposes of the arrangement and its acceptance, the court may fix the division of creditors into classes and, in the event of controversy, the court shall after hearing upon notice summarily determine such controversy. (July 1, 1898, ch. 541, § 351, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 752. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 352, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 753. Rejection of executory contract or unexpired lease; assignment of future rent claim.

In case an executory contract shall be rejected pursuant to the provisions of an arrangement or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or a receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the arrangement, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages

[1] So in original.

or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 353, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the last two sentences of former section 202 (a) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 754. Repealed. July 7, 1952, ch. 579, § 33, 66 Stat. 433.

Section, act July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910, related to expiration of time for filing claims in pending bankruptcy.

EFFECTIVE DATE OF REPEAL

Repeal of section effective three months after July 7, 1952, see note under section 1 of this title.

§ 755. Repealed. Pub. L. 90–157, § 5, Nov. 28, 1967, 81 Stat. 516.

Section, act July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910, and amended July 7, 1952, ch. 579, § 34, 66 stat. 433, provided for allowance of claims upon order to proceed with bankruptcy, and is now covered by section 778(a) (4) of this title.

§ 755a. Proofs of claim; filing before confirmation; exceptions.

Creditors, including the United States, any State, and any subdivision thereof, shall file their proofs of claim before confirmation except as follows:

(1) if scheduled by the debtor, a claim may be filed within thirty days after the date of mailing notice of confirmation to creditors but shall not be allowed for an amount in excess of that set forth in the debtor's schedules; and

(2) a claim arising from the rejection of an executory contract of the debtor may be filed within such time as the court may direct.

(July 1, 1898, Ch. 541, § 355, as added Nov. 13, 1963, Pub. L. 88–175, § 2, 77 Stat. 330, and amended Nov. 28, 1967, Pub. L. 90–156, § 2, 81 Stat. 510.)

AMENDMENTS

1967—Pub. L. 90–156 substituted provisions requiring creditors to file their proofs of claim before confirmation except in enumerated instances for provision making subd. (n) of section 93 of this title applicable when a petition is filed under section 722 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 767, 769 of this title.

SUBCHAPTER VIII.—PROVISIONS OF ARRANGEMENT

§ 756. Modification of rights of unsecured creditors.

An arrangement within the meaning of this chapter shall include provisions modifying or altering the rights of unsecured creditors generally or of some class of them, upon any terms or for any consideration. (July 1, 1898, ch. 541, § 356, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (h) of this title.

§ 757. Permissive provisions.

An arrangement within the meaning of this chapter may include—

(1) provisions for treatment of unsecured debts on a parity one with the other, or for the division of such debts into classes and the treatment thereof in different ways or upon different terms;

(2) provisions for the rejection of any executory contract;

(3) provisions for specific undertakings of the debtor during any period of extension provided for by the arrangement, including provisions for payments on account;

(4) provisions for the termination, under specified conditions, of any period of extension provided by the arrangement;

(5) provisions for continuation of the debtor's business with or without supervision or control by a receiver or by a committee of creditors or otherwise;

(6) provisions for payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected by such arrangement;

(7) provisions for retention of jurisdiction by the court until provisions of the arrangement, after its confirmation, have been performed; and

(8) any other appropriate provisions not inconsistent with this chapter.

(July 1, 1898, ch. 541, § 357, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Pars. (3) and (5) were from second sentence of former section 202 (h) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

SUBCHAPTER IX.—CONFIRMATION OF ARRANGEMENT

§ 761. Unanimously accepted arrangement; confirmation upon deposit by debtor.

An arrangement which at the meeting of creditors, as provided in section 736 of this title, has been accepted in writing by all creditors affected thereby,

whether or not their claims have been proved, shall be confirmed by the court when the debtor shall have made the deposit required under this chapter and under the arrangement, and if the court is satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this title. (July 1, 1898, ch. 541, § 361, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from former sections 30 (d) (3) and 202 (g) (4) of this title.

§ 762. Majority accepted arrangement; application for confirmation.

If an arrangement has not been so accepted, an application for the confirmation of the arrangement may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing by a majority in number of all creditors or, if the creditors are divided into classes, by a majority in number of all creditors of each class, affected by the arrangement, whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims generally or of each class of claims, as the case may be; and

(2) the debtor has made the deposit required under this chapter and under the arrangement.

(July 1, 1898, ch. 541, § 362, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 787 of this title.

§ 763. Alterations or modifications prior and subsequent to confirmation.

Alterations or modifications of an arrangement may be proposed in writing by a debtor, with leave of court, at any time before the arrangement is confirmed; or where the court has retained jurisdiction pursuant to the provisions of section 768 of this title, an arrangement providing for an extension of time for the payment of debts in whole or in part may be altered or modified after it has been confirmed to the extent and subject to the limitations set forth in section 787 of this title. (July 1, 1898, ch. 541, § 363, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911, and amended Aug. 23, 1958, Pub. L. 85-732, § 7, 72 Stat. 821.)

AMENDMENTS

1958—Pub. L. 85-732 inserted provision respecting alteration or modification of an arrangement which has been confirmed.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 764. Same; acceptance.

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the arrangement and who fails to file with the court, within such time as shall be fixed in the order, his rejection of the altered or modified arrangement, shall be deemed to have accepted the alteration or modification and the arrangement so altered or modified, unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 364, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 765. Same; notice.

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the debtor, the creditors, and other parties in interest. (July 1, 1898, ch. 541, § 365, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 766. Requisites for confirmation.

The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors and is feasible;

(3) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and

(4) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor, or if the debtor is a corporation, the interests of its stockholders or members will be preserved under the arrangement. (July 1, 1898, ch. 541, § 366, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911, and amended July 7, 1952, ch. 579, § 35, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, struck out provisions relating to the proposed plan being "fair and equitable" and added the last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 787 of this title.

§ 767. Effect of confirmation.

Upon confirmation of an arrangement—

(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement and upon all creditors of the debtor, whether or not they are affected by the arrangement or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

(2) the money deposited for priority debts and for the costs and expenses shall be disbursed to the persons entitled thereto;

(3) the consideration deposited, if any, shall be distributed and the rights provided by the arrangement shall inure to the creditors affected by the arrangement, including the United States, any State, and any subdivision thereof, whose claims are filed within the time prescribed by section 755a of this title and are allowed; and

(4) except as otherwise provided in sections 769 and 770 of this title, the case shall be dismissed.

(July 1, 1898, ch. 541, § 367, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 36, 66 Stat. 433; Nov. 13, 1963, Pub. L. 88–175, § 3, 77 Stat. 331; Nov. 28, 1967, Pub. L. 90–156, § 3, 81 Stat. 510.)

AMENDMENTS

1967—Par. (3). Pub. L. 90–156 substituted ", including the United States, any State, and any subdivision thereof, whose claims are filed within the time prescribed by section 755a of this title and are allowed" for "whose claims (a) have been filed prior to the date of confirmation but within the time prescribed by section 755a of this title and are allowed or (b) have been filed after the date of confirmation but within the time prescribed by section 755a of this title and are allowed".

1963—Par. (3). Pub. L. 88–175 inserted "but within the time prescribed by section 755a of this title" in clause (a), and substituted "have been filed after the date of confirmation but within the time prescribed by section 755a of his title and are allowed" for "whether or not filed have been scheduled by the debtor and are not contingent, unliquidated, or disputed" in clause (b).

1952—Par. (3). Act July 7, 1952, struck out "are not barred by the provisions of section 754 of this title" following "whose claims", substituted "filed" for "proved" in two places and "and are not contingent, unliquidated, or disputed;" for "as fixed liabilities, liquidated in amount, and are not disputed;".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from first sentence of former section 202 (i) of this title.

Pars. (3) and (4) were from first sentence of former section 202 (j) of this title and first sentence of former section 30 (e) of this title.

§ 768. Retention of jurisdiction; provision in arrangement.

The court shall retain jurisdiction, if so provided in the arrangement. (July 1, 1898, ch. 541, § 368, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (j) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 763, 787 of this title.

§ 769. Same; until final allowance or disallowance of debts.

The court shall in any event retain jurisdiction until the final allowance or disallowance of all claims affected by the arrangement which have been filed within the limitations as to time and amount prescribed by section 775a of this title but have not been allowed or disallowed prior to confirmation. (July 1, 1898, ch. 541, § 369, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 37, 66 Stat. 433; Nov. 13, 1963, Pub. L. 88–175, § 4, 77 Stat. 331; Nov. 28, 1967, Pub. L. 90–156, § 4, 81 Stat. 510.)

AMENDMENTS

1967—Pub. L. 90–156 substituted the provision that the court shall retain jurisdiction as to claims filed within the limitations as to time and amount prescribed by section 755a of this title but which have not been allowed or disallowed prior to confirmation for the provisions that the court shall retain jurisdiction as to debts affected by the agreement which (1) have been proved, but not allowed or disallowed, prior to the date of confirmation; or (2) are disputed or unliquidated, have been scheduled by the debtor, and are filed within the time prescribed by section 755a of this title; or (3) arise from the rejection of executory contracts by the debtor and are filed within the time prescribed by section 755a of this title.

1963—Par. 2. Pub. L. 88–175 substituted "filed within the time prescribed by section 755a of this title" for "proved within such time as the court may direct."

Par. (3). Pub. L. 88–175 substituted "filed within the time prescribed by section 755a of this title" for "proved within such time as the court may direct."

1952—Act July 7, 1952, amended the first unnumbered paragraph of section by striking out "and not barred by the provisions of section 752 of this title."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 767, 770 of this title.

§ 770. Allowance of debts; distribution of deposited consideration.

Upon the allowance of any debts specified in paragraphs (1)—(3) of section 769 of this title, the consideration, if any, deposited for them shall be distributed and the rights provided by the arrangement

shall inure to the creditors to whom such debts are owing. (July 1, 1898, ch. 541, § 370, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 767 of this title.

§ 771. Discharge of unsecured debts upon confirmation.

The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, but excluding such debts as, under section 35 of this title, are not dischargeable. (July 1, 1898, ch. 541, § 371, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 38, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, struck out "including the claims specified in section 754 of this title" following "the arrangement".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 772. Final decree upon consummation of arrangement.

Upon the consummation of a proceeding under this chapter after confirmation of an arrangement, the court shall enter a final decree discharging the receiver or trustee, if any; closing the estate; and making such provisions, by way of injunction or otherwise, as may be equitable. (July 1, 1898, ch. 541, § 372, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 776. Abandonment or rejection of arrangement before confirmation.

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 724 of this title, are not duly filed, or if an arrangement is not proposed in the manner and within the time fixed by the court, or if an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

(1) where the petition was filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 722 of this title, enter an order, upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors: *Provided, however,* That an order adjudging the debtor a bankrupt may be entered without such hearing upon the debtor's consent.

(July 1, 1898, ch. 541, § 376, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 39, 66 Stat. 434; Aug. 23, 1958, Pub. L. 85–732, § 8, 72 Stat. 821.)

AMENDMENTS

1958—Pub. L. 85–732 inserted "or if an arrangement is not proposed in the manner and within the time fixed by the court" in the opening paragraph, and the proviso clause in par. (2).

1952—Act July 7, 1952, amended section by adding "If a statement * * * are not duly filed or".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) of this title and former section 30 (e) of this title.

§ 777. Termination or default after confirmation.

Where the court has retained jurisdiction after the confirmation of an arrangement and the debtor defaults in any of the terms thereof or the arrangement terminates by reason of the happening of a condition specified in the arrangement, the court upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct shall—

(1) where the petition has been filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt, if not previously so adjudged, and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 722 of this title, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 377, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) of this title and former section 30 (e) of this title.

§ 778. Procedure upon order directing that bankruptcy be proceeded with.

(a) Reinstatement of bankruptcy proceeding; trustee; filing of separate debt schedule; tax claims; provable claims; date for first meeting of creditors; disallowance of untimely claims.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 721 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed;

(2) in the case of a petition filed under section 722 of this title, the proceeding shall be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed; and the trustee nominated by creditors under this chapter shall be appointed by the court, or, if not so nominated or if the trustee so nominated fails to qualify within five days after notice to him of the entry of such order, a trustee shall be appointed by the court;

(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by him while continued in possession and before the qualification of a receiver, if any, under this title, and if a receiver has qualified or a trustee has been continued in possession, the schedule and statement shall be filed by such receiver or trustee for any obligations incurred and contracts assumed or entered into by him; and

(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 721 of this title and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors; but if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title shall not be allowed in the reinstated bankruptcy proceeding.

(b) Executory contracts; rejection.

Any contract which is entered into or assumed by a debtor in possession, receiver, or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

(c) Filing of claims.

Upon the filing of the schedule and statement required by subdivision (a) of this section, the court shall make an order directing the claims against the debtor in possession, receiver, or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision (a) of this section and claims arising from rejection of executory contracts under subdivision (b) of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession, receiver, or trustee shall be proved and filed in the manner provided in section 93 of this title.

(d) Disallowance of untimely claims; surplus.

Claims directed to be filed under subdivision (c) of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession, receiver, or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision (c) and claims not allowable under paragraph (4) of subdivision (a) of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly provided, shall be allowed against any surplus remaining in such case. (July 1, 1898, ch. 541, § 378, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913, and amended Nov. 28, 1967, Pub. L. 90–157, § 3, 81 Stat. 513.)

AMENDMENTS

1967—Subd. (a). Pub. L. 90–157 designated existing provisions as subd. (a), substituted in par. (2) provision for appointment of a trustee by the court for appointment as provided for in section 72 of this title, and added pars. (3) and (4).

Subds. (b)–(d). Pub. L. 90–157 added subds. (b)–(d).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (2) was from first sentence of former section 202 (*l*) of this title and second sentence of former section 202 (m) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

§ 779. Adjudication against wage earner or farmer; consent.

No adjudication shall be entered under this chapter against a wage earner or farmer unless such person shall in writing file with the court consent to the adjudication. (July 1, 1898, ch. 541, § 379, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (*l*) of this title and former section 202 (p) of this title.

§ 780. Final decree upon dismissal of original petition.

Upon the dismissal of a proceeding originated by a petition filed under section 722 of this title, the court shall enter a final decree discharging the receiver, if any, and closing the estate. (July 1, 1898, ch. 541, § 380, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 781. Proceedings after confirmation of arrangement.

Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters 1 to 7 of this title, shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

(July 1, 1898, ch. 541, § 381, as added July 7, 1952, ch. 579, § 40, 66 Stat. 434.)

EFFECTIVE DATE

Section effective three months after July 7, 1952, see note under section 1 of this title.

SUBCHAPTER XI.—ARRANGEMENTS, WHEN SET ASIDE OR MODIFIED

§ 786. Fraud in procuring arrangement.

If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement—

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon, (a) where the petition was filed under section 721 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt, if he has not already been so adjudged, and direct that the bankruptcy proceeding be proceeded with, or (b) where the petition was filed under section 722 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the arrangement for the purpose of correcting the fraud, but may not materially modify or alter the arrangement adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person, who, for value, subsequent to the confirmation, acquired rights in reliance upon it.

(July 1, 1898, ch. 541, § 386, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former sections 31 and 202 (k) of this title.

§ 787. Alteration or modification of confirmed arrangement; procedure.

Where an arrangement which has been confirmed provides for an extension of time for payment in

whole or in part of the debts affected by the arrangement, and the court has retained jurisdiction pursuant to section 768 of this title—

(1) A proposal to alter or modify the arrangement by changing the time of payment of deferred installments of the consideration, or by reducing the amount of such payments, or to accomplish both of such alterations or modifications, may be filed by the debtor with leave of court after the arrangement has been confirmed, but before the deferred consideration has been fully paid, or if such deferred consideration is represented by negotiable promissory notes, then before such notes have been delivered to the creditors.

(2) The proposal to alter or modify the arrangement shall set forth the proposed alterations or modifications, shall state whether the deferred payments provided for by the arrangement are evidenced by negotiable promissory notes and, if so, whether such promissory notes have been delivered to the creditors, and the reasons why such alterations or modifications are proposed. The proposal shall be accompanied by a list of the names and addresses of all creditors who have extended credit to the debtor since the arrangement was confirmed.

(3) If the court permits the proposed alterations or modifications to be filed, it shall call a meeting of the creditors on at least ten days' written notice to the debtor, the creditors and other parties in interest, including creditors who extended credit during the proceeding or after the arrangement was confirmed, and shall transmit with such notice a copy of the alterations or modifications proposed.

(4) If at such meeting the arrangement as altered or modified is accepted as required for confirmation by section 762 of this title by the creditors affected by such alteration or modification, the court, subject to the provisions of section 766 of this title, shall confirm the arrangements as altered or modified.

(July 1, 1898, ch. 541, § 387, as added Aug. 23, 1958, Pub. L. 85–732, § 9, 72 Stat. 822.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 763 of this title.

SUBCHAPTER XII.—GENERAL PROVISIONS

§ 791. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 391, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 792. Notices; manner of giving.

Unless otherwise directed by the court, all notices required by this chapter may be given by mail to the parties entitled thereto to their addresses ascertained in the manner prescribed for other notices in section 94 of this title. (July 1, 1898, ch. 541, § 392, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 793. Unregistered securities; use of mails and interstate commerce.

(a) The provisions of section 77e of Title 15 shall not apply to—

(1) any security issued by a receiver, trustee, or debtor in possession pursuant to section 744 of this title; or

(2) any transaction in any security issued pursuant to an arrangement in exchange for claims against the debtor or partly in exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (A) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (B) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by the dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of Title 15. (July 1, 1898, ch. 541, § 393, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914, and amended Sept. 25, 1962, Pub. L. 87–681, § 16, 76 Stat. 574.)

AMENDMENTS

1962—Subd. (a)(2). Pub. L. 87–681 eliminated "securities of or" following "arrangement in exchange for" and redesignated pars. (a) and (b) as (A) and (B), respectively.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 794. Secretary of Treasury; notices and information to.

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 721 and 722 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharging debtors, closing estates, and setting aside confirmations;

(4) all orders appointing receivers or continuing debtors in possession;

(5) all orders confirming arrangements, together with copies of such arrangements;

(6) all orders approving alterations or modifications in arrangements, together with copies of such alterations or modifications;

(7) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and

(8) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than fifteen days. (July 1, 1898, ch. 541, § 394, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 795. Taxes; income or profit from modification of indebtedness.

Except as provided in section 796 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor or a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancellation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the arrangement had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed. (July 1, 1898, ch. 541, § 395, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former sections 30 and 202 of this title, see section 799 (4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 799 of this title.

§ 796. Same; income tax; property basis adjustment.

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income-tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section. (July 1, 1898, ch. 541, § 396, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915, and amended July 1, 1940, ch. 500, § 2, 54 Stat. 709.)

AMENDMENTS

1940—Act July 1, 1940, added "but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement" in the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280 set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former sections 30 and 202 of this title, see section 799 (4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 795, 799 of this title.

§ 797. Same; assessment and payment or acceptance of arrangement by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from, and shall be paid by the debtor or the corporation organized or made use of for effectuating an arrangement under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 397, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER XIII.—WHEN CHAPTER TAKES EFFECT

§ 799. Proceedings to which chapter applies.

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on the effective date of this amendatory Act;

(3) the provisions of sections 30, 201, and 202 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act; and

(4) sections 795 and 796 of this title shall apply to compositions and extensions confirmed under sections 30 and 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under sections 30 and 202 of this title on and after such effective date. (July 1, 1898, ch. 541, § 399, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

CHANDLER ACT; EFFECTIVE DATE

Section 7 of act June 22, 1938, provided that: "This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of act June 22, 1938, see note under section 1 of this title.

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SUBCHAPTER I.—CONSTRUCTION

§ 801. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 401, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 802. Application of other provisions.

The provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply to proceedings under this chapter: *Provided, however,* That subdivision (n) of section 93 of this title shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7 of this title. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors," and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 822 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 821 or 822 of this title. (July 1, 1898, ch. 541, § 402, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER II.—DEFINITIONS

§ 806. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan which has for its primary purpose the alteration or modification of the rights of creditors or of any class of them, holding debts secured by real property or a chattel real of which the debtor is the legal or equitable owner;

(2) "claims" shall include all claims of whatever character, against a debtor or his property, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(3) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(4) "executory contracts" shall include unexpired leases of real property;

(5) "creditors" shall mean the holders of claims;

(6) "debtor" shall mean a person, other than a corporation as defined in this title, who could become a bankrupt under section 22 of this title, who files a petition under this chapter and who is the legal or equitable owner of real property or a chattel real which is security for any debt, but shall not include a person whose only interest in property proposed to be dealt with by the arrangement is a right to redeem such property from a sale had before the filing of such petition;

(7) "debts" shall include all claims;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting trust certificates, constituting debts against a debtor or debts secured by a lien upon real property or a chattel real of which such debtor is the legal or equitable owner; and

(9) "petition" shall mean a petition filed under this chapter proposing an arrangement by a debtor.

(July 1, 1898, ch. 541, § 406, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (5) was from sixth sentence of former section 202 (a) of this title.

Par. (6) was from fifth sentence of former section 202 (a) of this title.

Par. (7) was from second sentence of former section 202 (a) of this title.

§ 807. Creditors affected by arrangement; determination.

Creditors or any class thereof shall be deemed to be "affected" by an arrangement only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor or class is so affected. (July 1, 1898, ch. 541, § 407, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER III.—JURISDICTION, POWERS, AND DUTIES OF THE COURT

§ 811. Exclusive jurisdiction of debtor and property.

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located. (July 1, 1898, ch. 541, § 411, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title.

CROSS REFERENCES

Delivery and accounting for property, see section 11 (a) (21) of this title.

§ 812. Jurisdiction, powers, and duties.

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the bankruptcy proceeding at the time the petition under this chapter was filed; and

(2) where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 412, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title.

§ 813. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties conferred and imposed upon it by this chapter—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) upon such notice as the court may prescribe and upon cause shown, authorize the trustee or debtor in possession to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the court may approve;

(3) whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time.

(July 1, 1898, ch. 541, § 413, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (d) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 814. Stay of actions.

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits against a debtor and may, upon notice for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon any property of a debtor. (July 1, 1898, ch. 541, § 414, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (n) of this title.

CROSS REFERENCES

Petition as stay, see section 828 of this title.

§ 815. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter. (July 1, 1898, ch. 541, § 415, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 816. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 416, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (m) of this title.

SUBCHAPTER IV.—PETITION AND STAY

§ 821. Filing petition; pending bankruptcy proceeding.

A debtor may file a petition under this chapter in a pending bankruptcy proceeding before his adjudication. (July 1, 1898, ch. 541, § 421, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 30 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 812, 825, 843, 857, 881, 882, 883, 893, 894, 911, 919 of this title.

§ 822. Same; original petition.

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication. (July 1, 1898, ch. 541, § 422, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 812, 826, 843, 857, 881, 882, 883, 885, 911, 919 of this title.

§ 823. Contents of petition.

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature, and shall set forth the terms of the arrangement proposed by him. (July 1, 1898, ch. 541, § 423, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

§ 824. Statements and fees to accompany petition.

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statements of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) payment to the clerk of the fees, if not already paid, required by this title.

(July 1, 1898, ch. 541, § 424, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918, and amended July 7, 1952, ch. 579, § 41, 66 Stat. 434.)

AMENDMENTS

1952—Act July 7, 1952, incorporated former pars. (1) and (2) into par. (1) and added proviso renumbered former par. (3) as (2) and substituted "required by this title" for "required to be collected by the clerk under this title."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 881 of this title.

§ 825. Petition in pending bankruptcy proceeding as stay of adjudication or administration.

A petition filed under section 821 of this title shall not act as a stay of adjudication or of the administration of the estate, but the court may, upon application of the debtor and upon notice to all parties in interest, including the creditors' committee and the receiver or trustee, if any such has been appointed, grant a stay of adjudication or of the administration of the estate upon such terms as may be proper for the protection of the estate. (July 1, 1898, ch. 541, § 425, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

§ 826. Bond of debtor in original petition.

Where a petition is filed under section 822 of this title, the court may, upon hearing and after notice to the debtor and to such other persons as the court may direct, order the debtor to file a bond or undertaking, with such sureties as may be approved by the court and in such amount as the court may fix, to indemnify the estate against subsequent loss in the event of the entry of an order of adjudication under this chapter. (July 1, 1898, ch. 541, § 426, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 827 of this title.

§ 827. Same; failure to give bond.

Upon failure of the debtor to comply with such order for indemnity, as provided in section 826 of this title, the court may, after hearing upon notice to the debtor, the creditors' committee, if any has been appointed, and to such other persons as the court may direct, either adjudge the debtor a bankrupt and direct that bankruptcy be proceeded with pursuant to the provisions of this title or dismiss the proceedings under this chapter, as in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 427, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first sentence of former section 202 (*l*) of this title.

§ 828. Petition as stay of actions.

Unless and until otherwise ordered by the court, upon hearing and after notice to the debtor and all other parties in interest, the filing of a petition under this chapter shall operate as a stay of any act or proceeding to enforce any lien upon the real property or chattel real of a debtor. (July 1, 1898, ch. 541, § 428, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Stay of actions generally, see section 814 of this title.

SUBCHAPTER V.—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

§ 831. Reference of proceeding to referee.

The judge may refer the proceeding to a referee. (July 1, 1898, ch. 541, § 431, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (*o*) of this title.

§ 832. Appointment of trustee.

The court may, upon the application of any party in interest, appoint a trustee of the property of the debtor. (July 1, 1898, ch. 541, § 432, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 833. Appointment of appraisers.

The court may, upon the application of the trustee or any party in interest, appoint one or more appraisers who shall prepare and file under oath an inventory and appraisal of the property of the debtor, and may prescribe how such inventory and appraisal shall be made. (July 1, 1898, ch. 541, § 433, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 834. Meeting of creditors; time; notice.

The court shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor, the creditors, and other parties in interest. (July 1, 1898, ch. 541, § 434, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first sentence of former section 202 (c) of this title and second sentence of former section 30 (a) of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

§ 835. Same; information accompanying notice; contents of notice.

The notice of such meeting of creditors shall be accompanied by a copy of the proposed arrangement, a summary of the liabilities as shown by the schedules and a summary of the appraisal, if one has been made, or, if not made, a summary of the assets as shown by the schedules. Such notice may also name the time for the filing of the application to confirm the arrangement and the time for the hearing of the confirmation and of such objections as may be made to the confirmation. (July 1, 1898, ch. 541, § 435, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (c) of this title.

§ 836. Same; conduct generally.

At such meeting, or at any adjournment thereof, the judge or referee—

(1) shall preside;

(2) may receive proofs of claim and allow or disallow them;

(3) shall examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding; and

(4) shall receive and determine the written acceptances of creditors on a proposed arrangement, which acceptances may be obtained before or after the filing of a petition under this chapter.

(July 1, 1898, ch. 541, § 436, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from second sentence of former section 30 (a) of this title.

Par. (3) was from first sentence of former section 202 (d) of this title and second sentence of former section 30 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 867 of this title.

§ 837. Same; conduct and business after acceptance of arrangement.

At such meeting, or at any adjournment thereof, the judge or referee shall, after acceptance of the arrangement—

(1) appoint the trustee, if any, or otherwise appoint some other person, to receive and distribute, subject to the control of the court, the moneys and consideration, if any, to be deposited, require such person to give bond with surety to be approved by the court in such amount as the court shall fix and fix the amount or rate of such person's compensation;

(2) fix a time within which there shall be deposited, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to creditors, the money necessary to pay the costs, expenses, and compensation allowed by the court, unless and to the extent that such deposit shall be waived by the persons entitled to such costs, expenses, and compensation, and unless and to the extent that the court shall, in its discretion, allow security to be entered or deposited, upon such terms and conditions as the court may prescribe, in lieu of the deposit of such money;

(3) fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof and on any objections to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it.

(July 1, 1898, ch. 541, § 437, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from former section 202 (b) of this title.

Par. (2) was from first sentence of former section 202 (e) of this title.

Par. (3) was from former sections 30 (c) and 202 (f) of this title.

SUBCHAPTER VI.—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 841. Trustee; title.

A trustee, upon his appointment and qualification, shall be vested with the title of a trustee appointed under section 72 of this title. (July 1, 1898, ch. 541, § 441, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 842. Same; rights, duties, and powers.

Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the rights, be subject to the duties, and exercise the powers of a trustee appointed under section 72 of this title, and, if authorized by the court, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of a debtor. (July 1, 1898, ch. 541, § 442, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Receiver in equity, powers of, see section 959 of Title 28, Judiciary and Judicial Procedure.

§ 843. Powers, rights, and duties to be same as if bankruptcy adjudged.

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the pending bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 443, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 844. Continuance of debtor in possession.

Where no trustee is appointed, the debtor shall continue in possession of his property and shall have all the title and exercise all the powers of a trustee appointed under this chapter, subject, however, at all times to the control of the court and to such limitations, restrictions, terms, and conditions as the court may from time to time prescribe. (July 1, 1898, ch. 541, § 444, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 845. Operation of business and management of property; reports.

The trustee or the debtor in possession shall have the power, upon authorization by and subject to the control of the court, to operate the business and manage the property of the debtor during such period, limited or indefinite, as the court may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate. (July 1, 1898, ch. 541, § 445, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (b) of this title.

§ 846. Issuance of certificates of indebtedness.

During the pendency of a proceeding for an arrangement, or after the confirmation of the arrangement where the court has retained jurisdiction, the court may upon cause shown authorize the trustee or debtor in possession to issue certificates of indebtedness for cash, property, or other consideration approved by the court, upon such terms and conditions and with such security and priority in

payment over existing obligations as in the particular case may be equitable. (July 1, 1898, ch. 541, § 446, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 918 of this title.

SUBCHAPTER VII.—CREDITORS AND CLAIMS

§ 851. Filing proofs of claims; manner; time; objections to allowance.

The court shall prescribe the manner in which and fix a time within which the proofs of claim of creditors may be filed and allowed. Objections by any party in interest to the allowance of any such claims shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 451, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 852. Classification of creditors.

For the purposes of the arrangement and its acceptance, the court may fix the division of creditors into classes according to the nature of their respective claims, and, in the event of controversy, the court shall after hearing upon notice summarily determine the controversy. (July 1, 1898, ch. 541, § 452, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 853 of this title.

§ 853. Same; hearing.

For the purposes of the classification, as provided in section 852 of this title, the court shall if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the court may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value. (July 1, 1898, ch. 541, § 453, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 854. Indenture trustee; filing claims.

An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That in computing the majority necessary for the acceptance of the arrangement only the claims filed by the holders thereof, and allowed, shall be included. (July 1, 1898, ch. 541, § 454, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 855. United States as creditor.

If the United States is a secured or unsecured creditor of a debtor, the claim thereof shall be deemed to be affected by an arrangement under this chapter, and the Secretary of the Treasury is authorized to accept or reject an arrangement in respect of the claims of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as a secured or unsecured creditor), no arrangement which does not provide for the payment thereof shall be confirmed by the court, except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,* That if the Secretary of the Treasury shall fail to accept or reject an arrangement for more than sixty days after receipt of written notice so to do from the court to which the arrangement has been proposed, accompanied by a certified copy of the arrangement, his consent shall be conclusively presumed. (July 1, 1898, ch. 541, § 455, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 856. Creditor may act in person or by agent.

A creditor may act in person, by an attorney-at-law, or by a duly authorized agent or committee and, if he shall act by an agent or committee, the court shall examine and may disregard any provision of a power or warrant of attorney, deposit agreement, trust indenture and committee, or other authorization affecting such creditor, and enforce an accounting thereunder and restrain the exercise of any power which it finds to be unfair or not consistent with public policy. (July 1, 1898, ch. 541, § 456, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 857. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the pending bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been

entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 457, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 858. Rejection of executory contract or unexpired lease; assignment of future rent claim; rights of injured party.

In case an executory contract shall be rejected pursuant to the provisions of an arrangement or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the arrangement, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided,* That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 458, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from last two sentences of former section 202 (a) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 859. Repealed. Pub. L. 90-157, § 5, Nov. 28, 1967, 81 Stat. 516.

Section, act July 1, 1898, ch. 541, § 459, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921, and amended July 7, 1952, ch. 579, § 42, 66 Stat. 434, provided for allowance of claims upon order to proceed with bankruptcy, and is now covered by section 883(a)(4) of this title.

SUBCHAPTER VIII.—PROVISIONS OF ARRANGEMENT

§ 861. Contents of arrangement.

An arrangement—

(1) shall include provisions modifying or altering the rights of creditors who hold debts secured by real property or a chattel real of a debtor, generally or of a class of them, either through the issuance of new securities of any character or otherwise;

(2) shall provide for the rights of all other creditors of a debtor who may be affected by the arrangement;

(3) may provide for treatment of unsecured debts on a parity one with the other, or for the division of such debts into classes and the treatment thereof in different ways or upon different terms;

(4) may provide for the rejection of any executory contract;

(5) may provide for the continuation of debtor's business and the management of his property with or without supervision or control by a trustee or by a committee of creditors or otherwise;

(6) may provide for payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected by such arrangement;

(7) may deal with all or any part of his property;

(8) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(9) shall specify what debts, if any, are to be paid in cash in full;

(10) shall specify the creditors or any class of them not to be affected by the arrangement and the provisions, if any, with respect to them;

(11) shall provide for any class of creditors which is affected by and does not accept the arrangement by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their debts against the property dealt with by the arrangement and affected by such debts, either, as provided in the arrangement or in the order confirming the arrangement, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such debts; or (b) by a sale of such property free of such debts, at not less than a fair upset price, and the transfer of such debts to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such debts; or (d) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;

(12) shall provide adequate means for the execution of the arrangement, which may include: the retention by the debtor of all or any part of his property; the sale or transfer of all or any part of his property in trust or to one or more corporations theretofore organized or thereafter to be organized; the sale of all or any part of his property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancelation or modification of indentures or of other similar instru-

ments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the issuance of trust securities or securities of the debtor or of such corporation or corporations for cash, for property, in exchange for existing securities, in satisfaction of debts, or for other appropriate purposes; and

(13) may include any other appropriate provisions not inconsistent with the provisions of this chapter.

(July 1, 1898, ch. 541, § 461, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from former section 202 (h) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 868 of this title.

SUBCHAPTER IX.—PROPOSAL, CONFIRMATION, AND CONSUMMATION OF ARRANGEMENT

§ 866. Proposal of approved arrangement.

An arrangement which has been approved by creditors affected thereby, who hold debts against the property dealt with therein, amounting to 25 per centum or more of the debts of some class of such creditors and 10 per centum or more of the debts of all such creditors, may be proposed by any such creditor. (July 1, 1898, ch. 541, § 466, as added June 22, 1938, ch. 575, § 1, 52 Stat. 922.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 869 of this title.

§ 867. Unanimously accepted arrangement; confirmation upon deposit by debtor.

An arrangement which at the meeting of creditors, as provided in section 836 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when there shall have been made the deposit required under this chapter and under the arrangement, and if the court is satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title. (July 1, 1898, ch. 541, § 467, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (g) of this title and third clause of former section 30 (d) of this title.

§ 868. Majority accepted arrangement; application for confirmation.

If an arrangement has not been so accepted, an application for the confirmation of an arrangement may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing by the creditors of each class, holding two-thirds in amount of the debts of such class affected by the arrangement proved and allowed before the conclusion of the meeting, or before such other time as may be fixed by the court, exclusive of creditors or of any class of them who are not affected by the arrangement or for whom payment or protection has been provided as prescribed in paragraph (11) of section 861 of this title; and

(2) the deposit required under this chapter and under the arrangement has been made.

(July 1, 1898, ch. 541, § 468, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (e) of this title.

§ 869. Alterations or modifications; proposal.

Alterations or modifications of an arrangement may be proposed in writing, with leave of court, either before or after its confirmation, by a debtor, or by any creditor as provided in section 866 of this title. (July 1, 1898, ch. 541, § 469, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 870. Same; acceptance.

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the arrangement and who fails to file with the court, within such time as shall be fixed in the order, his rejection of the altered or modified arrangement, shall be deemed to have accepted the alteration or modification and the arrangement so altered or modified, unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 470, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 871. Same; notice.

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the debtor, the creditors,

and other parties in interest. (July 1, 1898, ch. 541, § 471, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

§ 872. Requisites for confirmation.

The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of creditors and is feasible;

(3) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt;

(4) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title; and

(5) all payments made or promised by the debtor, by any person issuing securities or acquiring property under the arrangement or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with and incident to the arrangement, have been fully disclosed to the court and are reasonable, or, if to be fixed after confirmation of the arrangement, will be subject to the approval of the court.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor will be preserved under the arrangement. (July 1, 1898, ch. 541, § 472, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923, and amended July 7, 1952, ch. 579, § 43, 66 Stat. 435.)

AMENDMENTS

1952—Act July 7, 1952, eliminated the provision that a proposed plan must be "fair and equitable" and added the last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section, except par. (5), formerly par. (6), was from former section 202 (g) of this title.

§ 873. Effect of confirmation.

Upon confirmation of an arrangement—

(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement, and upon all creditors of the debtor, whether or not they are affected by the arrangement or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

(2) the debtor, and any corporation or trust organized or to be organized for the purpose of carrying out the arrangement, shall comply with the provisions of the arrangement and with all the orders of the court relative thereto and shall take all action necessary to carry out the arrangement;

(3) distribution shall be made, in accordance with the provisions of the arrangement, to the creditors, proofs of whose claims have been filed prior to the date fixed by the court and are allowed, or, if not so filed, whose claims have been scheduled by the debtor and are not contingent, unliquidated, or disputed: *Provided, however,* That where such debts are objected to by any party in interest, the objections shall be heard and summarily determined by the court.

(July 1, 1898, ch. 541, § 473, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924, and amended July 7, 1952, ch. 579, § 44, 66 Stat. 435.)

AMENDMENTS

1952—Par. (3). Act July 7, 1952, substituted "and are not contingent, unliquidated, or disputed" for "fixed debts, liquidated in amount and not disputed".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from first sentence of former section 202 (i) of this title.

Par. (3) was from former section 202 (j) of this title.

§ 874. Property to be free of debts affected by arrangement.

Upon confirmation of an arrangement, the property dealt with by the arrangement, when transferred by the trustee appointed under this chapter to the debtor, or to a trustee or corporation provided for by the arrangement, or, if no trustee has been appointed under this chapter, when transferred by the debtor to a trustee or corporation provided for by the arrangement, or when retained by the debtor, as the case may be, shall be free and clear of all debts affected by the arrangement, except such debts as may otherwise be provided for in the arrangement or in the order confirming the arrangement or in the order directing or authorizing the transfer or retention of such property. (July 1, 1898, ch. 541, § 474, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 875. Execution of instruments; satisfaction of liens, etc.

The court may direct the debtor, his trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of the property dealt with by the arrangement which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the arrangement. (July 1, 1898, ch. 541, § 475, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 876. Discharge of debts upon confirmation.

The confirmation of an arrangement shall discharge a debtor from his debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, excluding such debts as are not dischargeable under section 35 of this title. (July 1, 1898, ch. 541, § 476, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 877. Final decree upon consummation of arrangement.

Upon the consummation of a proceeding under this chapter, after confirmation of an arrangement, the court shall enter a final decree discharging the trustee, if any, closing the estate, and making such provisions, by way of injunction or otherwise, as may be equitable. (July 1, 1898, ch. 541, § 477, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 881. Abandonment or rejection of arrangement before confirmation.

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 824 of this title, are not duly filed, or if an arrangement is withdrawn or abandoned prior to its acceptance and no other arrangement is pending, or if no arrangement is accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

(1) where the petition was filed under section 821 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 822 of this title, enter an order upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 481, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924, and amended July 7, 1952, ch. 579, § 45, 66 Stat. 435.)

AMENDMENTS

1952—Act July 7, 1952, added "If a statement * * * are not duly filed, or".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former sections 30 (e) and 202 (*l*) of this title.

§ 882. Termination or default after confirmation.

Where the court has retained jurisdiction after the confirmation of an arrangement and the debtor defaults in any of the terms thereof or the arrangement terminates by reason of the happening of a condition specified in the arrangement, the court upon hearing after notice to the debtor, the creditors and such other persons as the court may direct shall—

(1) where the petition has been filed under section 821 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt and directing that the bankruptcy proceeding be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 822 of this title, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 482, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first and second sentences of former section 202 (*l*) of this title and from former section 30 (e) of this title.

§ 883. Procedure upon order directing that bankruptcy be proceeded with.

(a) Reinstatement of bankruptcy proceeding; filing of separate debt schedule; tax claims; provable claims.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 821 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed;

(2) in the case of a petition filed under section 822 of this title, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when such original petition under this chapter was filed;

(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under

this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by him while continued in possession and before the qualification of a trustee, if any, under this chapter, and if a trustee has qualified, the schedule and statement shall be filed by such trustee for any obligations incurred and contracts assumed or entered into by him; and

(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of the filing of the original petition under this chapter and such claims as are provable under section 103 of this title shall be allowed, and claims not already filed may be filed in accordance with the provisions of subdivision (n) of section 93 of this title.

(b) Executory contracts; rejection.

Any contract which is entered into or assumed by a debtor in possession or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

(c) Filing of claims.

Upon the filing of the schedule and statement required by subdivision (a) of this section, the court shall make an order directing the claims against the debtor in possession or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision (a) of this section and claims arising from rejection of executory contracts under subdivision (b) of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession or trustee shall be proved and filed in the manner provided in section 93 of this title.

(d) Disallowance of untimely claims; surplus.

Claims directed to be filed under subdivision (c) of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision (c) and claims not allowable under paragraph (4) of subdivision (a) of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case. (July 1, 1898, ch. 541, § 483, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925, and amended Nov. 28, 1967, Pub. L. 90–157, § 4, 81 Stat. 515.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (2) was from second sentence of former section 202 (m) of this title.

AMENDMENTS

1967—Subd. (a). Pub. L. 90–157 designated existing provisions as subd. (a) and added pars. (3) and (4).

Subds. (b)–(d). Pub. L. 90–157 added subds. (b)–(d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

§ 884. Adjudication against wage earner or farmer; consent.

No adjudication shall be entered under this chapter against a wage earner or farmer unless such person shall in writing filed with the court consent to the adjudication. (July 1, 1898, ch. 541, § 484, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (*l*) of this title and, in part, from former section 202 (p) of this title.

§ 885. Final decree upon dismissal of original petition.

Upon the dismissal of a proceeding originated by a petition filed under section 822 of this title, the court shall enter a final decree discharging the trustee, if any, and closing the estate. (July 1, 1898, ch. 541, § 485, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 886. Proceedings after confirmation of arrangement.

Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the

ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of entry of the order directing that bankruptcy be proceeded with.

(July 1, 1898, ch. 541, § 486, as added July 7, 1952, ch. 579, § 46, 66 Stat. 435.)

EFFECTIVE DATE

Section effective three months after July 7, 1952, see note note under section 1 of this title.

SUBCHAPTER XI.—COMPENSATION AND ALLOWANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

The subchapter is referred to in section 909 of this title.

§ 891. Court officers and attorneys.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by the trustee and other officers, and the attorneys for any of them; and

(3) by the attorney for the debtor.

Such compensation of referees and trustees shall not be governed by sections 68 and 76 of this title. (July 1, 1898, ch. 541, § 491, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 892. Other parties in interest.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with an arrangement confirmed by the court—

(1) by indenture trustees, depositaries, reorganization managers and committees or representatives of creditors;

(2) by any other parties in interest; and

(3) by the attorneys or agents for any of the foregoing.

(July 1, 1898, ch. 541, § 492, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act of June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 893. Petition filed in pending bankruptcy proceeding.

Where a petition is filed under section 821 of this title, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such bankruptcy proceeding—

(1) by a marshal or receiver, as provided in subdivision (f) of section 76 of this title, and the attorney for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this title to compensation or reimbursement in such bankruptcy proceeding.

(July 1, 1898, ch. 541, § 493, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 894. Same; referee in bankruptcy.

Where a petition is filed under section 821 of this title, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 68 of this title. (July 1, 1898, ch. 541, § 494, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 895. Dismissal of proceeding or adjudication of bankruptcy; arrangement allowances.

Upon the dismissal of a proceeding under this chapter or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof and for the payment of all proper costs and expenses incurred by officers in such proceedings. (July 1, 1898, ch. 541, § 495, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 896. Hearing of applications.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, the indenture trustees, and such other persons as the judge may designate, except that, in the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unse-

cured creditors, and may be given to such other classes of creditors or other persons as the judge may designate. (July 1, 1898, ch. 541, § 496, as added June 22, 1938, ch. 575, § 1, 52 Stat. 296.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

§ 897. Dismissal of proceeding and reinstatement of bankruptcy; charging of allowances in bankruptcy.

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, or receiver in the bankruptcy proceeding for services rendered by him in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this title fixing their compensation in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 497, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 898. Appeals.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers. (July 1, 1898, ch. 541, § 498, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926, and amended June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER XII.—PRIOR PROCEEDINGS

§ 906. Right to petition during pendency of prior proceedings.

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made. (July 1, 1898, ch. 541, § 506, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202(r) of this title and second sentence of former section 30 (a) of this title.

§ 907. Stay; rights of trustee or debtor in possession.

Such prior proceeding shall be stayed by the filing of a petition under this chapter. The trustee appointed under this chapter, upon his qualification, or, if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all real property and chattels real of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage. (July 1, 1898, ch. 541, § 507, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first sentence of former section 202 (m) of this title and second sentence of former section 30 (a) of this title.

§ 908. Protection of obligations of prior fiduciary; payment of costs and expenses.

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable compensation for services rendered and of the proper costs and expenses incurred therein as may be allowed by the judge. (July 1, 1898, ch. 541, § 508, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 909. Reinstatement of prior proceeding on dismissal of arrangement proceeding; allowances.

Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated and the judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in subchapter XI of this chapter, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by the trustee or debtor in possession, and for the payment of the costs and expenses of the proceedings. (July 1, 1898, ch. 541, § 509, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER XIII.—ARRANGEMENTS, WHEN SET ASIDE OR MODIFIED

§ 911. Fraud in procuring arrangement.

If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement:

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon (a) where the petition was filed under section 821 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt and direct that the bankruptcy proceeding be proceeded with; or (b) where the petition was filed under section 822 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the arrangement for the purpose of correcting the fraud, but may not materially modify or alter the arrangement adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person who, for value, subsequent to the confirmation, acquired rights in reliance upon it.

(July 1, 1898, ch. 541, § 511, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former sections 202 (k) and 31 of this title.

SUBCHAPTER XIV.—GENERAL PROVISIONS

§ 916. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 516, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 917. Inapplicability to obligations held by certain Federal agencies.

Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any debtor under a mortgage insured pursuant to the National Housing Act and Acts amendatory thereof and supplementary thereto; nor shall its provisions be deemed to allow extension or impairment of any secured obligation held by Home Owners' Loan Corporation or by any Federal Home Loan Bank or member thereof. (July 1, 1898, ch. 541, § 517, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

REFERENCES IN TEXT

The National Housing Act, referred to in the text, is principally classified to chapter 13 of Title 12, Banks and Banking.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

§ 918. Unregistered securities; use of mails and interstate commerce.

(a) The provisions of section 77e of Title 15 shall not apply to—

(1) any security issued by a trustee or debtor in possession pursuant to section 846 of this title; or

(2) any transaction in any security issued pursuant to an arrangement in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (b) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of Title 15. (July 1, 1898, ch. 541, § 518, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 919. Secretary of Treasury; notices and information to.

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 821 and 822 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharg-

ing debtors, closing estates and setting aside confirmations;

(4) all orders appointing trustees or continuing debtors in possession;

(5) all orders determining the time within which claims of creditors may be filed and allowed and the division of creditors into classes;

(6) all orders confirming arrangements, together with copies of such arrangements;

(7) all orders approving alterations or modifications in arrangements, together with copies of such alterations or modifications;

(8) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and

(9) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than thirty days. (July 1, 1898, ch. 541, § 519, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 920. Taxes; income or profit from modification of indebtedness.

Except as provided in section 922 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in an arrangement under this chapter, or by a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancelation in whole or in part of any of the indebtedness of the debtor in an arrangement consummated under this chapter. (July 1, 1898, ch. 541, § 520, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 926 of this title.

§ 921. Same; arrangement to evade.

Where it appears that an arrangement has for one of its principal purposes the evasion of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the arrangement, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the arrangement. (July 1, 1898, ch. 541, § 521, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 926 of this title.

§ 922. Same; income tax; property basis adjustment.

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income-tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section. (July 1, 1898, ch. 541, § 522, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929, and amended July 1, 1940, ch. 500, § 3, 54 Stat. 710.)

AMENDMENTS

1940—Act July 1, 1940, added "but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement" in the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 920, 926 of this title.

§ 923. Same; assessment and payment or acceptance of arrangement by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States or any State from a trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor, or the corporation organized or the trustee or corporation made use of for effectuating an arrangement under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 523, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER XV.—WHEN CHAPTER TAKES EFFECT

§ 926. Proceedings to which chapter applies.

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on such date, and a petition may be filed under this chapter notwithstanding the pendency on such date of a proceeding in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment application has been made in a court of the United States or of any State;

(3) the provisions of sections 201 and 202 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act; and

(4) sections 920 and 922 of this title shall apply to compositions and extensions confirmed under section 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 of this title on and after such effective date, except that the exemption provided by section 920 of this title may be disallowed if it shall be made to appear that such composition or extension, or composition and extension, had for one of its principal purposes the avoidance of income taxes, and except further that where such composition or extension, or composition and extension, has not been confirmed on or after such effective date, section 921 of this title shall apply where practicable and expedient. (July 1, 1898, ch. 541, § 526, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

CHANDLER ACT; EFFECTIVE DATE

Section 7 of act June 22, 1938, provided: "This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of act June 22, 1938, see note under section 1 of this title.

Chapter 13.—WAGE EARNERS' PLANS

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SUBCHAPTER XIII.—WHEN CHAPTER TAKES EFFECT

1086. Proceedings to which chapter applies.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 68 of this title; title 15 section 1673.

SUBCHAPTER I.—CONSTRUCTION

§ 1001. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 601, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1002. Application of other provisions.

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That subdivision (f) of section 110 shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 1022 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 1021 or 1022 of this title except where an adjudication had previously been entered. (July 1, 1898, ch. 541, § 602, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER II.—DEFINITIONS

§ 1006. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against the debtor or his property, whether or not provable as debts under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent, but shall not include claims secured by estates in real property or chattels real;

(2) "creditor" shall mean the holder of any claim;

(3) "debtor" shall mean a wage earner who filed a petition under this chapter;

(4) "debts" shall include all claims;

(5) "executory contracts" shall include unexpired leases of real property;

(6) "petition" shall mean a petition filed under this chapter by a wage earner desiring to effect a plan for a composition or extension of time for the payment of his debts, or both;

(7) "plan" shall mean a plan for a composition or extension, or both, proposed in a proceeding under this chapter; and

(8) "wage earner" shall mean an individual whose principal income is derived from wages, salary or commissions.

(July 1, 1898, ch. 541, § 606, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930, and amended Dec. 29, 1950, ch. 1193, 64 Stat. 1134; May 13, 1959, Pub. L. 86–24, § 1, 73 Stat. 24.)

AMENDMENTS

1959—Par. (8). Pub. L. 86–24 substituted "whose principal income is derived from wages, salary or commissions" for "who works for wages, salary, or hire at a rate of compensation which, when added to his other income, does not exceed $5,000 per year."

1950—Par. (8). Act Dec. 29, 1950, substituted "$5,000" for "$3,600".

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of Pub. L. 86–24 provided that: "The provisions of this Act [amending par. (8) of this section and par. (3) of section 1059 of this title] shall apply to all cases in which the petition initiating the proceedings under the Bankruptcy Act [this title] is filed subsequent to the date of the enactment of this Act [May 13, 1959]."

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1007. Creditors affected by plan; determination.

A creditor shall be deemed to be "affected" by a plan only if his interest shall be materially and adversely affected thereby. In the event of controversy, the court shall, after hearing upon notice, summarily determine whether any creditor is so affected. (July 1, 1898, ch. 541, § 607, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER III.—JURISDICTION, POWERS, AND DUTIES OF THE COURT

§ 1011. Exclusive jurisdiction of debtor, property, and earnings.

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located, and of his earnings and wages during the period of consummation of the plan. (July 1, 1898, ch. 541, § 611, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the first sentence of former section 202 (m) of this title.

§ 1012. Jurisdiction, powers, and duties.

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or

(2) where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 612, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the second sentence of former section 202 (m) of this title.

§ 1013. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) extend upon cause shown any time which under this chapter the court is required or permitted to fix for any purpose.

(July 1, 1898, ch. 541, § 613, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Rejection of executory contracts as breach thereof, see section 103 of this title.

§ 1014. Stay of actions.

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor. (July 1, 1898, ch. 541, § 614, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (n) of this title.

§ 1015. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter. (July 1, 1898, ch. 541, § 615, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Mail, notices by, see section 1077 of this title.

§ 1016. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 616, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the second sentence of former section 202 (m) of this title.

SUBCHAPTER IV.—PETITION AND STAY

§ 1021. Filing petition; pending bankruptcy proceeding.

A debtor may file a petition under this chapter in a pending bankruptcy proceeding either before or after his adjudication. (July 1, 1898, ch. 541, § 621, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1012, 1025, 1036, 1041, 1044, 1066, 1067, 1071 of this title.

§ 1022. Same; original petition.

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with

the court which would have jurisdiction of a petition for his adjudication. (July 1, 1898, ch. 541, § 622, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1012, 1036, 1041, 1066, 1067, 1071 of this title.

§ 1023. Contents of petition.

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature and that he desires to effect a composition or an extension, or both, out of his future earnings or wages. (July 1, 1898, ch. 541, § 623, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (a) of this title.

§ 1024. Statements and fees accompanying petition.

The petition shall be accompanied—

(1) by a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) where a petition is filed under section 1022 of this title, by payment to the clerk of $15 to be distributed, $10 to the Treasury of the United States for deposit in the referees' salary and expense fund and $5 to the clerk, in lieu of the fees of $32 and $8 as prescribed in sections 68 and 80 of this title: *Provided, however,* That such fees may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.

(July 1, 1898, ch. 541, § 624, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 28, 1946, ch. 512, § 15, 60 Stat. 331; July 7, 1952, ch. 579, § 47, 66 Stat. 436; July 28, 1959, Pub. L. 86-110, § 5, 73 Stat. 261.)

AMENDMENTS

1959—Par. (2). Pub. 86-110 substituted "referees' salary and expense fund" for "referees' salary fund" and fee of "$32" for "$17".

1952—Act July 7, 1952, incorporated former pars. (1) and (2) into par. (1), added a proviso, and renumbered former par. (3) as (2).

1946—Par. (3). Act June 28, 1946, made fees uniform with other bankruptcy fees, and provided for their disposition.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-110 effective on the first day of the first fiscal year following July 28, 1959, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE; REPEAL; ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and 202 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1066 of this title.

§ 1025. Petition in pending bankruptcy proceedings as stay.

A petition filed under section 1021 of this title shall act as a stay of adjudication or of administration of the estate. (July 1, 1898, ch. 541, § 625, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and 202 (a) of this title.

§ 1026. Bond of debtor; failure to file.

The court may, upon hearing after notice to the debtor and such other persons as the court may designate, require the debtor to file, within such time as the court may fix, a bond or undertaking with such sureties, as may be approved by the court, or without sureties, as the court may order, and in such amount as the court may fix, to indemnify the estate against loss thereto or diminution thereof during the period of such stay. Upon the failure of the debtor to comply with such requirement the proceeding under this chapter shall be dismissed. (July 1, 1898, ch. 541, § 626, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER V.—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

§ 1031. Reference to referee.

The clerk shall, unless the judge or judges direct otherwise, refer the proceedings to a referee. (July 1, 1898, ch. 541, § 631, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 23, 1959, Pub. L. 86-64, § 5, 73 Stat. 109.)

AMENDMENTS

1959—Pub. L. 86-64 substituted "The clerk shall, unless the judge or judges direct otherwise, refer the proceedings to a referee" and "The judge may refer the proceeding to a referee."

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (*o*) of this title.

§ 1032. Meeting of creditors; time; notice.

The judge or referee shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor and his creditors. (July 1, 1898, ch. 541, § 632, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (c) of this title.

§ 1033. Same; conduct and business generally.

At such meeting, or at any adjournment thereof—

(1) the judge or referee shall preside, receive proofs of claim, and allow or disallow them, and examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding;

(2) the debtor shall submit his plan, and deposit with the clerk, for payment into the referees' salary and expense fund a fee not to exceed $15, to be graduated and charged in the manner outlined in paragraph (2) of subdivision (c) of section 68 of this title: *Provided, however,* That such fee may be paid in installments, if so authorized by General Order of the Supreme Court of the United States;

(3) the court shall receive and determine the written acceptances of creditors on the proposed plan, which acceptances may be obtained by the debtor before or after the filing of a petition under this chapter;

(4) the court shall, if the plan is accepted, appoint a trustee to receive and distribute, subject to the control of the court, all moneys to be paid under the plan and shall require such trustee to give bond with surety to be approved by the court in such amount as the court shall fix; and

(5) the court shall fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof or any objection to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it.

(July 1, 1898, ch. 541, § 633, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 28, 1946, ch. 512, § 16, 60 Stat. 331; July 28, 1959, Pub. L. 86-110, § 6, 73 Stat. 261.)

AMENDMENTS

1959—Par. (2). Pub. L. 86-110 substituted "referees' salary and expense fund" for "referees' expense fund".

1946—Par. (2). Act June 28, 1946, made fees uniform with other bankruptcy fees.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-110 effective on the first day of the first fiscal year following July 28, 1959, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATE; REPEAL; ETC., OF 1946 AMENDMENT

Effective date; repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and (c) and 202 (d) and (f) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 65, 1051, 1059 of this title.

SUBCHAPTER VI.—RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 1036. In general.

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 636, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (m) of this title.

§ 1037. Exemptions.

The allowance of exemptions to a debtor shall be the same as provided for a bankrupt under this title, and such exemptions shall be set aside to the debtor in like manner as provided for a bankrupt. (July 1, 1898, ch. 541, § 637, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the proviso to former section 202 (h) of this title.

CROSS REFERENCES

Exemptions of bankrupts, see section 24 of this title.

SUBCHAPTER VII.—CREDITORS AND CLAIMS

§ 1041. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of

adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 641, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (m) of this title.

§ 1042. Rejection of executory contract or unexpired lease; assignment of future rent claims.

In case an executory contract shall be rejected pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or receiver in bankruptcy in a prior pending proceeding, any person injured by such rejection shall, for the purpose of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided,* That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 642, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 1043. Repealed. July 7, 1952, ch. 579, § 48, 66 Stat. 436.

Section, act July 1, 1898, ch. 541, § 643, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933, related to expiration of time for filing claims in pending bankruptcy.

EFFECTIVE DATE OF REPEAL

Repeal of section effective three months after July 7, 1952, see note under section 1 of this title.

§ 1044. Allowance of claims upon order to proceed with bankruptcy.

Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition under this chapter was filed under section 1021 of this title, and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors: *Provided, however,* That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title shall not be allowed in the reinstated bankruptcy proceeding. (July 1, 1898, ch. 541, § 643, formerly § 355, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933, renumbered and amended July 7, 1952, ch. 579, § 49, 66 Stat. 436.)

AMENDMENTS

1952—Act July 7, 1952, renumbered former section 644 of act July 1, 1898, as added by act June 22, 1938, as section 643, and permitted claims to be filed within six months rather than three months when bankruptcy ensues upon failure of a plan.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER VIII.—PROVISIONS OF PLAN

§ 1046. Contents generally.

A plan under this chapter—

(1) shall include provisions dealing with unsecured debts generally, upon any terms;

(2) may include provisions dealing with secured debts severally, upon any terms;

(3) may provide for priority of payment during the period of extension as between the secured and unsecured debts affected by the plan;

(4) shall include provisions for the submission of future earnings or wages of the debtor to the supervision and control of the court for the purpose of enforcing the plan;

(5) shall provide that the court may from time to time during the period of extension increase or reduce the amount of any of the installment payments provided by the plan, or extend or shorten the time for any such payments, where it shall be made to appear, after hearing upon such notice as the court may designate, that the circumstances of the debtor so warrant or require;

(6) may include provisions for the rejection of executory contracts of the debtor; and

(7) may include any other appropriate provisions not inconsistent with this chapter.

(July 1, 1898, ch. 541, § 646, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this were contained in former section 202 (h) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

SUBCHAPTER IX.—CONFIRMATION AND CONSUMMATION OF PLANS

§ 1051. Unanimously accepted plan; confirmation upon deposit by debtor.

A plan which at the meeting of creditors, as provided in section 1033 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when the debtor shall have made the deposit required under this chapter and under the plan, and if the court is satisfied that the plan and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this title. (July 1, 1898, ch. 541, § 651, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (g) of this title.

§ 1052. Majority accepted plan; application for confirmation.

If a plan has not been so accepted, an application for the confirmation of the plan may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing, if unsecured creditors are affected by the plan, by a majority in number of all such creditors whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims, and by the secured creditors whose claims are dealt with by the plan; and

(2) the debtor has made the deposit of moneys required of him under this chapter and under the plan.

(July 1, 1898, ch. 541, § 652, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (b) and 202 (e) of this title.

§ 1053. Alterations or modifications prior to confirmation.

Alterations or modifications of a plan may be proposed in writing by a debtor, with leave of court, at any time before the plan is confirmed. (July 1, 1898, ch. 541, § 653, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1054. Same; acceptance.

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a rejection of the altered or modified plan, shall be deemed to have accepted the alterations or modifications and the plan so altered or modified, unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 654, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1055. Same; notice.

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the creditors and other parties in interest. (July 1, 1898, ch. 541, § 655, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 1015 of this title.

§ 1056. Requisites for confirmation.

(a) The court shall confirm a plan if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors and is feasible;

(3) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of the bankrupt; and

(4) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title.

Confirmation of a plan shall not be refused solely because the interest of a debtor will be preserved under the plan.

(b) Before confirming any such plan the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt was contracted. (July 1, 1898, ch. 541, § 656, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935, and amended July 7, 1952, ch. 579, § 50, 66 Stat. 437.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, eliminated provisions that a proposed plan shall be "fair and equitable" and added last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (d) and 202 (g) of this title.

§ 1057. Binding effect of confirmation.

Upon confirmation of a plan, the plan and its provisions shall be binding upon the debtor and upon all creditors of the debtor, whether or not they are affected by the plan or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed or are allowable. (July 1, 1898, ch. 541, § 657, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (i) of this title.

§ 1058. Powers of court during extension period.

During the period of extension, the court—

(1) shall retain jurisdiction of the debtor and his property for all purposes of the plan and its consummation and shall have supervision and control of any agreement or assignment, provided for in the plan, in respect to any future earnings or wages of the debtor; and

(2) may issue such orders as may be requisite to effectuate the provisions of the plan, including orders directed to any employer of the debtor. An order directed to such employer may be enforced in the manner provided for the enforcement of judgments.

(July 1, 1898, ch. 541, § 658, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (j) of this title.

§ 1059. Priority of payment.

In advance of distribution to creditors, there shall first be paid in full, out of the moneys paid in by or for the debtor, and the order of payment shall be—

(1) the costs of the referee as specified in paragraph (2) of section 1033 of this title;

(2) the actual and necessary costs and expenses of the trustee;

(3) an additional fee for the referees' salary and expense fund, to be graduated and charged in the manner outlined in paragraph (2) of subdivision (c) of section 68 of this title, and to be computed upon the amount of the payments actually made by or for a debtor under the plan; and commissions to the trustee of not more than 5 per centum to be computed upon and payable out of the payments actually made by or for a debtor under the plan;

(4) such reasonable fee to the attorney for the debtor as the court may allow for the professional services actually rendered by such attorney to the debtor in and in connection with the proceedings under this chapter;

(5) in the case of a pending bankruptcy proceeding superseded by a proceeding under this chapter, the costs, expenses, and fees of such bankruptcy proceeding; and

(6) the debts entitled to priority, in the order of priority, as provided by subdivision (a) of section 104 of this title.

(July 1, 1898, ch. 541, § 659, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935, and amended June 28, 1946, ch. 512, § 17, 60 Stat. 331; May 13, 1959, Pub. L. 86–24, § 2, 73 Stat. 24; July 28, 1959, Pub. L. 86–110, § 7, 73 Stat. 261.)

AMENDMENTS

1959—Par. (3). Pub. L. 86–110 substituted "referees' salary and expense fund" for "referees' salary fund".

Pub. L. 86–24 substituted "of not more than 5 per centum" for "of 5 per centum."

1946—Pars. (1) and (3). Act June 28, 1946, made fees uniform with other bankruptcy fees.

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment of par. (3) of this section by Pub. L. 86–110 effective on the first day of the first fiscal year following July 28, 1959, see section 8 of Pub. L. 86–110, set out as a note under section 68 of this title.

Amendment of par. (3) of this section by Pub. L. 86–24 applicable to all cases in which the petition initiating the proceedings is filed subsequent to May 13, 1959, see section 3 of Pub. L. 86–24, set out as a note under section 1006 of this title.

EFFECTIVE DATE; REPEAL; ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (j) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 65 of this title.

§ 1060. Discharge of debtor.

Upon compliance by the debtor with the provisions of the plan and upon completion of all payments to be made thereunder, the court shall enter an order discharging the debtor from all his debts and liabilities provided for by the plan, but excluding such debts as are not dischargeable under section 35 of this title held by creditors who have not accepted the plan. (July 1, 1898, ch. 541, § 660, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935, and amended July 7, 1952, ch. 579, § 51, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, deleted "and all debts denied participation in the plan by section 1043 of this title" preceding "but excluding".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1062 of this title.

§ 1061. Same; at expiration of three years.

If at the expiration of three years after the confirmation of a plan the debtor has not completed his payments thereunder, the court may nevertheless, upon the application of the debtor and after hearing upon notice, if satisfied that the failure of the debtor to complete his payments was due to circumstances for which he could not be justly held accountable, enter an order discharging the debtor from all his debts and liabilities provided for by the plan, but excluding such debts as are not dischargeable under section 35 of this title held by creditors who have not accepted the plan. (July 1, 1898, ch. 541, § 661, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936, and amended July 7, 1952, ch. 579, § 52, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, deleted "and all debts denied participation in the plan by section 1043 of this title" preceding "but excluding".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1062 of this title.

§ 1062. Final decree.

Upon the consummation of a proceeding under this chapter, as provided either in section 1060 or section 1061 of this title, the court shall enter a final decree discharging the trustee, closing the estate and making such provision, by way of injunction or otherwise, as may be equitable. (July 1, 1898, ch. 541, § 662, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 1066. Procedure upon withdrawal, abandonment, or failure to accept plan.

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 1024 of this title, are not duly filed, or if a plan is not proposed at the meeting of creditors or within such further time as the court may fix, or if the plan is withdrawn or abandoned prior to its acceptance, or if the plan is not accepted at the meeting of creditors or within such further time as the court may fix, or if the deposit required under this chapter and under the plan is not made or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the plan is refused, or if after confirmation, a debtor defaults in any of the terms of the plan, or if the plan terminates by reason of the happening of a condition specified in the plan, the court shall—

(1) where the petition has been filed under section 1021 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt, if not previously so adjudged, and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 1022 of this title, enter an order dismissing the proceeding under this chapter or, with the consent of the debtor, adjudging him a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title.

(July 1, 1898, ch. 541, § 666, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936, and amended July 7, 1952, ch. 579, § 53, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, inserted "If the statement * * * as the court may fix" in the introductory paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1067, 1068 of this title.

§ 1067. Procedure upon order directing bankruptcy to be proceeded with.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 1021 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed; or

(2) in the case of a petition filed under section 1022 of this title, if an order has been entered adjudging the debtor a bankrupt, as provided in paragraph (2) of section 1066 of this title, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 667, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1068. Exclusive method of adjudication.

Except as provided in section 1066 of this title and elsewhere in this chapter, a debtor shall not be adjudged a bankrupt either in a proceeding under this chapter or in any proceeding instituted under this title, during the pendency of a proceeding under this chapter. (July 1, 1898, ch. 541, § 668, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1069. Proceedings following confirmation of arrangement.

Where, after the confirmation of a plan, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the plan and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the plan or in the order confirming the plan, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the plan or in the order confirming the plan, less any payment made thereunder; and

(3) the provisions of chapters 1 to 7 f this title shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the plan and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

(July 1, 1898, ch. 541, § 669, as added July 7, 1952, ch. 579, § 54, 66 Stat. 437.)

EFFECTIVE DATE

Section as effective three months after July 7, 1952, see note under section 1 of this title.

SUBCHAPTER XI.—PLANS, WHEN SET ASIDE OR MODIFIED

§ 1071. Fraud in procuring plan.

If, upon the application of parties in interest filed at any time within six months after a plan has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such plan and that knowledge of such fraud has come to the petitioners since the confirmation of such plan—

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon (a) where the petition was filed under section 1021 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt, if he has not already been so adjudged, and direct that the bankrupty[1] proceeding be proceeded with, or (b) where the petition was filed under section 1022 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the plan for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the plan for the purpose of correcting the fraud, but may not materially modify or alter the plan adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person who, for value, subsequent to the confirmation, acquired rights in reliance upon it.

(July 1, 1898, ch. 541, § 671, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 31 and 202 (k) of this title.

SUBCHAPTER XII.—GENERAL PROVISIONS

§ 1076. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 676, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1077. Notice by mail.

Unless otherwise directed by the court, all notices required by this chapter may be given by mail to the parties entitled thereto to their addresses ascertained in the manner prescribed for other notices in section 94 of this title. (July 1, 1898, ch. 541, § 677, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 1015 of this title.

§ 1078. District director of internal revenue and Federal agencies; notices.

The court shall, in every case instituted under any provisions of this chapter, mail or cause to be mailed a copy of the notice of the first meeting of creditors to the district director of internal revenue for the district in which the court is located. Whenever the

[1] So in original.

schedules of the debtor, or the list of creditors of the debtor, or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate), a notice of the first meeting shall be mailed as well to the head of such department, agency, or instrumentality. July 1, 1898, ch. 541, § 678, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937, and amended July 12, 1960, Pub. L. 86–631, § 1, 74 Stat. 466.)

AMENDMENTS

1960—Pub. L. 86–631 substituted requirement that a copy of the first meeting of creditors shall be sent to the district director of internal revenue for the district in which the court is located and that whenever the schedules of the debtor or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate), a notice of the first meeting shall be mailed as well to the head of such department, agency or instrumentality, for former requirement that petitions, notices, orders, and other papers in wage earners' plans proceedings be transmitted to the Secretary of the Treasury.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1079. Taxes; income or profit from modification of indebtedness.

No income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor by reason of a modification in or cancelation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the plan had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed. (July 1, 1898, ch. 541, § 679, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 1086 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1086 of this title.

§ 1080. Same; payment; acceptance of arrangement by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a debtor shall be assessed against, may be collected from, and shall be paid by the debtor: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 680, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER XIII.—WHEN CHAPTER TAKES EFFECT

§ 1086. Proceedings to which chapter applies.

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on the effective date of this amendatory Act;

(3) the provisions of sections 201 and 202 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act;

(4) section 1079 of this title shall apply to compositions and extensions confirmed under section 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 of this title on and after such effective date; and

(5) confirmation of a plan under this chapter shall not be refused because of a discharge granted or a composition confimed prior to the effective date of this amendatory Act. (July 1, 1898, ch. 541, § 686, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

CHANDLER ACT; EFFECTIVE DATE

Section 7 of act June 22, 1938, provided: "This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of act June 22, 1938, see note under section 1 of this title.

Chapter 14.—MARITIME COMMISSION LIENS

Sec.
1101. United States Maritime Commission as trustee or receiver; corporations operating vessels to foreign countries.
1102. Continued operation of vessels; payment of operating loss.
1103. Injunction powers; United States as creditor under preferred ship mortgage.

§ 1101. United States Maritime Commission as trustee or receiver; corporations operating vessels to foreign countries.

Notwithstanding any provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of the Merchant Marine Act, 1936, may constitute and appoint the United States Maritime Commission as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding

the appointment of any person other than the Commission as trustee or receiver shall become effective upon the ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. In no such proceeding shall the Commission be constituted as trustee or receiver without its express consent. (July 1, 1898, ch. 541, § 701, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in the text, is contained in chapter 27 of Title 46, Shipping.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

Section 304 of 1961 Reorg. Plan No. 7, effective Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Martime Commission or to the Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

The United States Maritime Commission was abolished by 1950 Reorg. Plan No. 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provisions that the Chairman of said Federal Maritime Board should, ex officio, be such administrator.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069 set out in the Appendix to Title 5, Government Organization and Employees.

§ 1102. Continued operation of vessels; payment of operating loss.

If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Commission certifies to the court that the continued operation of such vessels is, in the opinion of the Commission, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of the Merchant Marine Act, 1936, as amended, the court may permit the Commission to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Commission, if the Commission undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act. The Commission shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Commission may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Commission on account of the operation of such vessels. (July 1, 1898, ch. 541, § 702, as added June 22, 1938, ch. 575, § 1, 52 Stat. 939.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, and the Suits in Admiralty Act, both referred to in the text, are contained in chapters 27 and 20, respectively, of Title 46, Shipping.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

Section 304 of 1961 Reorg. Plan No. 7, effective Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

The United States Maritime Commission was abolished by 1950 Reorg. No. 21 eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of said Federal Maritime Board should, ex officio, be such administrator.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F. R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1103. Injunction powers; United States as creditor under preferred ship mortgage.

No injunction powers vested in the courts of bankruptcy under this title shall be construed or be deemed to affect or apply to the United States as a creditor under a preferred ship mortgage, as defined in the Ship Mortgage Act, 1920, as amended, unless the Commission files with the court a written waiver of the provisions of this section. (July 1, 1898, ch. 541, § 703, as added June 22, 1938, ch. 575, § 1, 52 Stat. 939.)

REFERENCES IN TEXT

The Ship Mortgage Act, 1920, referred to in the text, is contained in chapter 25 of Title 46, Shipping.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

Section 304 of 1961 Reorg. Plan No. 7, effective Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of

the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

The United States Maritime Commission was abolished by 1950 Reorg. Plan No. 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of said Federal Maritime Board should, ex officio, be such administrator.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees.

Chapter 15.—RAILROAD ADJUSTMENTS

§§ 1200 to 1255. Jurisdiction; definitions; petitions; hearings; proceedings; etc.

TERMINATION OF CHAPTER

This chapter, chapter XV of the Bankruptcy Act of July 1, 1898, ch. 541, §§ 700—755, as added by act Oct. 16, 1942, ch. 610, 56 Stat. 787, terminated by its own provisions on Nov. 1, 1945, except with respect to proceedings initiated on or before that date.

A prior chapter 15 of this title, chapter XV of the Bankruptcy Act of July 1, 1898, ch. 541, §§ 700—755, as added by act July 28, 1939, ch. 393, 53 Stat. 1134, terminated by its own provisions on July 31, 1940, except with respect to proceedings initiated on or before that date.

APPENDIX

GENERAL ORDERS AND FORMS IN BANKRUPTCY

Promulgated Nov. 28, 1898. Effective Jan. 2, 1899

As amended to December 31, 1970

GENERAL ORDERS IN BANKRUPTCY

Order

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42. Compensation of Attorneys.
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44. Appointment of Attorneys.
45. Auctioneers, Accountants and Appraisers.
46. Abrogated.
47. Reports of Referees and Special Masters.
48. Proceedings under Chapter XI of the Act [11 U. S. C. § 701 et seq.].
49. Proceedings under Section 77 of the Act [11 U. S. C. § 205].
50. Proceedings under Section 75 of the Act [11 U. S. C. § 203].
51. Ancillary Receiverships Limited.
52. Proceedings under Chapter X of the Act [11 U. S. C. § 501 et seq.].
53. Bond of Designated Depository under Section 61 [11 U. S. C. § 101].
54. Proceedings under Chapter XII of the Act [11 U.S.C. § 801 et seq.].

Order

55. Proceedings under Chapter XIII of the Act [11 U. S. C. § 1001 et seq.].
56. Rules by Courts of Bankruptcy.

Establishment of General Orders

The Supreme Court, under the Bankruptcy Act of 1898, promulgated thirty-eight General Orders by an order dated November 28, 1898, 18 Supreme Court IV, which provided in part that:

"In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled 'An act to establish a uniform system of bankruptcy throughout the United States [this title],' it is ordered, on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court."

The Orders of the Supreme Court which promulgated, added, amended, or abrogated the General Orders and Forms in Bankruptcy are as follows:

1898—Nov. 28, 1898, 18 S. Ct. iv—xlviii, 172 U. S. 653—723; 210 U. S. 567—585.

1905—Dec. 11, 1905, 37 S. Ct. iii, 210 U. S. 581, 582.

1915—Nov. 1, 1915, 36 S. Ct. vi.

1917—June 4, 1917, 37 S. Ct. iii.

1925—Apr. 13, 1925, 267 U. S. 613—616; May 25, 1925, 268 U. S. 712.

1930—Jan. 13, 1930, 280 U. S. 617.

1931—June 1, 1931, 283 U. S. 870.

1932—May 31, 1932, 52 S. Ct. xxxv, 286 U. S. 573.

1933—April 17, 1933, 53 S. Ct. xxxi—xxxvi, 288 U. S. 621—636; April 24, 1933, 53 S. Ct. xxxvi—xliii, 288 U. S. 636—654; May 15, 1933, 53 S. Ct. xliii, 288 U. S. 655.

1935—May 13, 1935, 55 S. Ct. xl.

1936—Mar. 30, 1936, 56 S. Ct. xlv; June 1, 1936, 56 S. Ct. xlvii—liii, 298 U. S. 695—706.

1937—Apr. 5, 1937, 57 S. Ct. lix; Nov. 16, 1937, 58 S. Ct. cxxvi; Dec. 7, 1937, 58 S. Ct. cxxvi.

1938—Feb. 7, 1938, 58 S. Ct. cxxvi; Mar. 14, 1938, 58 S. Ct. cxxvii.

1939—Jan. 16, 1939, 59 S. Ct. clxxvii—ccxxxii, 305 U. S. 681—785.

1940—June 3, 1940, 60 S. Ct. clx.

1947—June 23, 1947, 67 S. Ct. clxvii.

1958—Mar. 3, 1958, 78 S. Ct. 19.

1961—May 29, 1961, 81 S. Ct. 26.

For additions, amendments and abrogations of specific orders, see Notes under particular Orders.

Applicability to Guam

Rules of bankruptcy practice promulgated under section 53 of this title as applicable to the District Court of Guam, see section 1424 of Title 48, Territories and Insular Possessions.

APPLICABILITY TO VIRGIN ISLANDS

Rules of bankruptcy practice promulgated under section 53 of this title as applicable to the District Court of the Virgin Islands, see section 1615 of Title 48, Territories and Insular Possessions.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 81, Title 28, Appendix, Judiciary and Judicial Procedure, provides that the rules do not apply to proceedings in bankruptcy, except in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. After the adoption of the Federal Rules of Civil Procedure, General Order No. 37 in Bankruptcy was amended by the Supreme Court Jan. 16, 1939, effective Feb. 13, 1939, so as to provide that in proceedings under the Bankruptcy Act, the Rules of Civil Procedure shall, in so far as they are not inconsistent with such act or with the General Orders, be followed as nearly as may be.

Order 1. Docket

The clerk of the district court shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain an entry of the filing of the petition and of the action of the judge or clerk of the district court thereon; of the reference of the case, if any reference is made, to a referee; of the transmission of the referee's certified record of the proceedings; and of all proceedings in the case except those duly entered on the referee's docket. The clerk's docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection. If the proceeding is brought under section 77, or under chapter IX, X, XI, XII, or XIII, of the Act, the docket shall so indicate.

The referee, in each case referred to him, shall keep a docket sheet of all proceedings before him substantially in the manner indicated by Form No. 70. The referee's docket shall at all times be open to public inspection. The original referee's docket sheet shall be transmitted to the clerk of the district court for preservation by him when the case is closed. (As amended Apr. 17, 1933; Jan. 16, 1939; June 23, 1947; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The duty imposed on the referee to transmit all bonds, orders, and reports prior to the closing of the case was eliminated by Public Law 86-49, approved June 23, 1959, which repealed section 39a(9) of the Bankruptcy Act. Hence the passage regarding such transmission in the second sentence of this general order should be stricken.

Other changes are clarifying. In view of the definition of "clerk" by section 1(6) as the "clerk of a court of bankruptcy" and the definition of "court" in section 1(9) to include a referee, the duties defined by the first paragraph of this general order appear somewhat ambiguously to fall on a referee's clerk. The intended reference is to the clerk of the district court, and a change is proposed to make the intention explicit. A like change involves the last sentence of the general order. The word "court" in the second sentence is changed to "judge or clerk of the district court" to conform to current procedure. In practice the clerk of the district court does not enter, on the docket he keeps, memoranda of actions on petitions taken by the referee, these appearing rather on the referee's docket.

The deletion of "75 or" is recommended because no new cases under section 75 (Agricultural Compositions and Extensions) have been or can be filed since March 1, 1949. Only one such case is currently pending, and it is expected that it will be closed in the near future.

Inasmuch as the clerk of the district court is the permanent custodian of all court records, the original docket sheet and not a certified copy thereof should be transmitted to the clerk for preservation by him.

Other changes are minor and technical.

REFERENCES IN TEXT

Section 77 and chapters IX, X, XI, XII and XIII of the Act, referred to in text, are classified, respectively, to sections 205, 401-403, 501-676, 701-799, 801-926 and 1001-1086 of this title.

AMENDMENTS

1947—Amendment June 23, 1947, inserted "clerks" preceding "docket" in next to last sentence of first paragraph and added last paragraph.

1939—Amendment Jan. 16, 1939, changed the second sentence to read as set out in the text, and added the last sentence.

1933—Amendment Apr. 17, 1933, effected slight changes in the second sentence.

ORIGINAL ORDER

As originally promulgated this order read: "The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection."

Order 2. Filing of Papers

The clerk or the referee shall indorse on each paper filed with him the day, and in the case of the original petition, the day and hour, of filing. (As amended Jan. 16, 1939.

AMENDMENTS

1939—Amendment Jan. 16, 1939, inserted ", and in the case of the original petition, the day", and struck out ", and a brief statement of its character" which appeared at the end of this Order as promulgated originally.

Order 3. Process

All process, summonses, and subpoenas, except such as are issued by the Interstate Commerce Commission in the performance of its duties under section 77 of the Act, shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees. (As amended Apr. 17, 1933; Jan. 16, 1939.)

REFERENCES IN TEXT

Section 77 of the Act, referred to in text, is classified to section 205 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order, as amended, without change.

1933—Amendment Apr. 17, 1933, inserted "except such as are issued by the Interstate Commerce Commission in the performance of its duties under section 77 of the Act".

Order 4. Conduct of Proceedings

Proceedings may be conducted by the bankrupt or debtor in person in his own behalf, or by a creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the district court. The name of the attorney or counselor, with his business address, shall be entered upon the docket, with the date of the entry. Orders granted on motion shall contain

the name of the party or attorney making the motion. Notices and orders which are not, by the Act or by these general orders, required to be served on the party personally may be served upon his attorney. (As amended Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "business address" for "place of business" in third sentence, and substituted "Orders" for "All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders" in fourth sentence.

1933—Amendment Apr. 17, 1933, inserted "or debtor" in first sentence, and struck out "circuit or" before "district court" in second sentence.

Order 5. Form of Petitions and Other Papers

(1) All petitions and schedules shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

(2) Petitioners in involuntary proceedings for adjudication, whose claims rest upon assignment or transfer from other persons, shall annex to each of the triplicate petitions a copy of all instruments of assignment or transfer, and an affidavit setting forth the true consideration paid for the assignment or transfer of such claims and stating that the petitioners are the bona fide holders and legal and beneficial owners thereof and whether or not they were purchased for the purpose of instituting bankruptcy proceedings.

(3) Each paper filed shall contain a caption setting forth the name of the court, the title of the proceeding, the docket number, and a brief statement of the character of the paper.

(4) Proceedings shall be entitled "In Bankruptcy," "In Proceedings for the Reorganization of a Railroad," "In Proceedings for a Composition by a Public Debtor," "In Proceedings for the Reorganization of a Corporation," "In Proceedings for an Arrangement," "In Proceedings for a Real Property Arrangement," or "In Proceedings for a Wage Earner Plan," as the case may be.

(5) In proceedings under chapter X, XI, XII, or XIII of the Act, unless and until the debtor is adjudicated a bankrupt, he shall be referred to as a "debtor." In proceedings under chapter IX, the debtor shall be referred to as the "petitioner." (As amended Apr. 13, 1925; Apr. 17, 1933; Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The three copies of petitions required to be filed by section 59b of the Act should be complete. With the general availibility of duplicating equipment it is not conceived that any hardship will be imposed by requiring, in paragraph (2), that each copy of an involuntary petition be accompanied by the papers described in this paragraph.

The deletions in paragraphs (4) and (5) are warranted by the lapse of section 75, as earlier noted.

REFERENCES IN TEXT

Chapters IX, X, XI, XII and XIII of the Act, referred to in par. (5), are classified, respectively, to sections 401–403, 501–676, 701–799, 801–926 and 1001–1086 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "triplicate petitions" for "duplicate petitions" in par. (2), changed par. (3) to read as set out in the text, and added pars. (4) and (5).

1933—Amendment Apr. 17, 1933, inserted "for adjudication" in par. (2) and added par. (3).

1925—Amendment Apr. 13, 1925, added par. (2).

Order 6. Petitions in Different Courts

If two or more petitions are filed by or against the same person or by or against different members of a partnership in different courts of bankruptcy, each of which has jurisdiction, the court first acquiring jurisdiction shall, upon application by any party in interest and after a hearing upon reasonable notice to parties in interest, determine the court in which the cases can proceed with the greatest convenience to parties in interest, and the proceedings upon the other petitions shall be stayed by the courts in which such petitions have been filed until such determination is made. If the court first acquiring jurisdiction determines that it shall hear the cases, it shall make its order to that effect, and other courts in which petitions have been filed, upon exhibition of a certified copy of such order, shall order the cases before them transferred to the court first acquiring jurisdiction. If the court first acquiring jurisdiction determines that the cases shall be heard by another court, it shall make its order to that effect and that the case before it be transferred to such court; and other courts in which petitions have been filed, upon exhibition of a certified copy of such order, shall order the cases before them transferred to the court named in the order of the court first acquiring jurisdiction. (As amended Jan. 16, 1939.)

ORIGINAL ORDER

As promulgated originally this Order read: "In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court."

Order 7. Priority of Petitions

If two or more petitions are filed in the same court against the same person, and the debtor appears and shows cause against an adjudication of bankruptcy on the petitions, the petitions shall be heard and tried in the order of their filing: *Provided*, That the court, in its discretion, may order the proceedings consolidated. (As amended Jan. 16, 1939.)

ORIGINAL ORDER

As promulgated originally this Order read: "Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated."

Order 8. Abrogated May 25, 1925

ORIGINAL ORDER

As promulgated Nov. 28, 1898, this Order read: "Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made."

Order 9. List of Creditors in Involuntary Bankruptcy

In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found, it shall be the duty of the petitioning creditor or creditors to file, within five days after the date of the adjudication or within such additional time as may be allowed by the court, a list of the names and places of residence or business of all the creditors of the bankrupt, according to the best information of the petitioning creditor or creditors. (As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

Section 7a(8) of the Act as amended in 1952 requires the bankrupt to file a list of creditors "showing their residences or places of business." The insertion of "or business" conforms this general order to the Act. The insertion of "or creditors" at two points simply recognizes that the duty here defined may be imposed on all the petitioning creditors where there are more than one. The reference to "additional time" recognizes that the court should have discretion to extend the time allowed creditors to file a list under this order.

AMENDMENTS

1939—Amendment Jan. 16, 1939 substituted "list of" for "schedule giving" and deleted a second sentence which read: "If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or many himself furnish such schedule as aforesaid."

Order 10. Indemnity for Expenses

Before incurring any expense in procuring the attendance of witnesses or in perpetuating testimony, the clerk, marshal, or referee may require, from the bankrupt, debtor, or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt, debtor, or other person shall be repaid him out of the estate as part of the cost of administering the same. (As amended Apr. 17, 1933; Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, omitted "in publishing or mailing notices, or in traveling, or" following "any expense" in first sentence.

1939—Amendment Jan. 16, 1939, restated this Order, as amended, without change.

1933—Amendment Apr. 17, 1933, amended this Order by inserting "debtor" in first and second sentences.

Order 11. Amendments

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules, and filed in triplicate. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed. (As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, added the words "and filed in triplicate" at the end of the second sentence. With that exception, this Order reads as promulgated originally.

Order 12. Duties of Referee

(1) A copy of the order referring a proceeding to a referee shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the Act or by these general orders to be had before the judge, shall be had before the referee; and the bankrupt or debtor may receive from the referee a protection against arrest to continue, unless suspended or vacated by order of the court, until the final adjudication on his application for a discharge or for the confirmation of an arrangement or plan.

(2) The times when and places where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the Act to perform.

(3) If a bankrupt files the list of creditors in advance of his schedules, the referee shall promptly call the first meeting of creditors without awaiting the filing of schedules.

(4) The referee, except in no asset cases, shall mail a summary of the trustee's final report and account to the creditors with the notice of the final meeting, together with a statement of the amount of claims proved and allowed. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as now set out in the text.

1936—Amendment June 1, 1936, added reference "and section 77B" following reference "section 77" in par. (3).

1933—Amendment Apr. 17, 1933, changed this Order as indicated below by paragraphs thereof:

Par. (1). Amended first sentence to read: "The order referring a case to a referee shall name a day upon which the bankrupt or debtor shall attend before the referee, and from that day the bankrupt or debtor shall be subject to the orders of the court in all matters relating to the proceedings, and may receive from the referee a protection against arrest to continue, unless suspended or vacated by order of the court, until the final adjudication on his application for a discharge or for the confirmation of a composition or extension proposal."

Par. (3). Amended to read:

"3. Applications for a discharge, or for confirmation of a composition where the proceeding is had under section 12 of the Act, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee, or in proceedings under section 77 of the Act, to a special master, to ascertain and report the facts. Unless otherwise ordered by the judge, applications for the confirmation of a debtor's proposal under section 74 of the Act, and all objections thereto, shall be heard and decided by the referee."

Par. (4). Added.

ORIGINAL ORDER

As promulgated originally this Order read as follows:

"1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

"2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

"3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the Judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts."

CROSS REFERENCES

Additional duties of referee, see section 67 of this title.

Order 13. Abrogated. Jan. 16, 1939, eff. Feb. 13, 1939

ORIGINAL ORDER

As promulgated Nov. 28, 1898, this Order read: "The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only."

Order 14. No Official or General Trustee

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

1936—Amendment June 1, 1936, struck out the sentence which had been added by the 1933 amendment so as to make this Order read as promulgated originally.

1933—Amendment Apr. 17, 1933, added a second sentence as follows: "This general order shall not apply to proceedings under section 77 of the Act."

Order 15. Trustee not Appointed in Certain Cases

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called. (As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 16. Notice to Trustee of his Appointment

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment and of the time fixed for the filing of objections to the bankrupt's discharge if such time has been fixed; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond. (As amended Jan. 16, 1939; Mar. 3, 1958.)

AMENDMENTS

1958—Amendment Mar. 3, 1958 inserted provisions requiring the referee to notify the trustee of the time fixed for the filing of objections to the bankrupt's discharge if such time has been fixed.

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 17. Duties of Trustee

(1) The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all of the property of the bankrupt or debtor that comes into his possession unless, prior thereto, a receiver or other officer has prepared such an inventory.

(2) The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, with the estimated value of each article; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court.

(3) In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act or by these general orders, within five days after the same shall be due, it shall be the duty of the court to make an order requiring the trustee to show cause, at a time specified in the order, why he should not be removed from office. The court shall cause a copy of the order to be served upon the trustee at least three days before the time fixed for the hearing.

(4) All accounts of trustees and receivers shall be referred as of course to the referee for audit, unless otherwise specially ordered by the judge. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939; Mar. 3, 1958.)

REFERENCES IN TEXT

Section 47 of the act, referred to in par. (2), is classified to section 75 of this title.

AMENDMENTS

1958—Amendment Mar. 3, 1958 omitted provisions which required the trustee to notify the Commissioner of Internal Revenue of the adjudication of bankruptcy, and inserted provisions dispensing with the preparation of an inventory if a receiver or other officer has prepared such an inventory.

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, changed par. (1) of this Order as amended in 1933 to read as above set forth, and par. (7) to read: "This general order shall not apply to reorganization proceedings under section 77 or section 77B of the Act."

1933—Amendment Apr. 17, 1933, changed this Order to read:

"1. The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt or debtor that comes into his possession.

"2. The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, with the estimated value of each article, and any creditor or the bankrupt or debtor may take exceptions to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party.

"3. The accounts of the trustee, required by section 47 of the Act, shall include a statement of all items of property received and of all items of property disposed of; his final report shall include such accounts, and the referee, except in no asset cases, shall mail a summary of said report and accounts to the creditors with the notice of the final meeting, together with a statement of the amount of claims proved and allowed.

"4. The trustee shall examine the correctness of all proofs of claim filed against estates and object to the allowance thereof if he deems them improper.

"5. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before him, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least three days before the time fixed for the hearing.

"6. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

"7. This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

As promulgated originally this Order read: "The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty-days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court."

Order 18. Sale of Property

(1) All sales shall be by public auction unless otherwise ordered by the court. Where the property is sold by an auctioneer he shall, upon completion of the sale, file with the court and also furnish the receiver or trustee an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot, or for the property as a whole if it is sold in bulk.

(2) Upon application to the court, and for good cause shown, the receiver or trustee may be authorized to sell the property of the estate or any specified portion thereof at private sale; in which case he shall keep an accurate and itemized account of all property sold, of the price received therefor, and to whom sold; which account he shall forthwith file with the court. (As amended Apr. 17, 1933; June 1, 1936; Nov. 16, 1937; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as above set forth.

1937—Amendment Nov. 16, 1937, changed subd. (4) of this Order, as amended, to read: "This general order shall not apply to reorganization proceedings under section 77 of the Act."

1936—Amendment June 1, 1936, changed subd. (4) of this Order as amended in 1933 by inserting "or section 77B" after "section 77".

1933—Amendment Apr. 17, 1933, changed this Order to read:

"1. All sales shall be by public auction unless otherwise ordered by the court. Where the property is sold by an auctioneer he shall, upon completion of the sale, furnish the receiver or trustee with an itemized statement of the property sold, the name of each purchaser, and the price received for each item, or for the property as a whole if it is sold in bulk.

"2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

"3. Upon petition by a bankrupt, debtor, creditor, receiver, or trustee, setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

"4. This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. All sales shall be by public auction unless otherwise ordered by the court.

"2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

"3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court."

Order 19. Accounts of Marshal

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable. (As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 20. Papers Filed after Reference

Proofs of claim and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk. (As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 21. Proofs of Claim

(1) A proof of claim against an estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership it shall state that the deponent is a member of the partnership; when made by an agent, it shall state the reason the proof is not made by the claimant in person; and when made to prove a debt due to a corporation, the proof shall be made by a duly authorized officer of the corporation. A proof of claim for a debt founded upon an open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which no interest shall be allowed. Each such proof of claim shall state whether a note or other negotiable instrument has been received for such account or any part thereof, or whether any judgment has been rendered thereon. If a note or other negotiable instrument has been received, it shall be filed with the proof of claim. Proofs of claim received by any trustee shall be delivered to the referee to whom the cause is referred.

(2) Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at a designated address; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed. In other cases notices shall be addressed to each creditor at the place designated in the proof of claim, or, if no proof of claim has been filed or if filed and no address is therein stated, at the place shown in the list of creditors.

(3) If a claim has been assigned after the commencement of the proceedings but before proof of claim has been filed, the proof of claim therefor shall be supported by an affidavit of the owner at the time of the commencement of proceedings, setting forth the true consideration for the debt, what payments have been made thereon, and that it is entirely unsecured, or if secured, the security as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim, proof of which has been filed, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment and that objection thereto must be made within ten days. If no objection be made within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

(4) The claims of persons contingently liable for the bankrupt or debtor may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish pro tanto the original debt.

(5) The execution of any power of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before any of the officers enumerated in section 20 of the Act. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

(6) When the trustee or any creditor or the bankrupt or debtor shall desire the reconsideration of any claim allowed against the estate, he may apply by petition to the referee to whom the case is referred for an order for such reconsideration, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witness that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly. (As amended Nov. 1, 1915; Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

REFERENCES IN TEXT

Section 20 of the Act, referred to in par. (5), is classified to section 43 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, changed par. (8) as added by the 1933 amendment, to read: "The provisions of this general order shall not apply to reorganization proceedings under section 77 or 77B of the Act."

1933—Amendment Apr. 17, 1933, effected the following changes in this Order as amended in 1915: The last three sentences in par. (1) were restated without change, the preceding sentences being changed to read: "Depositions to prove claims against an estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by a duly authorized officer of the corporation."

Pars. (2), (3), (4), and (5) were restated without change.

In par. (6), first sentence, "the estate" was substituted for "the bankrupt's estate", and in the second sentence "witness" was substituted for "witnesses".

Pars. (7) and (8) were added, which read:

"7. Every proof of debt filed in extension proceedings under section 74 of the Act shall, unless the court is satisfied from its other allegations that the claim is not based upon money loaned or upon any bond, note, or other obligation, contain proof that the claim is free from usury as defined by the laws of the place where the debt is contracted.

"8. The provisions of this general order shall not apply to proceedings under section 77 of the Act."

1915—Amendment Nov. 1, 1915, added the following in the first paragraph of the original Order: "Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer. If the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending the deposition may be made by some officer or agent of the corporation having knowledge of the facts.

"2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post office box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

"3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

"4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish pro tanto the original debt.

"5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

"6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly."

Order 22. Taking of Testimony

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and shall be governed by the Rules of Civil Procedure for the District Courts of the United States, in so far as they are not inconsistent with the Act or with these general orders. The referee may rule upon the admissibility of evidence and may put witnesses on oath and may himself examine them and may call any party to the proceedings and examine him under oath. If an objection to a question propounded to a witness is sustained by the referee, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The referee may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. Upon the request of any party, however, the referee shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged. (As amended Jan. 16, 1939.)

REFERENCES IN TEXT

Rules of Civil Procedure for the District Courts of the United States, referred to in the text, are the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

ORIGINAL ORDER

As promulgated originally this Order read: "The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just."

FEDERAL RULES OF CIVIL PROCEDURE

See rules set out in Appendix to Title 28, Judiciary and Judicial Procedure.

Order 23. Orders of Referee

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests. (As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 24. List of Proved Claims and Interests

The person with whom proofs of claim or of interest are filed shall maintain open to inspection a list of the claims and interests proved against the estate, with the names and addresses of the owners thereof, as given by them. The list of claims or of interests shall be maintained substantially in the manner indicated by Form No. 71. The original list shall be transmitted to the clerk of the district court for preservation by him when the case is closed. (As amended Apr. 17, 1933; Jan. 16, 1939; June 23, 1947; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

Inasmuch as the clerk of the district court is the permanent custodian of all court records, the original list and not a certified copy thereof should be transmitted to the clerk for preservation by him.

AMENDMENTS

1947—Amendment June 23, 1947, added last two sentences.

1939—Amendment Jan. 16, 1939, changed the first sentence of this Order to read as above set forth.

1933—Amendment Apr. 17, 1933, changed this Order to read: "The referee shall maintain open to inspection a list of the claims proved against an estate, with the names and addresses of the proving creditors."

ORIGINAL ORDER

As promulgated originally this Order read: "The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors."

Order 25. Special Meeting of Creditors

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the Act, the court may call such a meeting, specifying in the notice the purpose for which it is called. (As amended Jan 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 26. Accounts of Referee

Every referee shall maintain, substantially in the manner indicated by Form No. 46, a cash book or a record in which he shall keep an accurate and itemized account showing (1) all moneys received by him in his official capacity as referee in bankruptcy and the case number of the proceeding to which each receipt is credited; and (2) the disposition made of such moneys, showing the case number of the proceeding, if any, on account of which each sum is disbursed. All moneys received as aforesaid shall be deposited forthwith to the credit of the referee in his official capacity in a depository designated by the court for the purpose, and shall be disbursed only by checks signed by the referee in his official capacity. Within thirty days after the expiration of each six months period ending June thirtieth and December thirty-first of each year, each referee shall submit to the district court a report substantially in the manner indicated by Form No. 47 containing (1) a financial statement showing all moneys received and disbursed in his official capacity as referee in bankruptcy during the period covered by the report; (2) an analysis of the unexpended balance in his official account at the end of the period; (3) a statement showing the number of cases handled during the period; and (4) a list of the proceedings referred to him which have remained open for more than eighteen months, giving the reasons in each instance why they have not been closed. The statements so submitted shall be in duplicate and verified; and one copy shall be transmitted by the clerk, forthwith upon its receipt, to the Administrative Office of the United States Courts. (As amended Apr. 17, 1933; Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed this Order to read as above set forth.

1939—Amendment Jan. 16, 1939, changed this Order to read: "Every referee shall maintain, substantially in the manner indicated by Form No. 46, a cash book or a record in which he shall keep an accurate and itemized account showing (1) his receipts of moneys as indemnity or charges for expenses, and as compensation for his services, and the case number of the proceeding to which each receipt is credited; and (2) the disposition made of such moneys, showing the case number of the proceeding, if any, on account of which each sum is expended. All moneys received as aforesaid shall be deposited forthwith to the credit of the referee in his official capacity in a depository designated by the court for the purpose, and shall be disbursed only by checks signed by the referee in his official capacity. Within sixty days after the expiration of each six months period ending June thirtieth and December thirty-first of each year, each referee shall submit to the district court (1) a financial statement containing the information indicated by Form No. 47; (2) if the referee devotes part time to his duties, a statement showing the extent to which and the method by which any overhead expenses have been allocated to and reimbursed out of the aforesaid funds; (3) a copy of the rule or a statement of the method by which the amount of the indemnity or expense charges against individual estates is computed or fixed; (4) a statement containing an inventory of law books, office equipment and other property acquired under the provisions of subdivision b of section 62 of the Act [section 102(b) of Title 11, Bankruptcy]; and (5) a list of the proceedings referred to him which have remained open for more than eighteen months, giving the reasons in each instance why they have not been closed. The statements so submitted shall be in duplicate and verified; and one copy shall be transmitted by the clerk, forthwith upon its receipt, to the Attorney General."

1933—Amendment Apr. 17, 1933, changed this Order to read: "Every referee shall keep an accurate and itemized account showing, with respect to each case referred to him, his receipts and expenditures and their nature. Within sixty days after the expiration of each six months period ending January thirty-first and July thirty-first respectively, in each year, he shall submit to the district court (1) a transcript of such account, with proper vouchers when vouchers can be procured; (2) a statement showing the unexpended balance, if any, of moneys received as indemnity or charges for expenses; (3) if the referee devotes part time to his duties, a statement showing the extent to which and the method by which any overhead expenses have been allocated to and reimbursed out of the cases referred to him; (4) the particular rule or method by which the amount of expense charges against individual estates is computed or fixed; (5) a statement of the cases referred to him which have remained open for more than eighteen months, giving the reasons in each instance why they have not been closed. The accounts and statements so submitted shall be in duplicate and verified; one copy shall be transmitted by the clerk, forthwith upon its receipt, to the Attorney General."

ORIGINAL ORDER

As promulgated originally this Order read: "Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and

shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month."

Order 27. Abrogated Jan. 16, 1939, eff. Feb. 13, 1939

ORIGINAL ORDER

As promulgated, Nov. 28, 1898, this Order read: "When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon."

CROSS REFERENCES

Review of orders of referee, see subd. (c) of section 67 of this title.

Order 28. Redemption of Property and Compounding of Claims

Whenever it may be deemed for the benefit of an estate to redeem and discharge any mortgage, pledge, deposit or lien, upon any property, real or personal, or to compound and settle any debts or other claims due or belonging to the estate, the receiver or trustee, or the bankrupt or debtor, or any creditor who has proved his claim, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing or directing such an act on the part of the receiver or trustee: *Provided*, That the court may, upon cause shown, order an immediate redemption of property without notice. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, inserted in the last sentence of this Order, as added by the 1933 amendment, "or section 77B".

1933—Amendment Apr. 17, 1933, inserted "or debtor," before "or any creditor" in this Order, and added at the end a new sentence "This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

This Order, as promulgated originally, read: "Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee."

Order 29. Payment of Moneys Deposited

No moneys deposited as required by the Act shall be drawn from the depository unless by check or draft, signed by the clerk of the court or by a receiver or trustee, and countersigned by the judge, or by a referee, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn. An entry of the substance of each check or draft, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the receiver or trustee; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any clerk authorized to countersign said checks. (As amended Apr. 17, 1933; May 13, 1935; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, added "reorganization" in the last sentence of this Order added by 1933 Amendment.

1935—Amendment May 13, 1935, inserted "or section 77B" in the last sentence of this Order added by the 1933 Amendment.

1933—Amendment Apr. 17, 1933, added a final sentence which read: "This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

This Order as promulgated originally read: "No moneys deposited as required by the Act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks."

Order 30. Imprisoned Debtor

If, at the time of the commencement of the proceedings under this Act, the bankrupt or debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailer or any officer in whose custody he may be, before the court, for the purpose of testifying in any manner relating to said proceedings; and, if committed after the commencement of said proceedings upon process in any civil action founded upon a claim provable under the Act, the judge may, upon like application, discharge him from such imprisonment. If the bankrupt or debtor, during the pendency of said proceedings, be arrested or imprisoned upon process in any civil action, the judge, upon his application, may issue a writ of habeas corpus to bring him before the judge to ascertain whether such process has been issued for the collection of any claim provable under the Act, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the judge shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order. (As amended Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "judge" for "the district court," and "court" in the second and third sentences of this Order as amended in 1933, so as to read as set out in the text.

1933—Amendment Apr. 17, 1933, changed this Order to read: "If, at the time of the commencement of proceedings under this Act, the bankrupt or debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailer or any officer in whose custody he may be, before the court, for the purpose of testifying in any manner relating to said proceedings; and, if committed after the commencement of said proceedings upon process in any civil action founded upon a claim provable under the Act, the court may, upon like application, discharge him from such imprisonment. If the bankrupt or debtor, during the pendency of said proceedings be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable under the Act, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order."

ORIGINAL ORDER

This Order, as promulgated originally, read: "If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailor or any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order."

Order 31. Petition for Discharge

The petition of a bankrupt corporation for a discharge shall state concisely, in accordance with the provisions of the Act and the orders of the court, the proceedings in the case and the acts of the bankrupt. (As amended Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as set out in the text, substituting "bankrupt corporation" and "bankrupt" for "bankrupt or debtor" at the beginning and end, respectively, of the Order.

1933—Amendment Apr. 17, 1933, substituted "bankrupt or debtor" for "bankrupt".

ORIGINAL ORDER

As promulgated originally this Order read as set out in the text except that the word "corporation" was not included.

Order 32. Opposition to Discharge

Any person opposing a discharge shall, on or before the time fixed for the filing of objections to the discharge, file a specification in writing of the grounds of his opposition. (As amended June 4, 1917; Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order, as amended, to read as set out in the text.

1933—Amendment Apr. 17, 1933, changed this Order to read: "A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition."

1917—Amendment June 4, 1917, substituted "shortened or enlarged" for "enlarged" in the original Order.

ORIGINAL ORDER

As promulgated originally this Order read: "A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge."

Order 33. Arbitration and Compromise

Whenever a receiver, trustee or debtor in possession shall make application to the court for authority to submit to arbitration any controversy arising in the settlement of an estate, or for authority to compromise any such controversy, the application shall clearly and distinctly set forth the subject matter of the controversy, and the reasons why it is proper and for the best interest of the estate that the controversy should be settled by arbitration or compromise. (As amended Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order, as amended, to read as set out in the text.

1933—Amendment Apr. 17, 1933, substituted "an estate" for "a bankrupt's estate".

ORIGINAL ORDER

As promulgated originally, this Order read: "Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise."

Order 34. Costs in Contested Proceedings

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a civil action cognizable as a case in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner. (As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "civil action cognizable as a case" for "suit", which is the only change made in this Order as promulgated originally.

Order 35. Compensation of Clerks, Referees, Receivers, and Trustees

(1) The fees allowed by the Act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the Act to be filed with them, or in certifying or delivering papers or copies of records to

referees or other officers, or in receiving or paying out moneys; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

(2) The compensation of referees, prescribed by the Act, shall be in full compensation for all services performed by them under the Act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the Act and allowed by special order of the judge.

(3) The compensation allowed to receivers or trustees by the Act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

(4) The petition in a voluntary proceeding under Chapters I to VII or Chapter XIII of the Act may be accepted for filing by the clerk if accompanied by a verified petition of the bankrupt or debtor stating that the petitioner is without and cannot obtain the money with which to pay the filing fees in full at the time of filing. Such petition shall state the facts showing the necessity for the payment of the filing fees in installments and shall set forth the terms upon which the petitioner proposes to pay the filing fees.

a. At the first meeting of creditors or any adjournment thereof, the court after hearing and examination of the bankrupt or debtor, shall enter an order fixing the amount and date of payment of such installments. The final installment shall be payable not more than six months after the date of filing of the original petition; provided, however, that for cause shown the court may extend the time of payment of any installment for a period not to exceed three months.

b. Upon the failure of a bankrupt or debtor to pay any installment as ordered, the court may dismiss the proceeding for failure to pay costs as provided in Section 59, sub. g. of the Act. If a proceeding is dismissed or closed without the payment of the filing fees in full, the amount collected in installments, including any payment made at the time the original petition is filed, shall be divided between the clerk, the referees' salary fund, the referees' expense fund and the trustee, if any, in the same proportion as such filing fees would be distributed if paid in full.

c. No proceedings upon the discharge of a bankrupt or debtor shall be instituted until the filing fees are paid in full. (As amended Dec. 11, 1905; Jan. 16, 1939; June 23, 1947.)

REFERENCES IN TEXT

Chapters I to VII and XIII of the Act, referred to in text, are classified to sections 1–112 and 1001–1086 of this title. Bankruptcy, respectively.

Section 59 sub. g of the Act, referred to in text, is classified to section 95(g) of this title.

AMENDMENTS

1947—Amendment June 23, 1947, changed subd. (4) to read as above set forth.

1939—Amendment Jan. 16, 1939, restated subds. (1) and (2) without change and substituted in subd. (3) "receivers or trustees" for "trustees", and in subd. (4) "receivers and trustees" for "trustees".

1905—Amendment Dec. 11, 1905, added the following sentence to subd. (4): "He may also, pending such proceedings, both in voluntary and involuntary cases, order the commissions of referees and trustees to be paid immediately after such commissions accrue and are earned."

ORIGINAL ORDER

As promulgated originally, subds. (1) and (2) of this Order read as set out in the text: subds. (3) and (4) read:

"3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

"4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed."

Order 36. Appeals

Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States. (As amended Apr. 17, 1933; Jan. 16, 1939.)

REFERENCES IN TEXT

Rules of Civil Procedure for the District Courts of the United States, referred to in the text, are the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States" for "equity in Courts of the United States."

1933—Amendment Apr. 17, 1933, amended this Order to read: "Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in equity in courts of the United States."

ORIGINAL ORDER

As promulgated originally, this Order read:

"1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

"2. Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

"3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law."

FEDERAL RULES OF APPELLATE PROCEDURE

Appeals by allowance in bankruptcy proceedings, see rule 6, Appendix to Title 28, Judiciary and Judicial procedure.

FEDERAL RULES OF CIVIL PROCEDURE

See rules set out in Appendix to Title 28, Judiciary and Judicial Procedure.

Order 37. General Provisions

In proceedings under the Act the Rules of Civil Procedure for the District Courts of the United States shall, in so far as they are not inconsistent with the Act or with these general orders, be followed as nearly as may be. But the court may shorten the limitations of time prescribed so as to expedite hearings, and may otherwise modify the rules for the preparation or hearing of any particular proceeding. (As amended Jan. 16, 1939.)

REFERENCES IN TEXT

Rules of Civil Procedure for the District Courts of the United States, referred to in the text, are the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1939—Amendment Jan. 16, 1939, amended this Order to read as set out in the text.

ORIGINAL ORDER

As promulgated originally, this Order read: "In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing."

FEDERAL RULES OF CIVIL PROCEDURE

See rules set out in Appendix to Title 28, Judiciary and Judicial Procedure.

Order 38. Forms

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order as promulgated originally.

1936—Amendment June 1, 1936, added in this Order, as amended in 1933, "or in proceedings for the reorganization of a corporation," after "railroad", in the second sentence.

1933—Amendment Apr. 17, 1933, changed this Order to read: "The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. In proceedings under any of the sections of Chapter VIII of the Bankruptcy Act, unless and until the debtor is adjudicated a bankrupt all forms used shall refer to him as a 'debtor' and not a 'bankrupt' and shall be captioned 'In proceedings for a composition or extension' or 'In proceedings for the reorganization of a railroad,' as the case may be, and not 'In bankruptcy.' "

Order 39. Representation of Creditors by Receivers or Their Attorneys

Neither a receiver nor his attorney shall solicit any proof of claim, power of attorney, or other authority to act for or represent any creditor for any purpose in connection with the administration of an estate or the acceptance or rejection of any arrangement or plan. (Added Apr. 13, 1925, and amended Jan. 13, 1930; Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order as promulgated originally with the following substitutions: "claim," for "debt,"; "an estate" for "the estate in bankruptcy"; and "arrangement or plan," for "composition offered by a bankrupt."

1933—Amendment Apr. 17, 1933, amended this Order to read: "Neither a receiver nor his attorney shall solicit any proof of debt, power of attorney, or other authority to act for, or represent, any creditor for any purpose in connection with the administration of an estate or the acceptance or rejection of any composition or extension proposal. The local bankruptcy court may, however, whenever a banking institution is under local rule or practice always appointed receiver in cases requiring the services of a receiver, by local rule approved by a majority of the circuit judges of the circuit, provide that notice may be given to the creditors of the availability of such institution to act as trustee if elected, and may provide means to facilitate the creditors in filing and voting their claims in favor of the election of such institution as trustee."

1930—Amendment Jan. 13, 1930, amended this Order to read: "Neither a receiver nor his attorney shall solicit any proof of debt, power of attorney or other authority to act for or represent any creditor for any purpose in connection with the administration of the estate in bankruptcy or the acceptance or rejection of any composition offered by a bankrupt. The local Bankruptcy Court may, however, whenever a banking institution is under local rule or practice always appointed receiver in cases requiring the services of a receiver, by local rule approved by a majority of the Circuit Judges of the Circuit, provide that notice may be given to the creditors of the availability of such institution to act as trustee if elected, and may provide means to facilitate the creditors in filing and voting their claims in favor of the election of such institution as trustee."

ORIGINAL ORDER

As promulgated originally this Order read: "Neither a receiver nor his attorney shall solicit any proof of debt, power of attorney, or other authority to act for, or represent any creditor for any purpose in connection with the administration of the estate in bankruptcy or the acceptance or rejection of any composition offered by a bankrupt."

Order 40. Receivers and Marshals as Custodians

A receiver or marshal appointed by the court to take charge of the property of a bankrupt after the filing of a petition, shall be deemed to be a mere custodian within the meaning of section 48 of the Act, unless his duties and compensation are specifically enlarged by order of the court, upon proper cause shown, either at the time of the appointment or later. (Added Apr. 13, 1925, and amended Jan. 16, 1939.)

REFERENCES IN TEXT

Section 48 of the Act, referred to in text, is classified to section 76 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 41. Waiver of Right to Share in Deposits or in Payments under an Arrangement or Plan

Before confirming an arrangement or plan the court shall require all creditors and other persons who may have waived their right to share in the distribution of the deposit or in payments under the arrangement or plan, for claims, fees or otherwise, to set forth in writing and under oath all agreements with respect thereto with the debtor, his attorney or other person, and shall also require an affidavit by the debtor that he has not directly or indirectly paid or promised any consideration to any attorney,

trustee, receiver, creditor, or other person in connection with the proceedings except as set forth in such affidavit or in the arrangement or plan, and that he has no knowledge of any such payment or promise by any other party. (Added Apr. 13, 1925, and amended Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order as amended in 1933, without change.

1933—Amendment Apr. 17, 1933, substituted "an arrangement or plan" for "a composition or extension proposal" for "extension", and for "offer of composition and extension"; and "debtor" for "bankrupt or debtor".

Order 42. Compensation of Attorneys

No allowance of compensation shall be made to any attorney for a receiver, trustee or debtor in possession except for professional services. (Added Apr. 13, 1925, and amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order, as amended in 1936, without change.

1936—Amendment June 1, 1936, changed this Order to read as above set forth.

1933—Amendment Apr. 17, 1933, changed this Order to read:

"1. Every attorney, receiver, and trustee seeking an allowance of compensation from an estate for services rendered, or reimbursement for expenses incurred in the proceedings, shall file with the court a petition under oath, setting forth a full and detailed statement of such services and expenses and the amount claimed therefor, and, in the case of an attorney or receiver, the amount of the partial allowance, if any, theretofore made. And such petition shall be accompanied by an affidavit of the applicant stating that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and the receiver, the trustee, the bankrupt, the debtor, or the attorney of any of them. In the absence of such petition and affidavit no allowance of compensation shall be made; and no allowance shall be made to any attorney for a receiver or trustee except for professional services.

"2. Except in proceedings under section 77 of the Act, such petition shall be heard at a meeting of creditors, and the referee in sending the notice of such meeting prescribed by section 58 of the Act shall state by whom and in what amount the allowance of the compensation or reimbursement for expenses is asked."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Every attorney, receiver and trustee seeking an allowance of compensation from a bankrupt estate for services rendered, shall file with the referee a petition under oath, setting forth a full and detailed statement of such services and the amount claimed therefor, and, in the case of an attorney or receiver, the amount of the partial allowance, if any, theretofore made. And such petition shall be accompanied by an affidavit of the applicant stating that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and the receiver, the trustee, the bankrupt, or the attorney of any of them. In the absence of such petition and affidavit no allowance of compensation shall be made.

"2. Such petition shall be heard at a meeting of creditors; and the referee in sending the notice of such meeting prescribed by section 58 of the Bankruptcy Act, shall state by whom and in what amount the allowance of the compensation is asked."

Order 43. Fees and Expenses of Attorneys for Petitioning Creditors

The court may deny the allowance of any fee to the attorney for petitioning creditors or the reimbursement of his expenses, or both, if it shall appear that the proceedings were instituted in collusion with the bankrupt or were not instituted in good faith. (Added Apr. 13, 1925, and amended Apr. 17, 1933; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

1933—Amendment Apr. 17, 1933, restated this Order as promulgated originally, without change.

Order 44. Appointment of Attorneys

No attorney for a receiver, trustee or debtor in possession shall be appointed except upon the order of the court, which shall be granted only upon the verified petition of the receiver, trustee or debtor in possession, stating the name of the counsel whom he wishes to employ, the reasons for his selection, the professional services he is to render, the necessity for employing counsel at all, and to the best of the petitioner's knowledge all of the attorney's connections with the bankrupt or debtor, the creditors or any other party in interest, and their respective attorneys. If satisfied that the attorney represents no interest adverse to the receiver, the trustee, or the estate in the matters upon which he is to be engaged, and that his employment would be to the best interests of the estate, the court may authorize his employment, and such employment shall be for specific purposes unless the court is satisfied that the case is one justifying a general retainer. If without disclosure any attorney acting for a receiver or trustee or debtor in possession shall have represented any interest adverse to the receiver, trustee, creditors or stockholders in any matter upon which he is employed for such receiver, trustee, or debtor in possession, the court may deny the allowance of any fee to such attorney, or the reimbursement of his expenses, or both, and may also deny any allowance to the receiver or trustee if it shall appear that he failed to make diligent inquiry into the connections of said attorney.

Nothing herein contained shall prevent the judge, in proceedings under section 77 of the Act, from authorizing the employment of attorneys who are attorneys of the corporation, or associated with its legal department, in connection with the operation of the business of the corporation by a trustee or trustees under subsection (c) of section 77, when such employment is found by the judge to be in the public interest in relation to such operation and is not adverse to the interests of the trustee or trustees or of the creditors of the corporation. (Added Apr. 13, 1925, and amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

REFERENCES IN TEXT

Section 77 of the Act, referred to in text, is classified to section 205 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, amended this Order to read as set out in the text.

1936—Amendment June 1, 1936, struck out the first paragraph of this Order as amended in 1933, and changed the second paragraph, then constituting entire order to read: "Nothing herein contained shall prevent the court, in proceedings under section 77 or section 77B of the Act, from authorizing the employment of attorneys who are attorneys of the corporation, or associated with its legal department, in connection with the operation of the business of the corporation by a trustee or trustees under subsection (c) of section 77 and subsection (c) of section 77B, when such employment is found by the court

to be in the public interest in relation to such operation and is not adverse to the interests of the trustee or trustees or of the creditors of the corporation."

1933—Amendment Apr. 17, 1933, amended this Order to read:

"No attorney for a receiver or a trustee shall be appointed except upon the order of the court, which shall be granted only upon the verified petition of the receiver or trustee, stating the name of the counsel whom he wishes to employ, the reasons for his selection, the professional services he is to render, the necessity for employing counsel at all, and to the best of the petitioner's knowledge all of the attorney's connections with the bankrupt or debtor, the creditors or any other parties to the proceedings, and their respective attorneys. If satisfied that the attorney represents no interest adverse to the receiver, trustee, or any creditor in the matters upon which he is to be engaged, and that his employment would be to the best interests of the estate, the court may authorize his employment, and such employment shall be for specific purposes unless the court is satisfied that the case is one justifying a general retainer. If without disclosure any attorney acting for a receiver or trustee shall have represented any interest adverse to the receiver, trustee, or any creditor in any matter upon which he is employed for such receiver or trustee, the court may deny the allowance of any fee to such attorney, or the reimbursement of his expenses, or both, and may also deny any allowance to the receiver or trustee if it shall appear that he failed to make diligent inquiry into the connections of said attorney.

"Nothing herein contained shall prevent the court, in proceedings under section 77 of the Act, from authorizing the employment of attorneys who are attorneys of the railroad corporation, or associated with its legal department, in connection with the operation of the business of the corporation by a trustee or trustees under paragraph (c) of section 77, when such employment is found by the court to be in the public interest in relation to such operation and is not adverse to the interests of the trustee or trustees or of the creditors of the corporation."

ORIGINAL ORDER

As promulgated originally this Order read as follows: "In any district in which there is a city having at the last federal census a population of 250,000 or more, no attorney for a receiver or a trustee shall be appointed except upon the order of the court, which shall be granted only upon the petition of the receiver or trustee, stating the name of the counsel whom he wishes to employ, the reasons for his selection, and the necessity for employing counsel at all; and there shall be submitted with this petition an affidavit of the person recommended showing that he is not employed by or connected with the bankrupt or any person having an interest adverse to the receiver, trustee or creditors."

Order 45. Auctioneers, Accountants and Appraisers

No auctioneer or accountant shall be employed by a receiver, trustee or debtor in possession except upon an order of the court expressly fixing the amount of the compensation or the rate or measure thereof. The compensation of appraisers shall be provided for in like manner in the order appointing them. (Added Apr. 13, 1925, and amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, struck out "or" after "receiver" and added "or debtor in possession" after "trustee".

Order 46. Abrogated Jan. 16, 1939, eff. Feb. 13, 1939

AMENDMENTS

1931—Amendment June 1, 1931, amended this Order to read: "Whenever a custodian, receiver, or trustee is a banking institution designated and qualified pursuant to § 61 of the Act to act as depositary for money, said banking institution may, if authorized by rule of the local Bankruptcy Court approved by a majority of the Circuit Judges of the Circuit, keep on deposit with itself money received by it as custodian, receiver, or trustee, if said banking institution under the local laws of the state of its domicile is permitted to keep on deposit with itself money collected and received by it acting as receiver or trustee under the appointment of any court. Such local rule shall contain such provisions for the supervision and control of such deposits as the court may deem adequate, and on all sums of money not less than $100 so kept on deposit interest shall be allowed by such banking institution at such rate as may from time to time be directed by such local rule."

ORIGINAL ORDER

As promulgated, Jan. 13, 1930, this Order read: "Whenever a custodian, receiver or trustee is a banking institution designated and qualified pursuant to section 61 of the Act to act as depositary for money, said banking institution may, if authorized by rule of the local Bankruptcy Court approved by a majority of the Circuit Judges of the Circuit, keep on deposit with itself money received by it as custodian, receiver or trustee, if said banking institution under the local laws of the state of its domicile is permitted to keep on deposit with itself money collected and received by it acting as receiver or trustee under the appointment of any court. Such local rule shall contain such provisions for the supervision and control of such deposits as the court may deem adequate, and on all sums of money not less than $100 so kept on deposit interest shall be allowed by such banking institution at such rate, not less than two per centum per annum, as may from time to time be directed by local rule."

Order 47. Reports of Referees and Special Masters

Unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and conclusions of law, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. (Added May 31, 1932, and amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as set out in the text.

1936—Amendment June 1, 1936, inserted "and section 77B" after "section 77".

1933—Amendment Apr. 17, 1933, substituted "under section 77 of the Act," for "in bankruptcy", and inserted "or master" after "referee".

ORIGINAL ORDER

As promulgated originally this Order read: "The reports of referees in all cases and proceedings in bankruptcy shall be deemed presumptively correct, but shall be subject to review by the court, and the court may adopt the same, or may modify or reject the same in whole or in part when the court in the exercise of its judgment is fully satisfied that error has been committed: Provided, That when any matter is referred by consent of all parties in interest and the intention is plainly expressed in the consent order that the submission is to the referee as an arbitrator, the court may review the same only in accordance with the principles governing a review of an award and decision by an arbitrator."

Order 48. Proceedings under Chapter XI of the Act [11 U. S. C. § 701 et seq.]

(1) This general order shall apply to proceedings under chapter XI of the Act.

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter XI or of this general order, apply to proceedings under chapter XI: *Provided,* That General Orders 18, 28 and 29 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk of the district court or, in the case of a petition filed after a reference, the referee after such reference, shall forthwith transmit to the District Director of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 321 or 322 of the Act.

(4) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order. (Added Apr. 24, 1933 and amended May 13, 1935; June 1, 1936; Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

A clarifying change is made in identifying the clerk of the district court as the person who should transmit the copy of the petition if no reference has been made. If a petition is filed under section 321 of the Bankruptcy Act after a reference, the copy should be transmitted by the referee.

The office of Collector of Internal Revenue having been abolished by Reorganization Plan No. 1 of 1952, the function of receiving information pertinent to bankruptcy and debtor-relief proceedings has been assigned to the office of the District Director of Internal Revenue. Statement of Organization and Functions of the Internal Revenue Service ¶ 1118.54(3), 21 F.R. 10418, 10432, effective December 1, 1956. This reorganization accordingly requires the substitution of "District Director" for "Collector."

REFERENCES IN TEXT

Sections 321 and 322 of the Act, referred to in text, are classified to sections 721 and 722 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, changed this Order to read:

"1. Notice to creditors of the proposed appointment of a custodian or receiver may, in the interests of expedition, be given by publication instead of in writing, if the court so directs.

"2. If a custodian or receiver is appointed, the notice of the first meeting which he is required to prepare shall be in form approved by the referee and the date of the meeting shall be fixed by the referee.

"3. If the debtor is a wage-earner or a farmer, and any happenings occur which under the provisions of subdivision (1) of said section would otherwise be followed by an order of liquidation, and the debtor does not consent to liquidation, the court shall dismiss the proceedings and notify the creditors accordingly. If a composition or extension proposal is set aside for fraud as provided in subdivision (k) of said section, the case shall be reinstated and such proceedings shall be had as upon denial of confirmation under subdivision (1).

"4. The commissions of the referee and of the custodian or receiver shall not exceed those payable to referees and receivers under sections 40 and 48 of the Act in the event of a composition in bankruptcy, and the amount of the debts whose maturity is to be extended shall be included for that purpose as part of 'the amount to be paid creditors' within the meaning of those sections, but if the compensation so computed shall appear to be in excess of what is fair and reasonable it shall be correspondingly reduced, the intent of this provision being that the amount of such fees shall be subject at all times to the approval of the court. If the estate is liquidated under the provisions of subdivision (1) of section 74 of the Act, the referee shall return to the estate any commissions previously received and shall be entitled to commissions on all moneys disbursed to creditors by the trustee as provided in section 40 of the Act.

"5. The personal representative of a deceased individual who desires in his representative capacity to effect, under section 74, a settlement or composition of the debts of the estate, shall attach to his petition, in lieu of schedules, the following papers, certified as correct by the court which appointed him (hereinafter referred to as the probate court): (a) a copy of the order of his appointment, (b) a copy of an order of the probate court authorizing him to file the petition, (c) a detailed inventory of so much of the property constituting the estate as under the laws of the State of which the decedent died a resident would be available for creditors, and (d) a list of the names and addresses of the creditors, showing the amounts allowed or apparently owing to each, the nature of the securities or liens, if any, held by each, and the claims which are entitled to priority. If the petition is approved by the judge as properly filed under section 74, the clerk shall file a certified copy of the order of approval with the probate court, and from the date of such order until the case is dismissed the district court shall exercise exclusive jurisdiction over the property required to be listed in the inventory as above provided.

"6. Upon the approval of a personal representative's petition the case shall be referred to a referee and proceeded with as in all other cases under section 74 and this general order, except that (a) the original and any amended or supplementary inventory filed by the petitioner with the approval of the probate court shall be deemed to be correct, and no inventory shall be made by the custodian or receiver; (b) all claims allowed by the probate court, and only such claims, shall be allowed by the referee; (c) the petitioner shall file with the application for confirmation a completed list of the claims allowed up to the date of the application, certified as correct by the probate court; and (d) the clerk shall file with the probate court certified copies of all orders of the referee or judge confirming or denying the proposal, dismissing the proceedings before or after confirmation, or directing liquidation of the estate."

1935—Amendment May 13, 1935, changed this Order as amended in 1933, to read: "4. The commissions of the referee and of the custodian or receiver shall not exceed those payable to referees and receivers under sections 40 and 48 of the Act in the event of a composition in bankruptcy, and the amount of the debts whose maturity is to be extended shall be included for that purpose as part of 'the amount to be paid creditors' within the meaning of those sections, but if the compensation so computed shall appear to be in excess of what is fair and reasonable it shall be correspondingly reduced, the intent of this provision being that the amount of such fees shall be subject at all times to the approval of the court. If the estate is liquidated under the provisions of subdivision (1) of section 74 of the Act, the referee shall return to the estate any commissions previously received and shall be entitled to commissions on all moneys disbursed to creditors by the trustee as provided in section 40 of the Act."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Notice to creditors of the proposed appointment of a custodian or receiver may, in the interests of expedition, be given by publication instead of in writing, if the court so directs.

"2. If a custodian or receiver is appointed, the notice of the first meeting which he is required to prepare shall be in form approved by the referee and the date of the meeting shall be fixed by the referee.

"3. If the debtor is a wage-earner or a person engaged chiefly in farming or the tillage of the soil, and any happenings occur which under the provisions of subdivision (1) of said section would otherwise be followed by an order of liquidation, and the debtor does not consent to liquidation, the court shall dismiss the proceedings and notify the creditors accordingly. If a composition or extension proposal is set aside for fraud as provided in subdivision (k) of said section, the case shall be reinstated and such proceedings shall be had as upon denial of confirmation under subdivision (1).

"4. For the purposes of computing the commissions of the referee and of the custodian or receiver the term 'composition' as used in sections 40 and 48 of the Act shall be deemed to include an extension proposal, and the amount of the debts whose maturity is to be extended thereunder and of the debts, if any, to be paid in full on the confirmation, shall be deemed to be 'the amount to be paid creditors' within the meaning of said sections. If the estate is liquidated under the provisions of subdivision (1) of section 74 of the Act, the referee shall return

to the estate any commissions previously received and shall be entitled to commissions on all moneys disbursed to creditors by the trustee as provided in section 40 of the Act."

Order 49. Proceedings under Section 77 of the Act [11 U. S. C. § 205]

(1) This general order shall apply to proceedings under section 77 of the Act.

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of section 77 or of this general order, apply to proceedings under section 77: *Provided,* That General Orders 17, 18, 21, 28, 29 and 41 shall not apply to such proceedings.

(3) Each circuit court of appeals shall cause written notice to be given to the judges of the district courts within the circuit of the names and addresses of the persons from time to time designated and qualified to act as special masters under the provisions of subsection (c) of section 77.

(4) The clerk of the district court in which proceedings under section 77 are brought shall forthwith transmit to the Interstate Commerce Commission copies of (a) the answer, if any, of the railroad corporation, or the pleading of any creditor controverting facts alleged in the petition; (b) the order approving or dismissing the petition; (c) any order (1) directing the debtor to give notice and fixing the date of a hearing on the appointment of a trustee or trustees, (2) appointing or removing a trustee, or (3) confirming the appointment of legal counsel for the trustee or trustees, or removing such counsel; (d) any application by a trustee for authority to issue certificates, and any order authorizing such issuance; (e) such schedules and reports as may be submitted by the officers of the corporation or trustees with respect to the conduct of the debtor's affairs and the fairness of any proposed plan, and all orders issued to the trustee or trustees with respect to the operation of the corporation's business, together with the petitions upon which the orders were based; (f) the lists of bondholders, creditors, and stockholders required to be filed under paragraph (4) of subsection (c) of section 77, and any other information concerning the security holders filed pursuant to the order of the court; (g) any order determining the time within which, and the manner in which, claims may be filed or evidenced and allowed, and the division of creditors and stockholders into classes, and any order respecting the exercise of any power by any person or committee representing any creditor or stockholder; (h) any order allowing or rejecting such claims, or extending the time within which they may be filed or evidenced; (i) any order directing the trustee or trustees to report facts pertaining to irregularities, fraud, misconduct, or mismanagement, and any report made pursuant to such order; (j) any order directing the debtor or the trustee or trustees to keep records and accounts, in addition to those prescribed by the commission, for the segregation and allocation of earnings and expenses; (k) any order approving the special employment of assistants requested by the commission; (*l*) any application for allowances of compensation and expenses under the provisions of paragraphs (2) and (12) of subsection (c) of section 77, upon receipt of which the commission shall determine the maximum limits of such allowances and file with the court its report and order thereon, and any order making allowances for compensation and expenses under said paragraph; (m) any order issued upon the petition of the commission for the reference of particular matters to a special master, and the report of such master thereon; (n) any order allowing interested parties to intervene in the proceedings, any minute of appearance by a person other than interveners, and any rule defining matters upon which notice shall be given to other than interveners; (*o*) any order extending the time for filing a plan; (p) any motion to dismiss the proceedings because of undue delay in a reasonably expeditious reorganization of the debtor, and notice of any hearing with reference to dismissing the proceedings for such cause; (q) any notice of the time within which parties in interest may file with the court objections to the plan approved by the commission, and any objection to such plan and any claim for equitable treatment filed by a party in interest; (r) any order affirming a finding of the commission affecting the requirement that the plan be submitted to creditors or stockholders as provided in the second paragraph of subsection (e) of section 77; (s) any order entered on the disapproval of the plan and the judge's opinion stating his conclusions and reasons for such disapproval; (t) if the plan is not confirmed, the order, with the judge's opinion stating his conclusions and reasons therefor, dismissing the proceedings or referring the case back to the commission for further proceedings, and, if the case is referred back to the commission, a copy of the evidence received in any hearings with reference to confirmation; (u) the order confirming the plan, with the judge's opinion stating his conclusions and reasons therefor, and any order directing the transfer or other disposition of the property; (v) the final decree; and (w) such other papers filed in the proceedings as the commission may request of the clerk or the court may direct him to transmit.

(5) The Interstate Commerce Commission shall forthwith cause to be filed in the district court having jurisdiction of the proceedings copies of (a) any order ratifying the appointment of a trustee or trustees; (b) each report and order authorizing the issue of trustees' certificates; (c) each order or call for a hearing, with a statement of its purposes; (d) each plan of reorganization, other than the debtor's, filed with the commission; (e) any report finding a plan to be prima facie impracticable; (f) any order refusing to approve a plan, together with the commission's report stating fully the reasons for its conclusions; (g) any petition for further hearing on a plan, and any supplemental order modifying any plan, together with the report stating the reasons for such modification; (h) the written acceptances of any plan which is finally approved; (i) any order granting authority for the issuance of securities or for other steps contemplated by the plan; (j) any order issued to the trustee or trustees with respect to the operation of the corporation's business; (k) any order issued under the provisions of subsection (p) of section 77 authorizing the solicitation, use, employment or action under or pursuant to proxies, authorizations, or deposit agreements; and (*l*) such

other papers filed in the proceedings as the court may direct or the commission deem pertinent.

(6) The clerk of the district court in which proceedings under section 77 are brought shall forthwith transmit to the Secretary of the Treasury copies of (a) any petition filed under subsection (a) of section 77; (b) the answer, if any, of the railroad corporation; (c) the order approving or dismissing the petition; (d) any order appointing or removing a trustee; (e) any application by a trustee for authority to issue certificates, and any order authorizing or refusing to authorize such issuance; (f) any order determining the time within which, and the manner in which, claims may be filed or evidenced and allowed, and the division of creditors and stockholders into classes; (g) any plan of reorganization filed with the court; (h) any order approving a plan, or referring the proceedings back to the commission for further action; (i) the order confirming a plan; (j) any application for allowances of compensation and expenses, and any order making or refusing to make such allowances; (k) the order dismissing the proceedings; (l) the final decree; (m) any opinion of the court, or report of a special master, with respect to the matters above enumerated; and (n) such other papers filed in the proceedings as the Secretary of the Treasury may request or the court may direct to be transmitted to him: *Provided,* That if the Secretary of the Treasury shall determine that the transmission of any such papers is unnecessary, he shall so notify the clerk, whereupon the clerk may dispense with the transmittal of further papers.

The clerk shall also transmit to the District Director of Internal Revenue for the district in which the proceedings are pending a copy of any petition filed under subsection (a) of section 77.

(7) The Interstate Commerce Commission shall forthwith cause to be transmitted to the Secretary of the Treasury copies of (a) any order ratifying the appointment of a trustee; (b) any plan of reorganization, other than the debtor's, filed with the commission; (c) any petition for alteration or modification of a plan; (d) any supplemental report and order modifying a plan; and (e) the plan certified by the commission to the court, together with the report and order approving the plan: *Provided,* That if the Secretary of the Treasury shall determine that the transmission of any such papers is unnecessary, he shall so notify the commission, whereupon the commission may dispense with the transmittal of further papers.

(8) All papers filed with the court and with the Interstate Commerce Commission shall have attached thereto such copies as may be required to carry out this general order.

(9) Any order fixing the time for a hearing on the approval or confirmation by the court of a plan which affects claims or stock of the United States shall include a reasonable notice to the Secretary of the Treasury of not less than thirty days.

(10) All proceedings before the commission under section 77 shall be conducted in accordance with its rules of practice and such special instructions, rules, and regulations as it may issue pursuant to the provisions of said section.

(11) All process to be served outside of the district in which proceedings under section 77 are pending shall be returnable at such time as the judge shall determine, and shall be directed to and served by the United States marshal for the district in which service is to be effected. (Added Apr. 24, 1933, and amended Mar. 30, 1936; Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The substitution of "District Director" for "Collector" is required for the same reason here as in General Order 48(3).

REFERENCES IN TEXT

"Circuit court of appeals", referred to in the text, was changed to "court of appeals" by act June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991, as amended May 24, 1949, ch. 139, § 127, 63 Stat. 107.

AMENDMENTS

1939—Amendment Jan. 16, 1939, amended order to read as now set out, effecting changes as indicated below under paragraphs thereof, respectively:

Par. (1). Added. Somewhat similiar provisions were contained in introductory clause of 1936 Amendment, which read as follows: "The following additional rules shall apply to proceedings under section 77 of the Act:"

Par. (2). Added.

Par. (3). Renumbered. Prior thereto constituted par. 1.

Par. (4). Renumbered. Prior thereto constituted par. 2. Text unchanged except for clause (g), which, prior thereto, read as follows: "(g) any order determining the time within which the claims of creditors may be filed or evidenced, the manner in which such claims may be filed or evidenced and allowed, and the division of creditors and stockholders into classes, and any order respecting the exercise of any power by any person or committee representing any creditor or stockholder;"

Par. (5). Renumbered. Prior thereto constituted par. 3. Text unchanged except for transfer of former last sentence to par. 10.

Pars. (6)—(9). Added.

Par. 10. Renumbered. Prior thereto constituted last sentence of par. 3.

Par. (11). Renumbered. Prior thereto constituted par. 4.

1936—Amendment Mar. 30, 1936, amended order to read as now set out, except for changes made by 1939 Amendment, infra, this note.

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Each Circuit Court of Appeals shall cause written notice to be given the judges of the district courts within the circuit of the names and addresses of the persons from time to time designated and qualified to act as special masters under the provisions of subdivision (c) of section 77.

"2. The clerk of the district court in which proceedings under section 77 are brought shall forthwith transmit to the Interstate Commerce Commission copies of (a) the petition of a railroad corporation, or of creditors thereof, desiring to effect a plan of reorganization; (b) the answer, if any, of the corporation, upon receipt of which the commission shall file with the court its recommendations as to the disposition of the answer; (c) the order approving or dismissing the petition; (d) any order appointing or removing a temporary or permanent trustee; (e) the order fixing the date for a hearing on the appointment of permanent trustees; (f) any application by a trustee for authority to issue certificates, upon receipt of which the commission shall file with the court an order approving or disapproving such issuance; (g) any order authorizing such issuance; (h) such schedules and reports as may be submitted by the corporation with respect to the conduct of its affairs and the fairness of any proposed plan; (i) the lists of creditors and stockholders required to be filed by the trustee or the corporation, and the order determining the time within which the claims and interests of creditors and stockholders may be filed or evidenced, the manner in which such claims and interests may be filed or evidenced and allowed, and the division of creditors and stockholders into classes, upon receipt of which

papers the commission may hold a public hearing for the presentation of plans of reorganization as provided in subdivision (d) of section 77; (j) all orders allowing or rejecting such claims and interests, or extending the time within which they may be filed or evidenced; (k) any petition for the fixing of a reasonable time within which a plan of reorganization shall be proposed or accepted, upon receipt of which the commission shall recommend to the court what in its judgment a reasonable time would be; (*l*) any orders fixing or extending such time, or dismissing the proceedings for failure to comply with such orders; (m) any order issued upon the petition of the commission for the reference of particular matters to a special master, and the report of such master thereon; (n) all orders referring to the commission for its determination, under the fifth or sixth clauses of subdivision (g) of section 77, the fixing of an upset price or the appraisal of securities, upon receipt of which orders the commission shall make the necessary determinations and report thereon to the court; (o) any orders approving the special employment of assistants requested by the commission; (p) all applications for allowances of fees and expenses in the proceeding or in any prior receivership proceeding, upon receipt of which the commission shall determine the maximum limits of such allowances and file with the court its report thereon; (q) any order adjudging the corporation to be solvent or insolvent; (r) the order confirming or disapproving the plan and, if it is disapproved, the judge's opinion stating his reasons for such disapproval; (s) any orders issued to the trustee or trustees with respect to the operation of the corporation's business; (t) the order dismissing the proceedings, if the plan is disapproved, or if it is confirmed directing the transfer or other disposition of the property; (u) the final decree: and (v) such other papers filed in the proceedings as the commission may request of the clerk or the court may direct him to transmit. All papers filed with the court shall have attached thereto such copies as the clerk may require in carrying out this general order.

"3. The commission shall forthwith cause to be filed in the district court having jurisdiction of the proceedings, copies of (a) any order approving the filing of a petition by creditors under subdivision (a) of section 77; (b) each plan of reorganization presented at the hearing provided for in subdivision (d) of section 77; (c) each order or call for a hearing, with a statement of its purposes; (d) the plan subsequently recommended by the commission, together with the report and any supplemental report thereon; (e) in addition to the papers required to be submitted to the court under the provisions of subdivision (f) of said section, the written acceptances of any plan which is finally approved, together with a certificate of the commission that in its judgment the debtor and every other corporation issuing securities or acquiring property under the plan is authorized by its charter or by applicable State or Federal Laws, upon confirmation of the plan, to carry out the plan; (f) any orders granting authority, subject to the confirmation of the plan, for the issuance of securities or other steps contemplated by the plan; (g) any orders issued to the trustee or trustees with respect to the operation of the corporation's business; and (h) such other papers filed in the proceedings as the court may direct or the commission deem pertinent. All proceedings before the commission under section 77 shall be conducted in accordance with its rules of practice.

"4. Upon application of the commission prior to its approval of a plan of reorganization the court, after a hearing upon notice to the stockholders and to all parties who have appeared in the proceedings, shall determine whether or not the corporation is insolvent."

Order 50. Proceedings under Section 75 of the Act [11 U. S. C. § 203]

The following rules shall apply to proceedings under section 75 of the Act.

(1) Upon the expiration of the term of office of a conciliation commissioner, the judge may reappoint him or appoint other or additional conciliation commissioners.

(2) Every petition for relief filed under subdivision (c) of section 75 shall specify the county or counties in which any land used in the petitioner's farming operations is situated, and shall not be granted unless a conciliation commissioner for such county, or for one of such counties, has previously been appointed. The clerk shall not accept the petition unless it is accompanied by the filing fee and the schedules, which shall be in duplicate. Upon the filing of the petition the judge shall enter an order either approving it as properly filed under the section, or dismissing it for want of jurisdiction. If the petition is approved, the case shall be referred, and one of the duplicate schedules delivered, to a conciliation commissioner appointed for service in said county or in one of said counties.

(3) Within ten days after the approval of the petition, or within such further time as the judge for cause shown may allow, the farmer shall file with the conciliation commissioner an inventory of his estate, and the commissioner shall thereupon call the first meeting of creditors, to be held before him at such place as he deems most convenient for the parties in interest, upon written and published notice as provided in section 58 of the Act. Prior to the meeting he shall set off to the farmer the exemptions to which the farmer is entitled.

(4) If the farmer has not applied for confirmation within such reasonable time as has been finally fixed therefor, which shall be not later than three months after the date of the first meeting, the conciliation commissioner shall, unless the judge for cause shown shall have permitted a further extension, forthwith report the facts to the judge, who shall thereupon dismiss the proceedings.

(5) The money to be paid upon the confirmation of a composition shall be placed in a depository to be designated by order of the judge, subject to withdrawal by the depositor upon the countersignature of the conciliation commissioner. The judge shall furnish a copy of this general order to the depositories and also the name of any conciliation commissioner whose countersignature is authorized.

(6) Application for confirmation shall be filed with the conciliation commissioner who shall forthwith transmit it to the judge with (a) the acceptances, (b) the proofs of claims which have been allowed and those which have been disallowed, (c) a list of the debts having priority, (d) a list of the secured debts, with a description of the security of each, (e) the final inventory, with a list of the exemptions, and (f) a report of the commissioner recommending or opposing confirmation and, in the case of an extension, stating to what extent, if any, it would be desirable for the court after confirmation to retain jurisdiction of the farmer and his property.

(7) The judge shall fix a date and place for a hearing before him upon the application for confirmation. At the hearing any creditor opposing confirmation shall file a written specification of the grounds of his opposition. If the judge does not confirm the proposal he may dismiss the proceedings, or refer the specifications to the com-

missioner for testimony and report and thereafter confirm the proposal or dismiss the proceedings.

(8) If a composition or extension proposal is set aside for fraud under the provisions of subdivision (m) of section 75 the case may be dismissed and the clerk shall notify the creditors accordingly. Whenever the terms of the proposal are modified under the provisions of subdivision (*l*) of said section, the clerk shall send a written notice of the modifications to the creditors.

(9) The personal representative of a deceased farmer who desires in his representative capacity to effect, under section 75, a composition or extension of the debts of the estate, shall attach to his petition, in lieu of schedules, the following papers, certified as correct by the court which appointed him (hereinafter referred to as the probate court): (a) a copy of the order of his appointment, (b) a copy of an order of the probate court authorizing him to file the petition, (c) a detailed inventory of so much of the property constituting the estate as under the laws of the State of which the decedent died a resident would be available for creditors, and (d) a list of the names and addresses of the creditors, showing the amounts allowed or apparently owing to each, the nature of the securities or liens, if any, held by each, and the claims which are entitled to priority. The petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of section 75, and shall specify the county or counties in which at the time of the decedent's death his farming operations occurred. If the petition is approved by the district court as properly filed under section 75, the clerk shall file a certified copy of the order of approval with the probate court, and from the date of such order until the case is dismissed the district court shall exercise exclusive jurisdiction over the property required to be listed in the inventory as above provided.

(10) Upon the approval of a personal representative's petition the case shall be referred to a conciliation commissioner and proceeded with as in all other cases under section 75 and this general order, except that (a) the original and any amended or supplementary inventory filed by the petitioner with the approval of the probate court shall be deemed to be correct, and no inventory shall be made by the commissioner; (b) all claims allowed by the probate court, and only such claims, shall be allowed by the commissioner or the district court; (c) the petitioner shall file with the application for confirmation a completed list of the claims allowed up to the date of the application, certified as correct by the probate court; and (d) the clerk shall file with the probate court certified copies of all orders of the judge confirming or denying the proposal, modifying its terms, or dismissing the proceedings before or after confirmation.

(11) Insofar as is consistent with the provisions of section 75 and of this general order, the conciliation commissioner shall have all the powers and duties of a referee in bankruptcy and the general orders in bankruptcy shall apply to proceedings under said section. A supervisory conciliation commissioner, if appointed, shall exercise such supervision and control over the conduct of proceedings by conciliation commissioners as the judge may from time to time direct.

(12) The twenty-five dollar fees of the conciliation commissioner, and the fees and expenses of the supervisory conciliation commissioner, shall be payable out of appropriated funds in accordance with such instructions as may be issued from time to time by the Director of the Administrative Office of the United States Courts.

(Added Apr. 24, 1933, and amended June 1, 1936; Jan. 16, 1939; June 23, 1947.)

REFERENCES IN TEXT

Section 58 of the Act, referred to in par. (3), is classified to section 94 of this title.

CODIFICATION

Section 203 has been omitted as executed. No further proceedings are brought under said section.

AMENDMENTS

1947—Amendment June 23, 1947, substituted "Director of the Administrative Office of the United States Courts" for "Attorney General" in par. (12).

1939—Amendment Jan. 16, 1939, changed this Order to read as above set forth, and constitutes a restatement of the order as promulgated originally with the exceptions explained in Original Order, set out below.

1936—Amendment June 1, 1936, changed this Order to read:

"1. Upon the expiration of the term of office of a conciliation commissioner, the judge may reappoint him or appoint other or additional conciliation commissioners."

"5. The money to be paid upon the confirmation of a composition shall be placed in a depository to be designated by order of the judge, subject to withdrawal by the depositor upon the countersignature of the conciliation commissioner. The judge shall furnish a copy of this general order to the depositories and also the name of any conciliation commissioner whose countersignature is authorized."

"6. Application for confirmation shall be filed with the conciliation commissioner who shall forthwith transmit it to the judge with (a) the acceptances, (b) the proofs of claims which have been allowed and those which have been disallowed, (c) a list of the debts having priority, (d) a list of the secured debts, with a description of the security of each, (e) the final inventory, with a list of the exemptions, and (f) a report of the commissioner recommending or opposing confirmation and, in the case of an extension, stating to what extent, if any, it would be desirable for the court after confirmation to retain jurisdiction of the farmer and his property."

"12. The twenty-five dollar fees of the conciliation commissioner, and the fees and expenses of the supervisory conciliation commissioner, shall be payable out of appropriated funds in accordance with such instructions as may be issued from time to time by the Attorney General."

ORIGINAL ORDER

As promulgated originally, this order read as now set out except as indicated above under paragraphs thereof, respectively:

Par. (1) originally read:

"1. A petition for the appointment within a particular county of a conciliation commissioner must show to the satisfaction of the judge that each petitioner, within the meaning of subdivision (r) of section 75 is a farmer and a resident of the county, and must allege that each petitioner is insolvent or unable to meet his debts as they mature, and that he intends to file a petition for relief

under said section. Having granted the petition and appointed a conciliation commissioner for such county, the judge may, without further petition, reappoint him or appoint other or additional conciliation commissioners for such county."

Par. (2). Words "subdivision (c)" originally read "subdivision (b)".

Par. (5) originally read: "5. The deposit required by subdivision (g) of section 75 shall be made in any one of the designated depositories, subject to withdrawal by the depositor upon the countersignature of the conciliation commissioner. The judge shall furnish a copy of this general order to the depositories and also the name of any conciliation commissioner whose countersignature is authorized."

Par. (6), clause (f), originally read: "(f) a certificate of the depository showing that the required deposit has been made, and"

In par. (12) "twenty-five dollar fees" originally read "ten dollar fees".

Other provisions of this Order as promulgated originally read as set out in the text.

Order 51. Ancillary Receiverships Limited

No ancillary receiver shall be appointed in any district court of the United States in any bankruptcy proceeding pending in any other district of the United States except (1) upon the application of the primary receiver, or (2) upon the application of any party in interest with the consent of the primary receiver, or by leave of a judge of the court of original jurisdiction. No application for the appointment of such ancillary receiver shall be granted unless the application contains a detailed statement of the facts showing the necessity for such appointment. The application shall be signed by the party in interest, or the primary receiver, or by an agent of the party in interest or primary receiver specifically authorized in writing for that purpose and having knowledge of the facts. Such authorization shall be attached to the application. (Added May 15, 1933, and amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

In view of the amendment to section 18c of the Bankruptcy Act by Public Law 86-293, approved September 21, 1959, eliminating the oath to pleadings other than petitions for voluntary and involuntary bankruptcy, the word "verified" is changed to "signed."

The substitution of "application" for "petition" is dictated by the statutory definition of "petition" in section 1(24) to "mean a document filed in a court of bankruptcy or with a clerk thereof initiating a proceeding under this Act." See 1 Collier, Bankruptcy ¶1.24 (14th ed. rev. 1956).

AMENDMENTS

1939—Amendment Jan. 16, 1939, struck out "or a judge thereof." at end of first sentence of Order as promulgated originally.

Order 52. Proceedings under Chapter X of the Act [11 U. S. C. § 501 et seq.]

(1) This general order shall apply to proceedings under chapter X of the Act.

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter X or of this general order, apply to proceedings under chapter X: *Provided*, That General Orders 12, 16, 17, 18, 20, 21, 28, 29 and 41 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk of the district court shall forthwith transmit to the District Director of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 127 or 128 of the Act.

(4) Whenever, under the provisions of chapter X, a copy of any paper is required to be transmitted to the Securities and Exchange Commission, two copies thereof shall be transmitted.

(5) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order. (Added May 13, 1935, and amended Nov. 16, 1937; Dec. 7, 1937; Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The identification of the clerk as "of the district court" is clarifying, and the substitution of "District Director" for "Collector" is required for the same reason here as in General Order 48(3).

REFERENCES IN TEXT

Sections 127 and 128 of the Act, referred to in text, are classified to sections 527 and 528 of this title.

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as set out in the text.

1937—Amendment Nov. 16, 1937, added the following new paragraph: "4. Not less than ten days' notice of hearing upon any application for the sale or lease of property of the debtor pursuant to section 77B (c) (3½) [11 U.S.C. § 207 (c) (3½)], except sales of perishable property, shall be given by mail to all creditors and stockholders of the debtor, addressed to them at their last known addresses appearing upon the records of the debtor or of the trustee, or to their attorneys of record. Paragraphs 1, 2 and 3 of General Order XVIII shall be applicable to such sales."

Amendment Dec. 7, 1937, amended par. (4) of this Order by adding at end of first sentence the following: ", or, for good cause shown, by advertisement in the manner and for the time directed by the District Court."

ORIGINAL ORDER

As promulgated originally this Order read: "1. The clerk of the district court in which proceedings under section 77B are brought shall forthwith transmit to the Secretary of the Treasury copies of (a) the petition of the corporation, or of the creditors thereof desiring to effect a plan of reorganization; or (b) the answer, if any, of the corporation in those cases in which an involuntary proceeding is pending; (c) the order approving or dismissing the petitio; (d) any order determining the time in which the clams and interests of creditors may be filed or evidenced and allowed, the division of creditors and stockholders into classes according to the nature of the respective claims and interests, and all orders extending the time in which such claims may be filed or evidenced; (e) any order for a hearing issued upon the report of the special master; (f) the plan of reorganization, amendments, or modifications; (g) any order (1) fixing the time for confirming the plan or dismissing the proceedings; (2) adjudging the corporation to be solvent or insolvent; (3) confirming the plan or directing the liquidation of the estate; (h) such other papers filed in the proceedings as the Secretary of the Treasury may request of the clerk or the court may direct him to transmit. The clerk shall also transmit to the Collector of Internal Revenue for the district in which the proceedings are pending copies of the petition or answer above described in subdivisions (a) and (b):

"Provided, however, that if the Secretary of the Treasury, upon receipt of the petition or answer, shall ascertain that the United States has no interest in the proceeding, he shall so notify the clerk, whereupon the clerk may

dispense with the transmittal of further papers. All papers filed with the court shall have attached thereto such copies as the clerk may require for carrying out this general order.

"2. Any order fixing the time for confirming any plan which deals with the interests or claims of the United States shall include a reasonable notice to the Secretary of the Treasury of at least thirty days.

"3. The provisions of this general order shall not apply to any action heretofore taken; and failure to comply with any provision hereof, in any proceeding heretofore or hereafter instituted, shall not deprive the District Court of jurisdiction of such proceeding or invalidate any action taken by the Court, but shall be the subject of such consideration and remedial action as justice may require."

ABOLITION OF OFFICE OF COLLECTOR OF INTERNAL REVENUE

The office of Collector of Internal Revenue, referred to in subd. (3), was abolished by 1952 Reorg. Plan No. 1, § 1, eff. Mar. 14, 1952, 17 F. R. 2243, 66 Stat. 823, set out in the Appendix to Title 5, Government Organization and Employees, and the offices of "district commissioner of internal revenue", and so many other offices, with titles to be determined by the Secretary of the Treasury, were established by section 2 (a) of the Plan.

CROSS REFERENCES

Further provisions on this subject, see section 666 of this title.

Order 53. Bond of Designated Depository under Section 61 [11 U. S. C. § 101]

(1) The bond required of a banking institution designated as a depository shall be given with an authorized fidelity or bonding company as surety, or with approved individual sureties who are residents of the judicial district in which the court of bankruptcy or the banking institution is located, and two of whom are neither officers nor directors of the institution designated as a depository: *Provided,* That the judge may, in accordance with the provisions of and the authority conferred in Title 6, United States Code, section 15, accept the deposit of the securities therein designated, in lieu of a surety or sureties upon such bond.

(2) The condition of bonds hereafter given shall be substantially to the effect that the banking institution, so designated, shall well and truly account for and pay over all moneys deposited with it as such depository, and shall pay out such moneys only as provided by the Act and applicable general orders and court rules, and shall abide by all orders of the court in respect of such moneys, and shall otherwise faithfully perform all duties pertaining to it as such depository: *Provided,* That no security in the form of a bond or otherwise shall be required in the case of such part of the deposits as are insured under Title 12, United States Code, section 1821.

(3) As one means of bringing before the judge of the bankruptcy court information respecting possible occasions for requiring a depository to give a new bond with different sureties, it shall be the duty of each depository to file with the bankruptcy court during the month of January in each year a sworn statement in writing disclosing

(a) Whether any of the individual sureties on its bond has removed from the judicial district of which he was a resident, or has died; and

(b) Whether the financial worth of any of its individual sureties has become materially impaired.

(4) As one means of bringing before the judge of the bankruptcy court information respecting occasions for requiring a depository to give a new bond in an increased amount, it shall be the duty of any depository, when its total of bankruptcy deposits equals ninety-five per centum of the amount of its current depository bond, forthwith to file a written statement with the bankruptcy court, setting forth the total amount of such deposits and the amount of its current bond.

(5) No receiver, trustee or debtor in possession shall deposit with any one depository funds committed to his custody as such receiver, trustee or debtor in possession in excess of the amount of the bond of such depository then in force.

(6) It shall be the duty of the judge to require a depository to give a new bond whenever it appears that the prior bond is not sufficient in amount, in view of present and prospective deposits, or that a surety has died or has removed from the judicial district of which he was a resident, or whenever there is otherwise occasion to believe that the prior bond does not constitute adequate security.

(7) It shall be the duty of the judge to require each depository to give a new bond within five years after the giving of its last prior bond.

(8) A surety, or the personal representative of a deceased surety, on the bond of a depository may, by a petition setting forth the grounds therefor, request the judge to require the depository to give a new bond and thereby to relieve such surety, or his estate, from responsibility and liability as respects any future default of the depository, and, if upon a hearing had after reasonable notice to the depository, to other sureties on the bond, and to the trustees or other representatives of estates having deposits in such depository, it appears to the judge that the petition can be granted without injury to any party in interest, the judge shall require the depository to give a new bond.

(9) A new bond given under any subdivision of this general order shall, from the time of its approval by the judge, be regarded as taking the place of the preceding bond as respects any subsequent default of the depository; and, upon approving the new bond, the judge shall enter an order relieving the sureties on the prior bond, and the estate of any deceased surety, from responsibility and liability thereon as respects any default of the depository occurring thereafter.

(10) If any depository, when required to give a new bond, fails to comply with that requirement within the time fixed therefor by this general order or by the judge, it shall be the duty of the judge to order such depository to pay over all moneys on deposit with it as such depository, and to revoke its designation as depository. (Added Apr. 5, 1937, and amended Feb. 7, 1938; Jan. 16, 1939; June 3, 1940; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

These changes conform the statutory references in the general order to those in section 61 of the Bankruptcy Act as amended in 1952. Other minor changes conform usage to that prevailing elsewhere in the general orders.

AMENDMENTS

1940—Amendment June 3, 1940, amended subd. (2) by adding the proviso.

1939—Amendment Jan. 16, 1939, amended this Order to read as above set forth with the exception that the proviso in subd. (2) was not included.

1938—Amendment Feb. 7, 1938, amended this Order to read:

"1. The bond required of a banking institution designated as a depository shall be given with an authorized fidelity or bonding company as surety, or with approved individual sureties who are residents of that judicial district and two of whom are neither officers nor directors of the institution designated as a depository.

"2. The condition of bonds hereafter given shall be substantially to the effect that the banking institution, so designated, shall well and truly account for and pay over all monies deposited with it as such depository, and shall pay out such monies only as provided by the bankruptcy law and applicable general orders and court rules, and shall abide by all orders of the bankruptcy court in respect of such monies, and shall otherwise faithfully perform all duties pertaining to it as such depository.

"3. As one means of bringing before the bankruptcy court information respecting possible occasions for requiring a depository to give a new bond with different sureties, it shall be the duty of each depository to file with the bankruptcy court during the month of January in each year a sworn statement in writing disclosing:

"(a) Whether any of the individual sureties on its bond has ceased to be a resident of that judicial district, or has died; and

"(b) Whether the financial worth of any of its individual sureties has become materially impaired.

"4. As one means of bringing before the bankruptcy court information respecting occasions for requiring a depository to give a new bond in an increased amount, it shall be the duty of any depository, when its total of bankruptcy deposits equals ninety-five per centum of the amount of its current depository bond, forthwith to file a written statement with the bankruptcy court, setting forth the total amount of such deposits and the amount of its current bond.

"5. No trustee or receiver shall deposit with any one depository funds committed to his custody as such receiver or trustee in excess of the amount of the bond of such depository then in force.

"6. It shall be the duty of the bankruptcy court to require a depository to give a new bond whenever it appears that the prior bond is not sufficient in amount, in view of present and prospective deposits, or that a surety has died or ceased to be a resident of that judicial district, or whenever there is otherwise occasion to believe that the prior bond does not constitute adequate security.

"7. It shall be the duty of the bankruptcy court to require each depository in its district to give a new bond within five years after the giving of its last prior bond.

"8. A surety, or the personal representative of a deceased surety, on the bond of a depository may, by a petition setting forth the grounds therefor, request the bankruptcy court to require the depository to give a new bond and thereby to relieve such surety, or his estate, from responsibility and liability as respects any future default of the depository, and, if upon a hearing had after reasonable notice to the depository, to other sureties on the bond, and to the trustees or other representatives of bankrupt estates having deposits in such depository, it appears to the court that the petition can be granted without injury to any party in interest, the court shall require the depository to give a new bond.

"9. A new bond given under any subdivision of this general order shall, from the time of its approval by the bankruptcy court, be regarded as taking the place of the preceding bond as respects any subsequent default of the depository; and, upon approving the new bond, the court shall enter an order relieving the sureties on the prior bond, and the estate of any deceased surety, from responsibility and liability thereon as respects any default of the depository occurring thereafter.

"10. If any depository, when required to give a new bond, fails to comply with that requirement within the time fixed therefor by this general order or by the bankruptcy court, it shall be the duty of that court to order such depository to pay over all monies on deposit with it as such depository, and to revoke its designation as depository."

ORIGINAL ORDER

As promulgated originally this Order read: "1. The bond required of a banking institution designated as a depository shall be given with an authorized fidelity or bonding company as surety, or with approved individual sureties who are residents of that judicial district and two of whom are neither officers nor directors of the institution designated as a depository.

"2. The condition of bonds hereafter given shall be substantially to the effect that the banking institution, so designated, shall well and truly account for and pay over all monies deposited with it as such depository, and shall pay out such monies only as provided by the bankruptcy law and applicable general orders and court rules, and shall abide by all orders of the bankruptcy court in respect of such monies, and shall otherwise faithfully perform all duties pertaining to it as such depository.

"3. As one means of bringing before the bankruptcy court information respecting possible occasions for requiring a depository to give a new bond in an increased amount, or a new bond with different sureties, it shall be the duty of each depository to file with the bankruptcy court during the month of January in each year a sworn statement in writing disclosing:

"(a) The amount of monies on deposit with it as such depository on the last business day of each month in the preceding calendar year;

"(b) Whether any of the individual sureties on its bond has ceased to be a resident of that judicial district, or has died; and

"(c) Whether the financial worth of any of its individual sureties has become materially impaired.

"4. It shall be the duty of the bankruptcy court to require a depository to give a new bond whenever it appears that the prior bond is not sufficient in amount, in view of present and prospective deposits, or that a surety has died or ceased to be a resident of that judicial district, or whenever there is otherwise occasion to believe that the prior bond does not constitute adequate security.

"5. It shall be the duty of the bankruptcy court to require each depository in its district to give a new bond within five years after the giving of its last prior bond.

"6. A surety, or the personal representative of a deceased surety, on the bond of a depository may, by a petition setting forth the grounds therefor, request the bankruptcy court to require the depository to give a new bond and thereby to relieve such surety, or his estate, from responsibility and liability as respects any future default of the depository, and, if upon a hearing had after reasonable notice to the depository, to other sureties on the bond, and to the trustees or other representatives of bankrupt estates having deposits in such depository, it appears to the court that the petition can be granted without injury to any party in interest, the court shall require the depository to give a new bond.

"7. A new bond given under any subdivision of this general order shall, from the time of its approval by the bankruptcy court, be regarded as taking the place of the preceding bond as respects any subsequent default of the depository; and, upon approving the new bond, the court shall enter an order relieving the sureties on the prior bond, and the estate of any deceased surety, from responsibility and liability thereon as respects any default of the depository occurring thereafter.

"8. If any depository, when required to give a new bond, fails to comply with that requirement within the time fixed therefor by this general order or by the bankruptcy court, it shall be the duty of that court to order such depository to pay over all monies on deposit with it as such depository, and to revoke its designation as a depository."

Order 54. Proceedings under Chapter XII of the Act [11 U. S. C. § 801 et seq.]

(1) This general order shall apply to proceedings under chapter XII of the Act.

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter XII or of this general order, apply to proceedings under chapter XII: *Provided,* That General Orders 17, 18, 21, 28 and 29 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk of the district court shall forthwith transmit to the District Director of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 421 or 422 of the Act.

(4) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order. (Added Jan. 16, 1939, and amended May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The identification of the clerk as "of the district court" is clarifying, and the substitution of "District Director" for "Collector" is required for the same reason here as in General Order 48(3).

REFERENCES IN TEXT

Sections 421 and 422 of the Act, referred to in the text, are classified to sections 821 and 822 of this title.

Order 55. Proceedings under Chapter XIII of the Act [11 U. S. C. § 1001 et seq.]

(1) This general order shall apply to proceedings under chapter XIII of the Act.

(2) The general orders in bankruptcy shall, insofar as they are not inconsistent with the provisions of chapter XIII or of this general order, apply to proceedings under chapter XIII: *Provided,* That General Orders 14, 18 and 28 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order.

(4) Each proof of claim shall, unless the court is satisfied from its other allegations that the claim is not based upon money loaned or upon any bond, note or other obligation, contain proof that the claims is free from usury as defined by the laws of the place where the debt was contracted. (Added Jan. 16, 1939, and amended May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

Public Law 86-631, approved July 12, 1960, amended section 678 to eliminate the necessity of sending copies of petitions filed under sections 621 and 622 of the Bankruptcy Act to the Secretary of the Treasury. Paragraph (3) of this general order should accordingly be deleted in furtherance of the legislative purpose to reduce the unnecessary transmission of papers, and the succeeding paragraphs should be renumbered.

Order 56. Rules by Courts of Bankruptcy

Each court of bankruptcy, by action of a majority of the judges thereof, may from time to time make and amend rules governing its practice in proceedings under the Act not inconsistent with the Act or with these general orders. Copies of rules and amendments so made by any court of bankruptcy shall, upon their promulgation, be distributed by the clerk of the district court as follows: Two copies to the Library of the Supreme Court of the United States, Washington 25, D.C.; two copies to the Director of Libraries, Department of Justice, Washington 25, D.C.; two copies to the Comptroller General, General Accounting Office, Washington 25, D.C.; and four copies to the Administrative Office of the United States Courts, Washington 25, D.C. (Added Jan. 16, 1939, and amended June 23, 1947; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The change here proposed embodies the order of distribution of local rules of court established at the instance of the Supreme Court and conforms the general order to section 4.54 of the Clerk's Manual issued by the Administrative Office of the United States Courts.

46. Referee's Cash Book.

AMENDMENTS

1947—Amendment June 23, 1947, added "and the Administrative Office of the United States Courts" at end of last sentence.

FORMS IN BANKRUPTCY

(N. B.—Oaths required by the Act, except upon hearing before a judge, may be administered by referees, by officers authorized to administer oaths in proceedings before the courts of the United States or under the laws of the State where the same are to be taken, and by diplomatic or consular officers of the United States in any foreign country.

Each paper filed should have a caption, similar to that of the Debtor's Petition, Form No. 1, as prescribed in General Order 5.)

Form

1. Debtor's Petition.
   —Schedule A.—Statement of All Debts of Bankrupt.
   —Schedule B.—Statement of All Property of Bankrupt.
   —Summary of Debts and Assets.
2. Statement of Affairs (For Bankrupt or Debtor not Engaged in Business).
3. Statement of Affairs (For Bankrupt or Debtor Engaged in Business).
4. Partnership Petition.
5. Creditors' Petition.
6. Subpoena to Alleged Bankrupt.
7. Answer of Alleged Bankrupt.
8. Bond of Applicant for a Receiver or Marshal.
9. Counterbond to Receiver or Marshal.
10. Adjudication that Debtor is not a Bankrupt.
11. Adjudication of Bankruptcy.
12. Appointment and Oath of Appraiser.
13. Order of General Reference.
14. Abrogated.
15. Oath of Office for Referees in Bankruptcy.
16. Bond of Referee.
17. Notice of First Meeting of Creditors.

17A. Order for First Meeting of Creditors.

17B. Notice of First Meeting of Creditors.

18. Power of Attorney.

Form
19. Special Power of Attorney.
20. Order Approving Appointment of Trustee or Appointment of Trustee by Referee.
21. Abrogated.
22. Notice to Trustee of his Appointment, and, if fixed, Notice of Time for Filing Objections to Discharge.
23. Bond of Receiver or Trustee.
24. Order Approving Trustee's Bond.
25. Order that no Trustee be Appointed.
26. Order for Examination of Bankrupt.
27. Subpoena to Witness.
28. Proof of Claim by Individual.
29. Proof of Claim by Corporation.
30. Proof of Claim by Partnership.
31. Proof of Claim by Agent or Attorney.
32. Affidavit of Loss of Negotiable Instrument.
33. Order Expunging or Reducing Claim.
34. Order for Payment of Dividends.
35. Application for Sale of Real Estate.
36. Order for Sale of Real Estate.
37. Application for Redemption of Property.
38. Order for Redemption of Property.
39. Trustee's Report of Exempt Property.
40. Report of Trustee in no Asset Case.
41. Application for Discharge.
42. Order Fixing Time for Filing Objections to Discharge.
42A. Order Fixing Time for Filing Objections to Discharge.
42B. Order for First Meeting of Creditors and Order Fixing Time for Filing Objections to Discharge.
43. Notice of Order Fixing Time for Filing Objections to Discharge.
43A. Notice of Order Fixing Time for Filing Objections to Discharge.
43B. Notice of First Meeting of Creditors and Notice of Order Fixing Time for Filing Objections to Discharge.
44. Specification of Objections to Discharge.
45. Discharge of Bankrupt.
47. Referee's Semi-Annual Report.
48. Original Petition in Proceedings Under Chapter XI.
49. Notice of Meeting of Creditors in Proceedings Under Chapter XI.
50. Application for Confirmation of an Arrangement Under Chapter XI.
51. Order Confirming an Arrangement Under Chapter XI. (Where all Affected Creditors Have Accepted.)
52. Order Confirming an Arrangement Under Chapter XI. (Where Less Than all Affected Creditors Have Accepted.)
53. Original Petition in Proceedings Under Chapter XII.
54. Notice of Meeting of Creditors in Proceedings Under Chapter XII.
55. Application for Confirmation of an Arrangement Under Chapter XII.
56. Order Confirming an Arrangement Under Chapter XII. (Where all Affected Creditors Have Accepted.)
57. Order Confirming an Arrangement Under Chapter XII. (Where Less Than all Affected Creditors Have Accepted.)
58. Original Petition in Proceedings Under Chapter XIII [11 U.S.C. § 1001 et seq.]
59. Notice of Meeting of Creditors in Proceedings Under Chapter XIII [11 U.S.C. § 1001 et seq.]
60. Application for Confirmation of an Arrangement Under Chapter XIII [11 U.S.C. § 1001 et seq.]
61. Order Confirming a Plan Under Chapter XIII. (Where All Affected Creditors Have Accepted.)
62. Order Confirming a Plan Under Chapter XIII. (Where Less Than All Affected Creditors Have Accepted.)
63—69. Abrogated.
70. [Bankruptcy Docket of Referee.]
71. [Referee's Claim Register.]
72. Order Allowing Claims.

CHANGE OF NAME

Wherever in the following Forms the name "District Court of the United States for the —— District of ——" is used, the correct name for individual district courts is now "United States District Court for the —— District of ——." See section 132 (a) of Title 28, Judiciary and Judicial Procedure.

FORM 1. DEBTOR'S PETITION

In the District Court of the United States for the _____ District of _____.

In the matter of
_____,
Bankrupt.
} In Bankruptcy No. _____.

PETITION.

To the Honorable _____ _____,
Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, residing at No. _____ _____ Street, in _____, County of _____, State of _____, by occupation a _____, and employed by ____ [*or* engaged in the business of _____], respectfully represents:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act.

_____ _____,
Petitioner.

_____ _____, *Attorney.*

State of _____
County of _____
} *ss.*

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A-1.

Statement of all creditors to whom priority is secured by the act.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated.)	When and where incurred or contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether incurred or contracted as partner or joint contractor and, if so, with whom.	Amount due or claimed.
a.—Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding $600 each, earned within three months before filing the petition.							$
b.—Taxes due and owing to— (1) The United States. (2) The State of ——. (3) The county, district or municipality of ——, State of ——.							
c.—(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority. (2) Rent owing to a landlord who is entitled to priority by the laws of the State of ——, accrued within three months before filing the petition, for actual use and occupancy.						Total.....	

------ ------, *Petitioner.*

SCHEDULE A-2.

Creditors holding securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	Description of securities.	When and where debts were contracted, and nature and consideration thereof.	Whether claim is contingent, unliquidated or disputed.	Value of securities.	Amount due or claimed.
						$	$
					Total.....		

------ ------, *Petitioner.*

SCHEDULE A-3.

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact mus be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	When and where contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount due or claimed.
						$
					Total.....	

------ ------, *Petitioner.*

SCHEDULE A-4.

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher.	Names of holders as far as known.	Residences (if unknown, that fact must be stated).	Place where contracted.	Whether claim is disputed.	Nature and consideration of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.
						$
					Total	

------ ------, *Petitioner.*

SCHEDULE A-5.

Accommodation paper.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated).	Names and residences of persons accommodated.	Place where contracted.	Whether claim is disputed.	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.
							$
						Total	

------ ------, *Petitioner.*

State of .....
County of ..... } *ss.*

OATH TO SCHEDULE A.

I, ..., the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debt in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Subscribed and sworn to before me this ..... day of ....., 19...

------ ------, *Petitioner.*

------ ------,
------ ------
[*Official character.*]

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B-1.

Real estate.

Location and description of all real estate owned by debtor, or held by him, whether under deed, lease or contract.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value of debtor' interest.
			$
		Total	

------ ------, *Petitioner.*

SCHEDULE B-2.

Personal property.

a.—Cash on hand		$
b.—Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately)		
c.—Stock in trade, in ——— business of ———, at ———, of the value of ———		
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person		
e.—Books, prints, and pictures		
f.—Horses, cows, sheep, and other animals (with number of each)		
g.—Automobiles and other vehicles		
h.—Farming stock and implements of husbandry		
i.—Shipping, and shares in vessels		
j.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated		
k.—Patents, copyrights, and trade-marks		
l.—Goods or personal property of any other description, with the place where each is situated		
	Total	

----------, *Petitioner.*

SCHEDULE B-3.

Choses in action.

a.—Debts due petitioner on open account		$
b.—Policies of insurance		
c.—Unliquidated claims of every nature, with their estimated value		
d.—Deposits of money in banking institutions and elsewhere		
	Total	

------ ------, *Petitioner.*

SCHEDULE B-4.

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General interest.	Particular description.	Estimated value of interest.
Interest in land		$
Personal property		
Property in money, stock, shares, bonds, annuities, etc		
Rights and powers, legacies and bequests		
	Total	
Property heretofore conveyed for benefit of creditors.		
Portion of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor		Amount realized as proceeds of property conveyed.
Attorney's fees.		
Sum or sums paid to counsel, and to whom, for filing fees or costs and for services rendered or to be rendered in this bankruptcy		
	Total	

------ ------, *Petitioner.*

SCHEDULE B-5.

Property claimed as exempt from the operation of the act of Congress relating to bankruptcy.

[N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.]

		Valuation.
Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption		$
Property claimed to be exempt by State laws, with reference to the statute creating the exemption		
	Total	

------ ------, *Petitioner.*

SCHEDULE B-6.

Books, papers, deeds and writings relating to debtor's business and estate.

The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.	
Deeds.	
Papers.	

------ ------, *Petitioner.*

OATH TO SCHEDULE B.

State of ------ } *ss.*
County of ------ }

I, ------, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

------ ------, *Petitioner.*

Subscribed and sworn to before me this ------ day of ------ ,19--,

------ ------,

------ ------.

[*Official character.*]

Summary of debts and assets.

[From the statements of the debtor in Schedules A and B.]

Schedule A	1-a	Wages		
Schedule A	1-b (1)	Taxes due United States		
Schedule A	1-b (2)	Taxes due States		
Schedule A	1-b (3)	Taxes due counties, districts and municipalities		
Schedule A	1-c (1)	Debts due any person, including the United States, having priority by laws of the United States		
Schedule A	1-c (2)	Rent having priority		
Schedule A	2	Secured claims		
Schedule A	3	Unsecured claims		
Schedule A	4	Notes and bills which ought to be paid by other parties thereto		
Schedule A	5	Accommodation paper		
		Schedule A, total		
Schedule B	1	Real estate		
Schedule B	2-a	Cash on hand		
Schedule B	2-b	Negotiable and non-negotiable instruments and securities		
Schedule B	2-c	Stock in trade		
Schedule B	2-d	Household goods		
Schedule B	2-e	Books, prints, and pictures		
Schedule B	2-f	Horses, cows, and other animals		
Schedule B	2-g	Automobiles and other vehicles		
Schedule B	2-h	Farming stock and implements		
Schedule B	2-i	Shipping and shares in vessels		
Schedule B	2-j	Machinery, fixtures, and tools		
Schedule B	2-k	Patents, copyrights, and trademarks		
Schedule B	2-*l*	Other personal property		
Schedule B	3-a	Debts due on open accounts		
Schedule B	3-b	Policies of insurance		
Schedule B	3-c	Unliquidated claims		
Schedule B	3-d	Deposits of money in banks and elsewhere		
Schedule B	4	Property in reversion, remainder, expectancy or trust		
Schedule B	5	Property claimed as exempt		
Schedule B	6	Books, deeds and papers		
		Schedule B, total		

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed Schedule B-4 by inserting "for filing fees or costs and" preceding "for services" in items listed under "Attorney's fees".

1939—Amendment Jan. 16, 1939, restated prior Form 1.

FORM 2. STATEMENT OF AFFAIRS

(For Bankrupt or Debtor not Engaged in Business.)

(Note.—Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.[1])

1. Name and residence.
   a. What is your full name?
   b. Where do you now reside?
   c. Where else have you resided during the six years immediately preceding the filing of the original petition here?

2. Occupation and income.
   a. What is your occupation?
   b. Where are you now employed?
      (Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.)
   c. Have you been in partnership with anyone, or engaged in any business, during the six years immediately preceding the filing of the original petition herein?
      (If so, give particulars, including names, dates and places.)
   d. What amount of income have you received from your trade or profession during each of the two years immediately preceding the filing of the original petition herein?
   e. What amount of income have you received from other sources during each of these two years?
      (Give particulars including each source, and the amount received therefrom.)

3. Income tax returns.
   a. Where did you file your last federal and state income tax returns, and for what years?

4. Bank accounts and safe deposit boxes.
   a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein?
      (Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)
   b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein?
      (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when

[1] 11 U. S. C. §§ 21 (b), 22 (a), 722, 822, 1022.

4. **Bank accounts and safe deposit boxes—Continued** surrendered, or, if transferred, when transferred and the name and address of the transferee.)

5. **Books and records.**

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

b. In whose possession are these books or records?

(Give names and addresses.)

c. Have you destroyed any books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

(If so, give particulars, including date of destruction and reason therefor.)

6. **Property held in trust.**

a. What property do you hold in trust for any other person?

(Give name and address of each person, and a description of the property and the amount or value thereof.)

7. **Prior bankruptcy or other proceedings; assignments for benefit of creditors.**

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein?

(Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.)

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee?

(If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.)

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein?

(If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.)

8. **Suits, executions and attachments.**

a. Have you been party plaintiff or defendant in any suit within the year immediately preceding the filing of the original petition herein?

(If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

b. Has any execution or attachment been levied against your property within the four months immediately preceding the filing of the original petition herein?

(If so, give particulars, including property seized and at whose suit.)

9. **Loans repaid.**

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein?

(Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship.)

10. **Transfer of property.**

a. What property have you transferred or otherwise disposed of during the year immediately preceding the filing of the original petition herein?

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

11. **Losses.**

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the original petition herein?

(If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

------ ------,
Bankrupt [or *Debtor*].

State of ----------
County of ---------- } *ss.*

I, ------ ------, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

------ ------,
Bankrupt [or *Debtor*].

Subscribed and sworn to before me this ------ day of ------, 19--.

------ ------,
------ ------.
[*Official character.*]

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 2, covering partnership petitions, was abrogated by Order of May 25, 1925, and replaced by Form 4.

FORM 3. STATEMENT OF AFFAIRS

(For Bankrupt or Debtor Engaged in Business.)

(Note.—Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the bankrupt or debtor is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.[1])

1. Nature, location and name of business.

a. What business are you engaged in?

(If business operations have been terminated, give the date of such termination.)

b. Where, and under what name, do you carry on such business?

c. When did you commence such business?

d. Where else, and under what other names, have you carried on business within the six years immediately preceding the filing of the original petition herein?

(Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)

2. Books and records.

a. By whom, or under whose supervision, have your books of account and records been kept during the two years immediately preceding the filing of the original petition herein?

(Give names, addresses, and periods of time.)

b. By whom have your books of account and records been audited during the two years immediately preceding the filing of the original petition herein?

(Give names, addresses, and dates of audits.)

c. In whose possession are your books of account and records?

(Give names and addresses.)

3. Financial statements.

a. Have you issued any financial statements within the two years immediately preceding the filing of the original petition herein?

(Give dates, and the names and addresses of the persons to whom issued, including mercantile and trade agencies.)

4. Inventories.

a. When was the last inventory of your property taken?

b. By whom, or under whose supervision, was this inventory taken?

c. What was the amount, in dollars, of the inventory?

(State whether the inventory was taken at cost, market, or otherwise.)

d. When was the next prior inventory of your property taken?

e. By whom, or under whose supervision, was this inventory taken?

f. What was the amount, in dollars, of the inventory?

(State whether the inventory was taken at cost, market, or otherwise.)

g. In whose possession are the records of the two inventories above referred to?

(Give names and addresses.)

5. Income other than from operation of business.

a. What amount of income, other than from the operation of your business, have you received during each of the two years immediately preceding the filing of the original petition herein?

(Give particulars, including each source, and the amount received therefrom.)

6. Income tax returns.

a. Where did you file your last federal and state income tax returns, and for what years?

7. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein?

(Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein?

(Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.)

8. Property held in trust.

a. What property do you hold in trust for any other person?

(Give name and address of each person, and a description of the property and the amount or value thereof.)

9. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein?

(Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.)

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee?

[1] 11 U.S.C. §§ 21 (b), 22 (a), 722, 822, 1022.

9. Prior bankruptcy etc.—Continued

(If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.)

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein?

(If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.)

10. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein?

(Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship. If the bankrupt or debtor is a partnership, state whether the lender is or was a partner or a relative of a partner, and, if so, the relationship. If the bankrupt or debtor is a corporation, state whether the lender is or was an officer, director or stockholder, or a relative of an officer, director or stockholder, and, if so, the relationship.)

11. Transfer of property.

a. What property have you transferred or disposed of, other than in the ordinary course of business, during the year immediately preceding the filing of the original petition herein?

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

12. Accounts receivable.

a. Have you assigned any of your accounts receivable during the year immediately preceding the filing of the original petition herein?

(If so, give names and addresses of assignees.)

13. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the petition herein?

(If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

(If the bankrupt or debtor is a partnership or corporation the following additional questions should be answered.)

14. Withdrawals.

a. What personal withdrawals, including loans, have been made by each member of the partnership, or by each officer, director or managing executive of the corporation, during the year immediately preceding the filing of the original petition herein?

(Give the name of each person, whether a partner, officer, director or manager, the dates and amounts of withdrawals, and the nature or purpose thereof.)

15. Members of partnership; officers, directors, managers, and principal stockholders of corporation.

a. What are the names and addresses of each member of the partnership, or the names, titles and addresses of each officer, director and managing executive, and of each stockholder holding 25 per cent. or more of the issued and outstanding stock, of the corporation?

_____ _____,
Bankrupt [or *Debtor*].

State of _____ }
County of _____ } *ss.*

I, _____ _____, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

_____ _____,
Bankrupt [or *Debtor*].

Subscribed and sworn to before me this _____ day of _____, 19____.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 3 was replaced by Form 5.

FORM 4. PARTNERSHIP PETITION

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, and _____ _____, of _____, respectfully represents:

1. Your petitioners are copartners, trading under the firm name of _____ _____, and file this petition jointly in behalf of said partnership and of themselves, individually.

2. The said partnership and your petitioners have had their principal place of business at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

3. The said partnership and your petitioners owe debts.

4. Your petitioners are willing to surrender all of the property of said partnership and all of their individual property for the benefit of the creditors of said partnership and of their creditors, except such property as is exempt by law, and desire to obtain the benefit of the Act of Congress relating to bankruptcy.

5. The schedule hereto annexed, marked Schedule A, and verified by the oaths of your petitioners, contains a full and true statement of all the debts of said partnership, and, so far as it is possible to ascertain, the names and places of residence of its credi-

tors, and such further statements concerning said debts as are required by the provisions of said Act.

6. The schedule hereto annexed, marked Schedule B, and verified by the oaths of your petitioners, contains an accurate inventory of all the property, real and personal, of said partnership, and such further statements concerning said property as are required by the provisions of said Act.

7. The schedule hereto annexed, marked Schedule C, and verified by the oath of your petitioner, _____ _____, contains a full and true statement of all his individual debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

8. The schedule hereto annexed, marked Schedule D, and verified by the oath of your petitioner, _____ _____, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

9. The schedule hereto annexed, marked Schedule E, and verified by the oath of your petitioner, _____ _____, contains a full and true statement of all his individual debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

10. The schedule hereto annexed, marked Schedule F, and verified by the oath of your petitioner, _____ _____, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioners pray that the said partnership, and each of your petitioners, may be adjudged by the court to be a bankrupt within the purview of said Act.

_____ _____,
_____ _____,
Petitioners.

_____ _____, *Attorney.*

State of_____ }
County of_____ } *ss.*

_____ _____ and _____ _____, the petitioners named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

_____ _____,
_____ _____,
Petitioners.

Subscribed and sworn to before me this _____ day of _____, 19___.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Form replaces prior Form 2, abrogated by Order of May 25, 1925.

PRIOR FORMS

Prior Form 4, covering Orders to show cause on creditor's petition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 5. CREDITORS' PETITION

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, and _____ _____, of _____, and _____ _____, of _____, respectfully represents:

1. _____ _____, of _____, has had his principal place of business [*or* has resided *or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Said _____ _____ owes debts to the amount of $1000, and is not a wage-earner or a farmer.

3. Your petitioners are creditors of said _____ _____, having provable claims against, him, fixed as to liability and liquidated in amount, amounting in the aggregate, in excess of the value of securities held by them, to $500. The nature and amount of your petitioners' claims are as follows:

_____

_____

4. Within four months next preceding the filing of this petition, the said _____ _____ committed an act of bankruptcy, in that he did heretofore, to wit, on the _____ day of _____, 19___, _____

_____

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon said _____, as provided in the Act of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said Act.

_____ _____,
_____ _____,
_____ _____,
Petitioners.

_____ _____, *Attorney.*

State of_____ }
County of_____ } *ss.*

_____ _____, _____ _____, and _____ _____, the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

_____ _____,
_____ _____,
_____ _____,
Petitioners.

Subscribed and sworn to before me this _____ day of _____, 19___.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 3.

PRIOR FORMS

Prior Form 5 was replaced by Form 6.

FORM 6. SUBPOENA TO ALLEGED BANKRUPT

United States of America, _____ District of _____.
To _____, in said district:

A petition in bankruptcy having been filed on the _____ day of _____, 19___, before the District Court of the United States within and for the _____ District of _____, as a court of bankruptcy, praying that you may be adjudged a bankrupt under the Act of Congress relating to bankruptcy,

You are hereby summoned and required to appear and plead to said petition, on or before the _____ day of _____, 19___; and, if you fail to do so, you may be adjudged a bankrupt by default.

Witness the Honorable _____ _____, judge of said court, and the seal thereof, at _____, this _____ day of _____, 19___.

_____ _____,
Clerk.

[SEAL OF THE COURT]

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 5.

PRIOR FORMS

Prior Form 6 was replaced by Form 7.

FORM 7. ANSWER OF ALLEGED BANKRUPT

A petition having been filed in the above court on the _____ day of _____, 19__, praying that your respondent, the alleged bankrupt above named, be adjudged a bankrupt, your respondent now appears and answers the petition as follows:

1. Respondent admits the allegations contained in paragraphs ____ of the petition.

2. Respondent denies each and every allegation contained in paragraphs ____ of the petition.

Wherefore your respondent prays that a hearing may be had on the petition and this answer, and that the issues presented thereby may be determined by the court [*or* by a jury].

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,
Respondent [or *Attorney for Respondent*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

Since the oath is no longer required in connection with this form by virtue of Public Law 86-293, approved September 21, 1959, amending section 18c to eliminate the verification requirement as to all pleadings except petitions for voluntary and involuntary bankruptcy, the form for the oath should be stricken. The time and place of execution of the answer should nonetheless be ascertainable from the pleading, and blanks have been provided for entry of this information. Space for the entry of the address of the signing party or his attorney is added pursuant to Rule 11 of the Federal Rules of Civil Procedure.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form extended prior Form 6 which covered only denial of bankruptcy.

PRIOR FORMS

Prior Form 7, covering Order for jury trial, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 8. BOND OF APPLICANT FOR A RECEIVER OR MARSHAL

Know all men by these presents: That we, _____ _____, as principal, and _____ _____, as surety, are held and firmly bound unto _____ _____, in the sum of _____ dollars, to be paid to the said _____ _____, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the District Court of the United States for the _____ District of _____ against the said _____ _____, and the said _____ _____ has applied to that court to have a receiver [*or* marshal] take charge of the property of said _____ _____, subject to the further order of said court;

Now, therefore, if said property be taken in charge by said receiver [*or* marshal], and if the said _____ _____ shall indemnify the said _____ _____ for such costs, counsel fees, expenses, and damages as may be occasioned by such seizure, taking, and detention of such property in the event the said petition is dismissed or withdrawn by the petitioners, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

_____ _____ _____ _____ [SEAL]

_____ _____ _____ _____ [SEAL]

Approved this _____ day of _____, 19__.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 9.

PRIOR FORMS

Prior Form 7, covering Order for jury trial, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 9. COUNTERBOND TO RECEIVER OR MARSHAL

Know all men by these presents: That we _____ _____, as principal, and _____ _____, as surety, are held and firmly bound unto _____ _____, marshal of the United States of the _____ District of _____ [*or* the receiver appointed by the District Court of the United States for the _____ District of _____ to take charge of the property of _____ _____], in the sum of _____ dollars, lawful money of the United States, to be paid to the said _____ _____, his successors in office or assigns, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in

the said district court against the said _____ _____, and the said court has ordered said _____ _____ to take charge of the property of the said _____ _____, subject to the further order of the court, and the said district court upon a petition of said _____ _____ has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said _____ _____, and the said _____ _____, being adjudged a bankrupt, shall account for and turn over said property or pay the value thereof in money at the time of seizure to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

_____ _____ _____ _____ [SEAL].
_____ _____ _____ _____ [SEAL].

Approved this _____ day of _____, 19__.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 10.

PRIOR FORMS

Prior Form 9 was replaced by Form 8.

FORM 10. ADJUDICATION THAT DEBTOR IS NOT A BANKRUPT

At _____, in said district, on the _____ day of _____, 19__.

This cause having been heard at _____, in said court, upon the petition of _____ _____, _____ _____, and _____ _____, that _____ _____ be adjudged a bankrupt under the Act of Congress relating to bankruptcy; and [*here state the proceedings, whether there was no opposition, or, if opposed, what proceedings were had*];

And, upon consideration of the proofs in said cause [*and the arguments of counsel thereon, if any*], it having been found that the material facts alleged in said petition were not proved;

It is adjudged that said _____ _____ is not a bankrupt as alleged, and that said petition be dismissed, with costs.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 11.

PRIOR FORMS

Prior Form 10 was replaced by Form 9.

FORM 11. ADJUDICATION OF BANKRUPTCY

At _____, in said district, on the _____ day of _____, 19__.

The petition of _____ _____, filed on the _____ day of _____, 19__, that _____ _____ be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and [*here state the proceedings, whether there was no opposition, or, if opposed, what proceedings were had*];

It is adjudged that the said _____ _____ is a bankrupt under the Act of Congress relating to bankruptcy.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 12.

PRIOR FORMS

Prior Form 11 was replaced by Form 10.

FORM 12. APPOINTMENT AND OATH OF APPRAISER

_____ _____, of _____, a disinterested person, is hereby appointed appraiser, forthwith to appraise, after having been duly sworn, all the items of real and personal property belonging to the estate of the said bankrupt, and to prepare and file with the court a report of said appraisal.

[Here set out the amount of compensation or the rate or measure thereof to be paid and such instructions as may be deemed appropriate for the appraisal of the property of the particular estate.]

Dated at _____, this _____ day of _____, 19__.

_____,
Referee in Bankruptcy.

United States of America }
_____ District of _____ } *ss.*

I, _____, the person above named, do hereby make solemn oath that I will fully and fairly appraise the aforesaid property according to my best skill and judgment.

_____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____,
_____.
[*Official character.*]

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, inserted "the amount of compensation or the rate or measure thereof to be paid and" preceding "such instructions" in the bracketed sentence and a line of dashes indicating the place for the signature of the appraiser in the oath.

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 12.

PRIOR FORMS

Prior Form 12 was replaced by Form 11.

FORM 13. ORDER OF GENERAL REFERENCE

At _____, in said district, on the _____ day of _____, 19__.

Whereas a petition was filed in this court, on the _____ day of _____, 19__, by [*or* against] _____ _____, the bankrupt [*or* alleged bankrupt] above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy; [*If the debtor has been adjudged a bankrupt, add:* and whereas the said _____ _____ was adjudged a bankrupt, upon said petition, on the _____ day of _____, 19__;]

It is ordered that the above entitled proceeding be, and it hereby is, referred to _____ _____, one

of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said _____ _____ shall henceforth attend before the said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

_____ _____,
District Judge.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 14.

PRIOR FORMS

Prior Form 13 was replaced by Form 12.

FORM 14. ABROGATED MAY 29, 1961, EFF. JULY 19, 1961

Form 14 was entitled: "Order of Reference in Judge's Absence".

NOTES OF ADVISORY COMMITTEE

Since Public Law 86-64, approved June 23, 1959, repealed section 18f of the Bankruptcy Act and amended section 22a to provide for reference of all bankruptcy cases unless "the judge or judges direct otherwise," this form is no longer needed and should be stricken.

FORM 15. OATH OF OFFICE FOR REFEREES IN BANKRUPTCY

I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

_____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 19__.

_____,
_____.

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, permitted the oath to be affirmed or sworn to, substituted a line of dashes for "referee in bankruptcy" following "upon me as", inserted "and that I will * * * about to enter" following "laws of the United States", and substituted a line of dashes for "District Judge" at the end of oath.

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 16.

PRIOR FORMS

Prior Form 15 was replaced by Form 14.

FORM 16. BOND OF REFEREE

Know all men by these presents: That we, _____ _____, of _____, as principal, and _____ _____, of _____, and _____ _____, of _____, as sureties, are held and firmly bound to the United States of America in the sum of _____ dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas the said _____, has been on the _____ day of _____, 19__, appointed by the Honorable _____, Judge of the District Court of the United States for the _____ District of _____, a referee in bankruptcy in said district, under the Act of Congress relating to bankruptcy;

Now, therefore, if the said _____ shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

_____ _____, [L. S.]
_____ _____, [L. S.]
_____. [L. S.]

Approved this _____ day of _____, 19__.

_____ _____,
District Judge.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 17.

PRIOR FORMS

Prior Form 16 was replaced by Form 15.

FORM 17. NOTICE OF FIRST MEETING OF CREDITORS

(Caption as in Form No. 1)

To the creditors of _____,
of _____, a bankrupt:

Notice is hereby given that said _____ has been duly adjudged a bankrupt on a petition filed by [or against] him on _____, 19__, and that the first meeting of his creditors will be held at _____, in _____, on _____, 19__, at ____ o'clock __ m., at which place and time the said creditors may attend, prove their claims, appoint a trustee, appoint a committee of creditors, examine the bankrupt, and transact such other business as may properly come before said meeting.

Dated at _____, 19__.

_____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed manner of indicating dates and time of day.

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 18.

PRIOR FORMS

Prior Form 17 was replaced by Form 16.

FORM 17A. ORDER FOR FIRST MEETING OF CREDITORS

[*To be used in cases where the filing fees are to be paid in installments*]

At _____, in this district, on the _____ day of _____, 19__.

It is ordered that the first meeting of creditors herein be held at_____, in _____, on _____, 19__, at _____ o'clock __.m., _____ _____ time.

It is further ordered that the above-named bankrupt [*or, in proceedings under chapter XIII,* debtor] be and appear before a referee of this court at the time and place appointed for the first meeting of creditors for the purpose of being examined as provided by the Bankruptcy Act.

_____ _____,
Referee in Bankruptcy.

(Added May 29, 1961.)

NOTES OF ADVISORY COMMITTEE

The official forms now contain no form for an order for the first meeting of creditors. The administrative Office of the United States Courts has prepared and provided such a form for use of referees, and the proposed Form No. 17A is an adaptation of that form for use in proceedings in bankruptcy and under chapter XIII where the filing fees are to be paid in installments. The need for this new form arises out of the fact that when fees have been paid in full at the time of filing, it is advantageous and possible to prepare a combined "Order for First Meeting of Creditors and Order Fixing Time for Filing Objections to Discharge," by virtue of the amendment of section 14b of the Bankruptcy Act effected by Public Law No. 82–275 in 1957. A form for such a combined order is proposed *infra* as Official Form No. 42B. A separate order for the first meeting of creditors is still required when the filing fees are to be paid in installments, in order that the time limits prescribed by section 55a for holding the meeting may be complied with.

FORM 17B. NOTICE OF FIRST MEETING OF CREDITORS

[*To be used in cases where the filing fees are to be paid in installments*]

To the creditors of _____ _____, of _____, a bankrupt:

Notice is hereby given that _____ _____ has been duly adjudged a bankrupt on a petition filed by him on _____, 19__, and that the first meeting of his creditors will be held at _____, in _____, on _____, 19__, at _____ o'clock __, m., _____ _____ time, at which place and time the creditors may attend, prove their claims, appoint a trustee, appoint a committee of creditors, examine the bankrupt, and transact such other business as may properly come before the meeting.

Dated at _____, _____, 19__.

_____ _____,
Referee in Bankruptcy.

(Added May 29, 1961.)

NOTES OF ADVISORY COMMITTEE

Since the amendment of section 14b of the Act in 1957 referred to in the preceding Note, notice of the first meeting of creditors can and, in the interest of economy, should be combined in most cases with notice of the last day fixed by the court for the filing of objections to a bankrupt's discharge. The Act permits the court to fix the time for filing objections to discharge, however, only after the filing fees required by the Act have been paid in full. Since the first meeting must nonetheless be held within the time limits prescribed by section 55a, it is necessary in installment cases to provide for a separate notice. Proposed Form No. 17B is an adaptation of present Form No. 17 for use in giving notice in such cases. When fees have been paid in full at the time of filing, the form proposed for use is Form No. 43B *infra*. Unlike the proposed Form No. 17A, which is adaptable for use in proceedings in bankruptcy and under chapter XIII, this form is appropriate only in bankruptcy proceedings.

FORM 18. POWER OF ATTORNEY

To _____ _____ and _____ _____:

I, _____ _____, of _____, in the County of _____, State of _____, do hereby authorize you, or any one of you, with full power of substitution, to attend all meetings of creditors of the bankrupt aforesaid, and all adjournments thereof, at the places and times appointed by the court, and for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Act of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said bankrupt and for a committee of creditors, to accept any arrangement or wage-earner's plan proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends, and payment or delivery of money or of other consideration due me under such arrangement or wage-earner's plan, and for any other purpose in my interest whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid.

In witness whereof I have hereunto signed my name and affixed my seal the _____ day of _____, 19__.

_____ _____, [L. S.]

Signed, sealed and delivered in the presence of _____ _____.

Acknowledged before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, replaced prior Form 20.

PRIOR FORMS

Prior Form 18 was replaced by Form 17.

FORM 19. SPECIAL POWER OF ATTORNEY

To _____ _____ and _____ _____:

I hereby authorize you, or any one of you, to attend the meeting of creditors of the bankrupt aforesaid, advertised or directed to be held at _____, on the _____ day of _____, before _____, or any adjournment thereof, and then and there for me and in my name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

In witness whereof I have hereunto signed my name and affixed my seal the _____ day of _____, 19__.

_____ _____, [L. S.]

Signed, sealed and delivered in the presence of _____ _____.

Acknowledged before me this _____ day of _____, 19__.

_____ _____,

_____ _____.

[*Official character.*]

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 21.

PRIOR FORMS

Prior Form 19, covering list of debts proved at first meeting, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 20. ORDER APPROVING APPOINTMENT OF TRUSTEE OR APPOINTMENT OF TRUSTEE BY REFEREE

At _____, in this district, on the _____ day of _____, 19__.

[*If the creditors elect a trustee, use paragraph (1) and strike paragraph (2); if the creditors fail to elect a trustee, use paragraph (2) and strike paragraph (1).*]

(1) _____ _____, of _____, having been appointed trustee of the estate of the above-named bankrupt by his creditors, as provided in the Bankruptcy Act,

It is ordered that the appointment of _____ _____ as trustee be, and it hereby is, approved, and the amount of his bond is fixed at _____ dollars.

(2) The creditors of the above-named bankrupt having failed to appoint a trustee as provided in the Bankruptcy Act, _____ _____, of _____, is hereby appointed trustee of the estate of the bankrupt, and the amount of his bond is fixed at _____ dollars.

_____ _____,

Referee in Bankruptcy.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The proposed form is a consolidation of Form No. 20 and Form No. 21. The proposal carries out in part a recommendation approved by the Judicial Conference of the United States (see Conference Report, September 1958, p. 29) that Official Forms No. 20, 21, and 24 be combined. Form No. 24 for the order approving the trustee's bond frequently cannot be executed, however, until an interval after either Form No. 20 or Form No. 21 has been completed. Moreover, by section 21e of the Act a certified copy of the order approving the bond of a trustee is conclusive evidence of the trustee's appointment and qualification and, by section 21g, may be recorded so as to give constructive notice of the trustee's title to purchasers and lienors of the bankrupt's real property. It is desirable therefore to keep Form No. 24, Order Approving Trustee's Bond, as a short separate form. Convenience and economy would be achieved nevertheless by providing a single form for the appointment of a trustee with mutually exclusive paragraphs applicable to the alternative modes of selecting a trustee. The Administrative Office of the United States Courts believes that, in the light of an expected increase in the appointment and use of trustees by virtue of the recent doubling of the trustee's fee pursuant to Public Law 86-504, approved June 11, 1960, the advantages of the single form will be substantial.

Minor conforming changes have been made in the combined forms, including substitution of the official short title of the Bankruptcy Act, adopted in 1950, for the longer reference to the "Act of Congress relating to bankruptcy."

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 22.

PRIOR FORMS

Prior Form 20 was replaced by Form 18.

FORM 21. ABROGATED MAY 29, 1961, EFF. JULY 19, 1961

Form 21 was entitled: "Appointment of Trustee by Referee."

NOTES OF ADVISORY COMMITTEE

It is proposed that this form be consolidated with Form No. 20, as noted supra.

FORM 22. NOTICE TO TRUSTEE OF HIS APPOINTMENT, AND, IF FIXED, NOTICE OF TIME FOR FILING OBJECTIONS TO DISCHARGE

To _____ _____, of _____:

I hereby notify you that you were duly appointed trustee of the estate of the above-named bankrupt at the first meeting of creditors, on the _____ day of _____, 19__, and I have approved the appointment. The amount of your bond as such trustee has been fixed at _____ dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

[*If the time for the filing of objections to the bankrupt's discharge has been fixed, add the following paragraphs; if the time has not been fixed, strike out the paragraph.*]

You are further notified that the _____ day of _____, 19__, has been fixed as the last day for the filing of objections to the discharge of the bankrupt.

Dated at _____, the _____ day of _____, 19__.

_____ _____,

Referee in Bankruptcy.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

On February 28, 1959, General Order 16 was amended to read as follows:

"It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment and of the time fixed for the filing of objections to the bankrupt's discharge if such time has been fixed; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond." (The underlined words were inserted by the amendment.) This change was made necessary by the amendment of section 14b of the Bankruptcy Act in 1957 (discussed above in connection with proposed Forms No. 17A and 17B). For cases where the time for filing objections to the discharge has been fixed at the time notice is given to the trustee of his appointment, a new paragraph is recommended to be added to Form No. 22 to permit compliance with General Order 16 by the use of a single form.

The deletion of the unnecessary reference to "one of three trustees" conforms the provisions of this notice to those of the other official forms relating to the trustee.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 24.

PRIOR FORMS

Prior Form 22 was replaced by Form 20.

FORM 23. BOND OF RECEIVER OR TRUSTEE

Know all men by these presents: That we _____ _____, of _____, as principal, and _____ _____, of _____, and _____ _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas the above named _____ _____ was, on the _____ day of _____, 19__, appointed receiver [*or* trustee] in the case pending in bankruptcy in said court, wherein _____ _____ is the bankrupt, and he, the said _____ _____, has accepted said trust with all the duties and obligations pertaining thereunto;

Now, therefore, if the said _____ _____, receiver [*or* trustee] as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said receiver [*or* trustee], then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in the presence of

_____ _____ _____ _____ [SEAL]
_____ _____ _____ _____ [SEAL]
_____ _____ [SEAL]

(As amended Jan. 16, 1939.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 25.

PRIOR FORMS

Prior Form 23 was replaced by Form 21.

FORM 24. ORDER APPROVING TRUSTEE'S BOND

At _____, in said district, on the _____ day of _____, 19__.

The above named _____ _____, having been duly adjudged a bankrupt on a petition filed by [*or* against] him on the _____ day of _____, 19__; and _____ _____, of _____, in said district, having been duly appointed trustee of the estate of said bankrupt, and having duly qualified by giving a bond with sufficient sureties for the faithful performance of his official duties in the amount fixed by the order of this court, viz., _____ dollars;

It is ordered that the said bond be, and it hereby is, approved.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 26.

PRIOR FORMS

Prior Form 24 was replaced by Form 22.

FORM 25. ORDER THAT NO TRUSTEE BE APPOINTED

At _____, in said district, on the _____ day of _____, 19__.

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 27.

PRIOR FORMS

Prior Form 25 was replaced by Form 23.

FORM 26. ORDER FOR EXAMINATION OF BANKRUPT

At _____, in said district, on the _____ day of _____, 19__.

Upon the application of _____ _____, trustee of said bankrupt [*or* a creditor of said bankrupt], it is ordered that said bankrupt attend before _____ _____, one of the referees in bankruptcy of this court, at _____, on the _____ day of _____, at __ o'clock in the _____ noon, to submit to examination under the Act of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 28.

PRIOR FORMS

Prior Form 26 was replaced by Form 24.

FORM 27. SUBPOENA TO WITNESS

To _____ _____:

Whereas the above entitled proceeding is pending in the District Court of the United States for the _____ District of _____;

You are hereby commanded personally to be and appear before _____ _____, one of the referees in bankruptcy of said court, at _____, on the _____ day of _____, at __ o'clock in the _____ noon, [and bring with you _____ _____,] then and there to be examined in relation to said proceeding.

Witness the Honorable _____ _____, judge of said court, and the seal thereof, at _____, this _____ day of _____, 19__.

_____ _____,
Clerk.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 30.

PRIOR FORMS

Prior Form 27 was replaced by Form 25.

FORM 28. PROOF OF CLAIM BY INDIVIDUAL

_____ _____, of No. __ _____ Street in _____, County of _____, State of _____, says:

1. That _____, the above-named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted [*or* liable] to the undersigned in the sum of _____ dollars.

2. That the consideration of this debt [*or* liability] is as follows: _____
_____.

3. That no part of the debt [*or* liability] has been paid, except _____
_____.

4. That there are no set-offs or counterclaims to the debt [*or* liability], except _____
_____.

5. That this creditor does not hold, and has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received, any security or securities for the debt [*or* liability], except _____
_____.

6. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which the debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

7. [*If the debt is founded upon an open account*] That the debt was [or will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except _____
_____.

Dated at _____, this ____ day of _____, 19__.

_____ _____,
Creditor.

Penalty For Presenting Fraudulent Claim.—Fine of not more than $5,000 or imprisonment for not more than five years or both—Title 18, U.S.C., § 152.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The provision for the oath at the foot of this form is stricken pursuant to the elimination of the requirement of a verification for a proof of claim by Public Law 86-519, approved June 12, 1960. Verbal changes in the form entailed by the elimination of the oath have been made, and blanks for the entry of the place and date of execution of the proof of claim have been provided. The addition of the penalty warning is recommended as a prophylactic safeguard.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form covered subject matter of prior Forms 31, 32, Proof of Unsecured and Secured Debts.

PRIOR FORMS

Prior Form 28 was replaced by Form 26.

FORM 29. PROOF OF CLAIM BY CORPORATION

_____ _____, of _____, in the County of _____, State of _____, says:

1. That he is the _____ of _____, a corporation organized and existing under the laws of the State of _____, and carrying on business at No. __ _____ Street, in _____, County of _____, State of _____, and is duly authorized to make this proof of claim on its behalf.

2. That _____ _____, the above-named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication or bankruptcy, and still is, justly and truly indebted [*or liable*] to this corporation in the sum of _____ dollars.

3. That the consideration of this debt [*or* liability] is as follows: _____
_____.

4. That no part of the debt [*or* liability] has been paid, except_____
_____

5. That there are no set-offs or counterclaims to the debt [*or* liability], except_____
_____

6. That the corporation does not hold, and has not, nor has any person by its order, or to the knowledge or belief of the undersigned, for its use, had or received, any security or securities for the debt [*or* liability], except_____
_____

7. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which the debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

8. [*If the debt is founded upon an open account*] That the debt was [*or* will become] due on_____ [*or* that the average due date thereof is_____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto; and that no judgment has been rendered thereon, except_____
_____

_____

Dated at_____, this____ day of_____, 19__.

_____ _____,
as _____ _____,
of or for the corporation.

Penalty For Presenting Fraudulent Claims.—Fine of not more than $5,000 or imprisonment for not more than five years or both—Title 18, U.S.C., § 152.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 28 for reasons for these changes.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 33.

PRIOR FORMS

Prior Form 29, covering examination of bankrupt or witness, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 30. PROOF OF CLAIM BY PARTNERSHIP

_____ _____, of _____, in the County of _____, State of _____, says:

1. That he is a member of _____, a copartnership composed of the undersigned and _____ _____, of _____, in the County of _____, State of _____, and carrying on business at No. __ _____ Street, in _____, County of _____, State of _____.

2. That _____ _____, the above-named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted [*or* liable] to this copartnership in the sum of _____ dollars.

3. That the consideration of this debt [*or* liability] is as follows: _____

_____.

4. That no part of the debt [*or* liability] has been paid, except_____

_____

5. That there are no set-offs or counterclaims to the debt [*or* liability] except_____

_____

6. That the copartnership does not hold, and has not, nor has any person by its order, or to the knowledge or belief of the undersigned, for its use, had or received, any security or securities for the debt [*or* liability], except_____

_____

7. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which the debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

8. [*If the debt is founded upon an open account*] That the debt was [*or* will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except_____

_____

_____

Dated at _____, this _____ day of _____, 19__.

_____ _____.

Penalty For Presenting Fraudulent Claim.—Fine of not more than $5,000 or imprisonment for not more than five years or both—Title 18, U.S.C., § 152.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 28 for reasons for these changes.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 34.

PRIOR FORMS

Prior Form 30 was replaced by Form 27.

FORM 31. PROOF OF CLAIM BY AGENT OR ATTORNEY

_____ _____, of _____, in the County of _____, State of _____, says:

1. That he is the attorney [*or* agent] of _____ _____, of No. — _____ Street, in _____, County of _____, State of _____; that the undersigned is duly authorized by _____ _____ to make this proof of claim in his behalf; and that proof cannot be made by _____ _____ in person because

_____

_____

_____

2. That _____ _____, the above-named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted [*or* liable] to _____ in the sum of _____ dollars.

3. That the consideration of this debt [*or* liability] is as follows: _____

_____.

4. That no part of the debt [*or* liability] has been paid, except_____

_____.

5. That there are no set-offs or counterclaims to the debt [*or* liability], except _____

_____

6. That _____ _____ does not hold, and has not, nor has any person by his order, or to the knowledge or belief of the undersigned, for his use, had or received, any security or securities for the debt [*or* liability], except _____

_____

7. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which the debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

8. [*If the debt is founded upon an open account*] That the debt was [*or* will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except _____

_____.

Dated at _____, this _____ day of _____, 19__.

_____ _____.

Penalty For Presenting Fraudulent Claim.—Fine of not more than $5,000 or imprisonment for not more than five days or both—Title 18, U.S.C., §152.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 28 for reasons for these changes.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 35.

PRIOR FORMS

Prior Form 31 was replaced by Form 28.

FORM 32. AFFIDAVIT OF LOSS OF NEGOTIABLE INSTRUMENT

State of _____ }
County of _____ } *ss.*

_____ _____, of _____, in the County of _____, State of _____, being duly sworn, deposes and says that the note [*or other negotiable instrument*], the particulars whereof are underwritten, has been lost under the following circumstances: _____ _____; and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said _____ _____, or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said note [*or other negotiable instrument*], nor in any manner parted with or assigned the legal or beneficial interests therein, or any part thereof; that he, this deponent, is the person now legally and beneficially interested in the same; and that the particulars of the said instrument are as follows:

Date.	When due.	Drawer or maker.	Acceptor.	Prior indorser or indorsers if any.	Amount.

_____ _____.

Subscribed and sworn to before me, this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 37.

PRIOR FORMS

Prior Form 32, covering proof of secured debt, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 33. ORDER EXPUNGING OR REDUCING CLAIM

At _____, in said district, on the _____ day of _____, 19__.

The petition for reconsideration of the claim of _____ _____ against the estate of the above named bankrupt in the amount of _____ dollars having been heard on the _____ day of _____, 19__; and due notice of said hearing having been given [*here state the manner of notice*] to said claimant; and upon the evidence submitted to this court upon said claim [*and, if the fact be so, upon hearing counsel thereon*];

It is ordered that the said claim of _____ _____ be, and it hereby is, expunged from the list of claims in this proceeding [*or*, reduced to _____ dollars and allowed at said amount].

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Forms 38–39.

PRIOR FORMS

Prior Form 33 was replaced by Form 29.

FORM 34. ORDER FOR PAYMENT OF DIVIDENDS

At _____, in said district, on the _____ day of _____, 19__.

It appearing that, pursuant to the provisions of section 65 of the Act of Congress relating to bankruptcy,[1] a first [*or* further, *or* final] dividend should be declared and paid herein;

It is ordered that a first [*or* second, *etc., or* final] dividend of _____ per cent. be, and it hereby is, declared on all unsecured claims, not entitled to priority, allowed against the estate of the above named bankrupt, in accordance with the following dividend sheet:

No.	Creditors. (The names of all parties to the proof to be set forth.)	Amount of Claim Allowed.	Amount of Dividend.
		$	$

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Forms 40–41.

PRIOR FORMS

Prior Form 34 was replaced by Form 30.

FORM 35. APPLICATION FOR SALE OF REAL ESTATE

This application of _____ _____, trustee of the estate of the above-named bankrupt, respectfully represents:

1. A portion of the bankrupt's estate consists of the following described real estate: [*Here describe the property and any mortgages or liens thereon, and give its appraised or estimated value.*]

2. In the judgment of this applicant it will be for the benefit of the estate to sell this property at public auction, upon the following terms and conditions: _____ _____

Wherefore this applicant prays that he may be authorized to make sale at public auction of the real estate as aforesaid.

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,
Trustee [or *Attorney for Trustee*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

[1] 11 U. S. C. § 105.

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The oath should be stricken from this form pursuant to the amendment of section 18c of the Act by Public Law 86-293, approved September 21, 1959, eliminating the requirement of verification for pleadings other than petitions for voluntary and involuntary bankruptcy. The date and place of the execution of the application should nonetheless appear, and blanks are accordingly provided for this information. A space for the entry of the trustee's or his attorney's address is provided pursuant to Rule 11 of the Federal Rules of Civil Procedure.

The substitution of "application" for "petition" is made for the reason indicated *supra* in the Note accompanying General Order 51.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 36, replaced prior Form 42.

PRIOR FORMS

Prior Form 35 was replaced by Form 31.

FORM 36. ORDER FOR SALE OF REAL ESTATE

At _____, in said district, on the _____ day of _____, 19__.

The petition of _____ _____, trustee of the estate of the above named bankrupt, filed on the _____ day of _____, 19__, that said trustee be authorized to sell at public auction certain real estate belonging to said estate, having come on for hearing before me, of which hearing [*here set forth to whom notice was given and the manner thereof*], now after due hearing, no adverse interest being represented thereat [*or* after hearing _____ _____ in favor of said petition and _____ _____ in opposition hereto];

It is ordered that the said trustee be, and he hereby is, authorized to sell at public auction all that certain real estate, belonging to the estate of said bankrupt, mentioned in said petition and described as follows: _____; upon terms and conditions as follows: _____ _____; and that the said trustee shall keep an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall forthwith file with this court.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 35, replaced prior Form 42.

PRIOR FORMS

Prior Form 36, covering proof of secured debt by agent, adopted Nov. 28, was abrogated by order January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 37. APPLICATION FOR REDEMPTION OF PROPERTY

This application of _____ _____, trustee of the estate of the above-named bankrupt, respectfully represents:

1. A portion of the bankrupt's estate consists of the following described property: [*Here describe the property and give its appraised or estimated value.*]

2. This property is subject to the following described mortgage [*or* lien *or* pledge]: _____ _____.

3. In the judgment of this applicant it will be for the benefit of the estate to redeem this property from this mortgage [*or* lien *or* pledge], for the following reasons: _____ _____.

Wherefore this applicant prays that he may be authorized to pay out of the assets of the estate the sum of _____ dollars, being the amount of the mortgage [*or* lien *or* pledge], to redeem the property therefrom.

Dated at _____, this _____ day of _____, 19____.

Signed: _____ _____,
Trustee [or *Attorney for Trustee*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 35 for the reasons for these changes.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 38, replaced prior Form 43.

PRIOR FORMS

Prior Form 37 was replaced by Form 32.

FORM 38. ORDER FOR REDEMPTION OF PROPERTY

At _____, in said district, on the _____ day of _____, 19__.

The petition of _____ _____, trustee of the estate of the above named bankrupt, filed on the _____ day of _____, 19__, that said trustee be authorized to redeem certain property belonging to said estate, having come on for hearing before me, of which hearing [*here set forth to whom notice was given and the manner thereof*], now, after due hearing, no adverse interest being represented thereat [*or* after hearing _____ _____ in favor of said petition and _____ _____ in opposition thereto];

It is ordered that the said trustee be, and he hereby is, authorized to redeem that certain property, belonging to said estate, mentioned in said petition and described as follows: _____ _____ _____ from the mortgage [*or* lien *or* pledge] so mentioned and described as follows: _____, and for that purpose to pay out of the assets of said estate the said sum of _____ dollars.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 37, replaced Form 43.

PRIOR FORMS

Prior Form 38 was replaced by Form 33.

FORM 39. TRUSTEE'S REPORT OF EXEMPT PROPERTY

To _____ _____, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of

the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above entitled proceeding.

General head.	Particular description.	Estimated value.
Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption		$
Property claimed to be exempt by State laws, with reference to the statute creating the exemption		

Dated this _____ day of _____, 19__.

_____ _____,
Trustee.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 47.

PRIOR FORMS

Prior Form 39, covering Order expunging claim, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1931, effective February 13, 1939, and was not replaced.

FORM 40. REPORT OF TRUSTEE IN NO ASSET CASE

To _____ _____, Referee in Bankruptcy:

_____ _____, of _____, in the County of _____, State of _____, trustee of the estate of the above-named bankrupt, respectfully reports that he has neither received any property nor paid any moneys on account of this estate; that he has made diligent inquiry into the whereabouts of property belonging to the estate; and that there are no assets in the estate over and above the exemptions claimed by, and by him set aside to, the bankrupt.

Wherefore he prays that this report be approved, and that he be discharged of his trust.

Dated at _____, this _____ day of _____, 19____.

Signed: _____ _____,
Trustee [or *Attorney for Trustee*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 35 for the reason for striking the form for the oath.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 48.

PRIOR FORMS

Prior Form 40 was replaced by Form 34.

FORM 41. APPLICATION FOR DISCHARGE

This application of _____ _____, the bankrupt above-named, a corporation organized and existing under the laws of the State of _____ _____, respectfully represents that on the _____ day of _____, 19____, a petition was filed by [*or* against] it, praying that it be adjudged a bankrupt under the Bankruptcy Act; that on the _____ day of _____, 19____, it was duly adjudged a bankrupt under the Act; that it has duly surrendered all its property and rights of property, and has fully complied with all the requirements of the Act, and with all the orders of the court pertaining to its bankruptcy.

Wherefore this applicant prays that it may be decreed by this court to have a discharge from all debts provable against its estate under the Act, except such debts as are excepted by the Act from such discharge.

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,
as_____,
of or for the corporation.
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 35 for the reasons for these changes.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 57.

PRIOR FORMS

Prior Form 41, covering notice of dividend, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 42. ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

At _____, in said district, on the _____ day of _____, 19__.

It appearing that the above named bankrupt has been duly adjudged a bankrupt and has been duly examined at a meeting of creditors as required by the Act of Congress relating to bankruptcy; [*if the bankrupt is a corporation, add:* and it further appearing that said bankrupt filed its application for a discharge on the _____ day of _____, 19__];

It is ordered that the _____ day of _____, 19__, be, and it hereby is, fixed as the last day for the filing of objections to the discharge of said bankrupt.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 42 was replaced by Forms 35, 36.

FORM 42A. ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

[*To be used in cases where the filing fees have been paid in installments*]

At _____, in this district, on the _____ day of _____, 19__.

It is ordered that the _____ day of _____, 19__, be, and it hereby is, fixed as the last day for the filing of objections to the discharge of the bankrupt.

_____ _____,
Referee in Bankruptcy.

(Added May 29, 1961.)

NOTES OF ADVISORY COMMITTEE

Form No. 42 for the order fixing the time for filing objections to the discharge is here proposed to be renumbered Form No. 42A and, as revised, reserved for use in the cases where the filing fees have been paid in installments. Form No. 42 now contains a recital that the

debtor has been duly examined at a meeting of creditors as required by the Act. The 1957 amendment of section 14b eliminates the examination as a prerequisite to the entry of an order fixing the last date for the filing of objections to the discharge. The recital that the bankrupt has been duly adjudged bankrupt or, if the bankrupt is a corporation, that a timely application for a discharge has been filed, does not appear to be a jurisdictional requirement of an order fixing the time for filing objections. (This is not to say of course that the necessity of an adjudication, or a timely application by a corporate bankrupt, can ever be dispensed with.) The instances when a corporation applies for a discharge are quite rare. The recitals therein being nonessential, it is recommended that the first paragraph of Form No. 42 be omitted from both the separate Form No. 42A and the combined Form No. 42B *infra*.

FORM 42B. ORDER FOR FIRST MEETING OF CREDITORS AND ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

[*To be used in cases where the filing fees were paid in full at the time of filing*]

At _____, in this district, on the _____ day of _____, 19__.

It is ordered that the first meeting of creditors herein be held at _____, in _____, on _____, 19__, at __ o'clock __.m., _____ _____ _____ time.

It is further ordered that the above-named bankrupt be and appear before a referee of this court at the time and place appointed for the first meeting of creditors for the purpose of being examined as provided by the Bankruptcy Act.

And it is further ordered that the _____ day of _____, 19____, be, and it hereby is, fixed as the last day for the filing of objections to the discharge of the bankrupt.

_____ _____,
Referee in Bankruptcy.

(Added May 29, 1961.)

NOTES OF ADVISORY COMMITTEE

The amendment of section 14b of the Bankruptcy Act effected by Public Law No. 82-275 in 1957 authorized the order fixing a time for the filing of objections to the bankrupt's discharge to be entered after the required filing fees have been paid in full rather than after the debtor has been examined. It is thus now possible in all but installment cases for the order fixing such time to be entered concurrently with the order for the first meeting of creditors. The Administrative Office has found it advantageous to prepare a combined "Order for First Meeting of Creditors and Order Fixing Time for Filing Objections to Discharge" for use by referees in cases where the filing fees have been paid in full at the time of filing. Since there has been no official form for the order fixing the date of the first meeting, the combined form adds appropriate new language (identical to that of the proposed new Form No. 17A *supra*) to Form No. 42, the official form for the order fixing the time for filing objections to the discharge. This combined form has been revised slightly and is proposed as Official Form No. 42B.

FORM 43. NOTICE OF ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

To the creditors of the above named bankrupt and other parties in interest:

Notice is hereby given that on the _____ day of _____, 19__, an order was made in the above entitled proceeding, fixing the _____ day of _____, 19__, as the last day for the filing of objections to the discharge of said bankrupt.

Dated this _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 43 was replaced by Forms 37, 38.

FORM 43A. NOTICE OF ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

[*To be used in cases where the filing fees have been paid in installments*]

To the creditors of the above-named bankrupt and other parties in interest:

Notice is hereby given that on the _____ day of _____, 19__, an order was made in the above-entitled proceeding, fixing the _____ day of _____, 19__, as the last day for the filing of objections to the discharge of the bankrupt.

Dated this _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(Added May 29, 1961.)

NOTES OF ADVISORY COMMITTEE

Proposed Form No. 43A is substantially present Form No. 43 but is designated for use in the cases where the filing fees have been paid in installments. When the installment fees have been paid in full, it is possible and desirable to combine this form with present Form No. 17 as indicated in the proposed Form No. 43B *infra*.

FORM 43B. NOTICE OF FIRST MEETING OF CREDITORS AND NOTICE OF ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

[*To be used in cases where the filing fees were paid in full at the time of filing*]

To the creditors of _____, _____, of _____, a bankrupt, and to other parties in interest:

Notice is hereby given that _____ _____ has been duly adjudged a bankrupt on a petition filed by [*or* against] him on _____, 19__, and that the first meeting of his creditors will be held at _____, in _____, on _____, 19__, at __ o'clock __.m., _____ _____ time, at which place and time the creditors may attend, prove their claims, appoint a trustee, appoint a committee of creditors, examine the bankrupt, and transact such other business as may properly come before the meeting.

Notice is also hereby given that on the _____ day of _____, 19__, an order was made in the above-entitled proceeding, fixing the _____ day of _____, 19__, as the last day for the filing of objections to the discharge of the bankrupt.

Dated this _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(Added May 29, 1961.)

NOTES OF ADVISORY COMMITTEE

Prior to the amendment of section 14b of the Bankruptcy Act by Public Law No. 82-275 in 1957, at least two separate notices were required to be given in every ordinary bankruptcy case. The first was the ten-day notice of the first meeting of creditors required by section 58a(3), and the second was the thiry-day notice of

the last day fixed by the court pursuant to section 58b for the filing of objections to a bankrupt's discharge. Prior to the amendment this second notice could not ordinarily be combined with the first because the order fixing the last day for filing objections could not be entered until after the debtor's examination, which was typically held at the first meeting at least ten days after the first notice.

The 1957 amendment of section 14b permits the two notices to be combined in approximately two-thirds of all ordinary bankruptcy cases, where the fees are fully paid at the time of filing. This legislation was requested by the Administrative Office of the United States Courts to effect a substantial saving in expenditures for postage, clerical help, supplies, and equipment. Since the amendment the Administrative Office has prepared and provided printed forms for the use of referees in this most numerous class of cases, which combine the essential features of Official Forms No. 17 and 43. This form is resignated as No. 43B.

FORM 44. SPECIFICATION OF OBJECTIONS TO DISCHARGE

_____ _____, of _____, in the County of _____, State of _____, the trustee of the estate [*or* a creditor] of the above-named bankrupt [*or* the United States attorney for this district [*or* the attorney designated by the Attorney General of the United States], having examined into the acts and conduct of the bankrupt and being satisfied that probable grounds exist for the denial of the discharge of the bankrupt and that the public interest so warrants], does hereby oppose the granting to the bankrupt of a discharge from his debts, and specifies the following as grounds of objections: [*Here specify in separately numbered paragraphs the grounds of objection.*]

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,

Trustee [or *creditor* or *attorney*],

Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See note supra accompanying Form No. 35 for the reasons for these changes.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 58.

PRIOR FORMS

Prior Form 44, covering petition and order for sale subject to lien, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 45. DISCHARGE OF BANKRUPT

At _____, in said district, on the _____ day of _____, 19__.

It appearing that _____ _____, of _____, in the County of _____, State of _____, was duly adjudged a bankrupt on a petition filed by [*or* against] him on the _____ day of _____, 19__; and

It further appearing that, after due notice by mail, no objection to the discharge of said bankrupt was filed within the time fixed by the court [*or* objections to the discharge of the said bankrupt were filed and, after due notice by mail, were heard and were not sustained];

It is ordered that the said _____ _____ be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy.

_____ _____,

Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 59.

PRIOR FORMS

Prior Form 45, covering petition and order for private sale, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 46. REFEREE'S CASH BOOK

Receipts							Disbursements									
Date	Title of Case and Case No.	From Whom Received	Indemnity for Witnesses and Testimony	Moneys Collected for Clerk	Moneys Held in Trust	Misc. Receipt	Date	Payee	Check No.	Title of Case and Case No.	Witnesses	Testimony	Moneys Disbursed to Clerk	Refunds	Moneys Held in Trust	Misc. Disbursements
Amounts brought forward							Amounts brought forward									
Amounts carried forward							Amounts carried forward									

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, made numerous changes in items to be carried in cash book.

PRIOR FORMS

Prior Form 46, covering petition and order for sale of perishable property, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 47. REFEREE'S SEMI-ANNUAL REPORT

IN THE DISTRICT COURT OF THE UNITED STATES

_____ District of _____

To the Honorable _____, Judge of said court:

I, _____, Referee in Bankruptcy of said court, beg to submit herewith, in duplicate, my report in compliance with General Order No. 26 of the Supreme Court, covering the period from _____, to _____, inclusive.

Attached hereto and made a part of this report are the following exhibits:

1. A financial statement showing all moneys received and disbursed during the period covered by this report.

2. An analysis of the unexpended balance in my official account at the end of the period.

3. Statement of the number of cases handled during the period.

4. A list of proceedings referred to me which have remained open for more than eighteen months, giving the reason in each instance why they have not been closed.

Respectfully submitted, this _____ day of _____, 19____.

_____

State of _____ } ss.
County of _____ }

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, who after being sworn by me, upon his oath states that the statements contained in the foregoing instrument, and all exhibits thereto attached, are true and correct, to the best of his knowledge and belief.

_____

Subscribed and sworn to before me by _____, this the _____ day of _____, 19__.

_____

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed this entire form by substituting Referee's Semi-Annual Report for Referee's Financial Statement.

PRIOR FORMS

Prior Form 47 was replaced by Form 39.

FORM 48. ORIGINAL PETITION IN PROCEEDINGS UNDER CHAPTER XI

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the County of _____, State of _____, by occupation a _____ [*or* engaged in the business of _____], respectfully represents:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at _____, within the above judicial district, for the six months immediately preceding the filing of this petition [*or* for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.]

2. No bankruptcy proceeding, initiated by a petition by or against your petitioner, is now pending.

3. Your petitioner is insolvent [*or* unable to pay his debts as they mature], and proposes the following arrangement with his unsecured creditors: ____

_____

[*or* intends to propose an arrangement pursuant to the provisions of chapter XI of the Bankruptcy Act.]

4. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence or of business of his creditors, and such further statements concerning his debts as are required by the provisions of the Bankruptcy Act.

5. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning his property as are required by the provisions of the Act.

6. The statement hereto annexed, marked Exhibit 1, and verified by your petitioner's oath, contains a full and true statement of all his executory contracts, as required by the provisions of the Act.

7. The statement hereto annexed, marked Exhibit 2, and verified by your petitioner's oath, contains a full and true statement of his affairs, as required by the provisions of the Act.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XI of the Bankruptcy Act.

_____ _____,
Petitioner.

Address: _____.

_____ _____,
Attorney,
Address: _____.

State of _____
County of _____, *ss.*

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1]

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The change in the first paragraph conforms the language of the form more closely to that in section 2a(1) of the Bankruptcy Act. The principal change is the one in paragraph 3 to accommodate a petition not accompanied by the proposed arrangement, as permitted by the amendment of section 323 in 1958. The change in the fourth and concluding paragraphs simply employs the official short title of the Act. Spaces have been added for entry of the addresses of the petitioner and his attorney pursuant to Rule 11 of the Federal Rules of Civil Procedure.

PRIOR FORMS

Prior Form 48 was replaced by Form 40.

FORM 49. NOTICE OF MEETING OF CREDITORS IN PROCEEDINGS UNDER CHAPTER XI

To _____ _____, of _____, his creditors, and to other parties in interest:

Notice is hereby given that on the _____ day of _____, 19__, _____ _____ filed a petition in this court proposing [*or* stating that he intends to propose] an arrangement with his unsecured creditors under the provisions of chapter XI of the Bankruptcy Act,[1] and that a meeting of his creditors will be held at _____, in _____, on the _____ day of _____, 19__, at ___ o'clock __.m., _____ _____ time, at which place and time the creditors may attend, prove their claims, nominate a trustee, appoint a committee of creditors, examine the debtor, present written acceptances of the proposed arrangement, if filed, and transact such other business as may properly come before the meeting.

Annexed hereto are, if filed, a copy of the proposed arrangement, a summary of the liabilities of the debtor as shown by his schedules, and a summary of the appraisals of the property of the debtor [*or* a summary of the assets of the debtor as shown by his schedules].

[*If appropriate, the following may be added:*]

Notice is also hereby given that the application to confirm the arrangement shall be filed with this court on or before the _____ day of _____, 19__; and that the hearing on the confirmation and objections thereto, if any, will be held at _____, in _____, on the _____ day of _____, 19__, at ____ o'clock __.m., _____ _____ time.

Dated this _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The addition of the debtor and "other parties in interest" to the categories of persons to receive the notice of the creditors' meeting required by section 334 of the Act appears to fulfill the mandate of the section and to conform to the recitals in Form No. 51.

Changes in the first two paragraphs are proposed to permit the form to apply to a case where no arrangement is proposed with the petition as contemplated by the 1958 amendment to section 323.

PRIOR FORMS

Prior Form 49, covering account of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 50. APPLICATION FOR CONFIRMATION OF AN ARRANGEMENT UNDER CHAPTER XI

To _____ _____, Referee in Bankruptcy:

_____ _____, the above-named debtor, respectfully represents that the arrangement under chapter XI of the Bankruptcy Act proposed on the _____ day of _____, 19__, has been duly accepted, in accordance with the provisions of this chapter, and that the deposit required by the provisions of the chapter and by the arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court.

Wherefore the debtor prays that the arrangement be confirmed by the court.

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,
Debtor [or *Attorney for Debtor*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

Section 323 of the act as amended in 1958 requires the reference to proposal of the arrangement in the petition to be stricken. The oath should be stricken by virtue of the amendment of section 18c by Public Law 86-293, approved September 21, 1959. A space is provided for entry of the address of the debtor or his attorney following the signature pursuant to Rule 11 of the Federal Rules of Civil Procedure.

PRIOR FORMS

Prior Form 50, covering oath to final account of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 51. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XI. (WHERE ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in this district, on the _____ day of _____, 19__.

A petition having been filed herein on the _____ day of _____, 19 __, by the above-named debtor, and an arrangement under chapter XI of the Bankruptcy Act having been proposed and thereafter accepted in writing by all creditors affected thereby at a meeting of creditors held on the _____ day of _____, 19__, of which meeting __ days' notice by mail was given to the debtor, to his creditors, and to other parties in interest; and

It appearing that the deposit required by the provisions of this chapter and by the arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court, and that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by the Act;

It is ordered that the arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The principal change here would conform the form to the 1958 amendment of section 323, which no longer requires the arrangement to be proposed in the petition.

PRIOR FORMS

Prior Form 51, covering order allowing account and discharging trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 52. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XI. (WHERE LESS THAN ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in this district, on the _____ day of _____, 19__.

The application of _____ _____, the above-named debtor, for confirmation of the arrangement under chapter XI of the Bankruptcy Act proposed by the debtor having been heard and duly considered; and due notice of the hearing having been given [*here state the manner of notice*]; and [*here state the proceedings, whether there was no opposition, or if opposed, what proceedings were had*]; and

It appearing that the arrangement has been duly accepted in accordance with the provisions of this chapter, and that the deposit required by the provisions of the chapter and by the arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court; and

It further appearing that the provisions of the chapter have been complied with; that the arrangement is for the best interests of the creditors of said debtor; that the arrangement is fair and equitable, and feasible; that the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by the Act;

It is ordered that the arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1936; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See the note accompanying Form 51 for the reason for the principal change made here.

PRIOR FORMS

Prior Form 52, covering petition for removal of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 53. ORIGINAL PETITION IN PROCEEDINGS UNDER CHAPTER XII

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the County of _____, State of _____, by occupation a _____ [*or* engaged in the business of _____], respectfully represents:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner is the legal [*or* equitable] owner, as more fully set forth in the arrangement hereinafter proposed, of the real property [*or* chattel real] described in, and which is security for debts dealt with by, said arrangement, and has an interest in said property other than a right to redeem it from a sale had before the filing of this petition.

3. No bankruptcy proceeding, initiated by a petition by or against your petitioner, is now pending.

4. Your petitioner is insolvent [*or* unable to pay his debts as they mature], and proposes the following arrangement with his creditors: _____

_____

_____

5. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to bankruptcy.

6. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

7. The statement hereto annexed, marked Exhibit 1, and verified by your petitioner's oath, contains a full and true statement of all his executory contracts, as required by the provisions of said Act.

8. The statement hereto annexed, marked Exhibit 2, and verified by your petitioner's oath, contains a full and true statement of his affairs, as required by the provisions of said Act.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XII of the Act of Congress relating to bankruptcy.

_____ _____,
Petitioner.

_____ _____, *Attorney.*

State of _____ }
County of _____ } *ss.*

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 53, covering notice of petition for removal of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 54. NOTICE OF MEETING OF CREDITORS IN PROCEEDINGS UNDER CHAPTER XII

To the creditors of _____ _____, of _____, in the County of _____, in the district aforesaid:

Notice is hereby given that on the _____ day of _____, 19__, the said _____ _____ filed a petition in this court proposing an arrangement with his creditors under the provisions of chapter XII of the Act of Congress relating to bankruptcy, and that a meeting of his creditors will be held at _____, in _____, on the _____ day of _____, 19____, at __ o'clock in the _____ noon, at which place and time the said creditors may attend, prove their claims, examine the debtor, present written acceptances of the proposed arrangement, and transact such other business as may properly come before said meeting.

Annexed hereto is a copy of said proposed arrangement, a summary of the liabilities of said debtor as shown by his schedules, and a summary of the appraisal of the property of said debtor [*or* a summary of the assets of said debtor as shown by his schedules].

[*If appropriate, the following may be added:*]

Notice is also hereby given that the application to confirm said arrangement shall be filed with this court on or before the ____ day of _____, 19__; and that the hearing on the confirmation and objections thereto, if any, will be held at _____, in _____, on the _____ day of _____, 19__, at __ o'clock in the _____ noon.

Dated this _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 54, covering order for removal of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 55. APPLICATION FOR CONFIRMATION OF AN ARRANGEMENT UNDER CHAPTER XII

To _____ _____, Referee in Bankruptcy:

_____ _____, the above-named debtor, respectfully represents that the arrangement under chapter XII of the Bankruptcy Act, proposed in the petition filed by him on the _____ day of _____, 19__, has been duly accepted, in accordance with the provisions of this chapter, and that the deposit required by the provisions of the chapter and by the arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court.

Wherefore the debtor prays that the arrangement be confirmed by the court.

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,
Debtor [or *Attorney for Debtor*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

The form for the oath should be stricken pursuant to the amendment of section 18c of the Act by Public Law 86-293, approved September 21, 1959, but the date and place of its execution should be entered on the application. A space is provided for entry of the address of the debtor or his attorney after the signature pursuant to Rule 11 of the Federal Rules of Civil Procedure.

PRIOR FORMS

Prior Form 55, covering order for choice of new trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 56. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XII. (WHERE ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in said district, on the _____ day of _____, 19__.

A petition having been filed herein on the _____ day of _____, 19__, by the above named debtor, proposing an arrangement under chapter XII of the Act of Congress relating to bankruptcy, and said arrangement having been accepted in writing by all creditors affected thereby, at a meeting of creditors held on the _____ day of _____, 19__, of which meeting _____ days' notice by mail was given to said debtor, to his creditors, and to other parties in interest; and

It appearing that the deposit required by the provisions of said chapter and by said arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court, and that said arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act;

It is ordered that the said arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 56, covering certificate by referee to judge, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 57. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XII. (WHERE LESS THAN ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in said district, on the _____ day of _____, 19__.

The application of _____ _____, the above named debtor, for confirmation of the arrangement under chapter XII of the Act of Congress relating to bankruptcy, proposed by said debtor in the petition fluid by him on the _____ day of _____, 19__, having been heard and duly considered; and due notice of said hearing having been given [*here state the manner of notice*]; and [*here state the proceedings, whether there was no opposition, or if opposed, what proceedings were had*]; and

It appearing that said arrangement has been duly accepted in accordance with the provisions of said chapter, and that the deposit required by the provisions of said chapter and by said arrangement, amounting to the sum of _____ dollars, has been

deposited, subject to the order of the court, in _____, of _____, the depository designated by the court; and

It further appearing that the provisions of said chapter have been complied with; that the arrangement is for the best interests of the creditors of said debtor; that the arrangement is fair and equitable, and feasible; that the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act; and that all payments made or promised by the debtor, by any person issuing securities or acquiring property under the arrangement, or by any other person, for services and for costs and expenses in, or in connection with, this proceeding, or in connection with and incident to the arrangement, have been fully disclosed to the court and are reasonable [*or, if to be fixed after confirmation of the arrangement,* will be subject to the approval of the court];

It is ordered that the said arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 57 was replaced by Form 41.

FORM 58. ORIGINAL PETITION IN PROCEEDINGS UNDER CHAPTER XIII [11 U.S.C. § 1001 et seq.]

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the County of _____, State of _____, by occupation a _____, and employed by _____ _____, respectfully represents:

1. Your petitioner has resided [*or* has had his domicile] at _____, within the above judicial district, for the six months immediately preceding the filing of this petition [*or* for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district].

2. Your petitioner is an individual whose principal income is derived from wages, salary or commissions.

3. No bankruptcy proceeding, initiated by a petition by or against your petitioner, is now pending.

4. Your petitioner is insolvent [*or* unable to pay his debts as they mature], and desires to effect a composition [*or* an extension of time to pay his debts, *or* a composition and an extension of time to pay his debts] out of his future earnings.

5. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence or of business of his creditors, and such further statements concerning his debts as are required by the provisions of the Bankruptcy Act.

6. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning his property as are required by the provisions of the Act.

7. The statement hereto annexed, marked Exhibit 1, and verified by your petitioner's oath, contains a full and true statement of all his executory contracts, as required by the provisions of the Act.

8. The statement hereto annexed, marked Exhibit 2, and verified by your petitioner's oath, contains a full and true statement of his affairs, as required by the provisions of the Act.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XIII of the Bankruptcy Act.

_____ _____,
Petitioner,
Address: _____.

_____ _____,
Attorney,
Address: _____.

State of _____
County of _____, *ss.*

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENT

The first paragraph is revised to conform more closely to the statutory language of section 2a(1) of the act. Other conforming changes in paragraph 5 and the last paragraph use the short title of the act.

The principal changes here are in paragraphs 2 and 5. The 1959 amendments to section 606(8), effected by Public Law 86–24, approved May 13, 1959, requires an amendment in paragraph 2 to conform with the new statutory definition of a wage earner as "an individual whose principal income is derived from wages, salary or commissions." The insertion of the reference to creditors' places of business in paragraph 5 recognizes the change made in section 7a(8) by the amendment of 1952.

PRIOR FORMS

Prior Form 53 was replaced by Form 44.

FORM 59. NOTICE OF MEETING OF CREDITORS IN PROCEEDINGS UNDER CHAPTER XIII [11 U.S.C. § 1001 et seq.]

To the creditors of _____, of _____:

Notice is hereby given that on _____, 19__, the said _____ filed a petition in this court stating that he desires to effect a composition or an extension of time to pay his debts out of his future earnings in accordance with the provisions of chapter XIII of the Bankruptcy Act; and that a meeting of

his creditors will be held at _____, in _____, on _____, 19__, at ____ o'clock __. m., at which place and time the said debtor shall submit his plan for a composition or extension, and the said creditors may attend, prove their claims, examine the debtor, present written acceptances of the plan proposed by him, and transact such other business as may properly come before said meeting.

[If appropriate, the following may be added]

Notice is also hereby given that the application to confirm said plan shall be filed with this court on or before _____, 19__; and that the hearing on the confirmation and objections thereto, if any, will be held at _____, in _____, on _____, 19__, at __. m.

Dated this _____ day of _____, 19__.

_____
Referee in Bankruptcy.

(As amended Jan. 16, 1939; June 23, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, among other changes, omitted "and praying that proceedings be had upon his petition" following "future earnings", substituted "Bankruptcy Act" for "Act of Congress relating to bankruptcy" following "Chapter XIII of the", and changed manner of indicating dates and times of day.

PRIOR FORMS

Prior Form 59 was replaced by Form 45.

FORM 60. APPLICATION FOR CONFIRMATION OF AN ARRANGEMENT UNDER CHAPTER XIII [11 U.S.C. § 1001 et seq.]

To _____ _____, Referee in Bankruptcy:

_____ _____, the above-named debtor, respectfully represents that the plan under chapter XIII of the Bankruptcy Act, submitted by him at a meeting of his creditors on the _____ day of _____, 19__, has been duly accepted, in accordance with the provisions of this chapter, and that he has made the deposit of moneys required by the provisions of the chapter [*If it be the fact, add:* and that the deposit required by the provisions of the plan, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court].

Wherefore the debtor prays that the plan be confirmed by the court.

Dated at _____, this _____ day of _____, 19__.

Signed: _____ _____,
Debtor [or *Attorney for Debtor*],
Address: _____.

(As amended Jan. 16, 1939; May 29, 1961.)

NOTES OF ADVISORY COMMITTEE ON 1961 AMENDMENTS

See the note accompanying Form 55 for the reason for these changes.

PRIOR FORMS

Prior Form 60, covering petition for meeting to consider composition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 61. ORDER CONFIRMING A PLAN UNDER CHAPTER XIII. (WHERE ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in said district, on the _____ day of _____, 19__.

The plan of _____ _____, the above named debtor, under chapter XIII of the Act of Congress relating to bankruptcy, submitted by him at a meeting of his creditors on the _____ day of _____, 19__, of which meeting _____ days' notice by mail was given to the said debtor and to his creditors, having been accepted in writing at said meeting by all creditors affected thereby; and

It appearing that said plan and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act; and that the deposit required by the provisions of said chapter has been made; [*If it be the fact, add:* and that the deposit required by the provisions of said plan, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court;]

It is ordered that the said plan be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 61, covering application for confirmation of composition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 62. ORDER CONFIRMING A PLAN UNDER CHAPTER XIII. (WHERE LESS THAN ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in said district, on the _____ day of _____, 19__.

The application of _____ _____, the above named debtor, for confirmation of the plan under chapter XIII of the Act of Congress relating to bankruptcy, submitted by said debtor at a meeting of his creditors on the _____ day of _____, 19__, having been heard and duly considered; and due notice of said hearing having been given [*here state the manner of notice*]; and [*here state the proceedings, whether there was no opposition, or if opposed, what proceedings were had*]; and

It appearing that said plan has been duly accepted in accordance with the provisions of said chapter, and that the deposit required by the provisions of said chapter has been made; [*If it be the fact, add:* and that the deposit required by the provisions of said plan, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court;] and

It further appearing that the provisions of said chapter have been complied with; that the plan is for the best interests of the creditors of said debtor; that the plan is fair and equitable, and feasible; that the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act;

It is ordered that the said plan be, and it hereby is, confirmed.

------ ------,
Referee in Bankruptcy.

(As amended Jan. 16, 1939.)

PRIOR FORMS

Prior Form 62, covering order confirming composition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORMS 63 TO 69. ABROGATED MAY 29, 1961, EFF. JULY 19, 1961

Form 63 was entitled: "Debtor's Petition in Proceedings Under Section 75 of the Bankruptcy Act".

Form 64 was entitled "Order Approving Debtor's Petitions in Proceedings Under Section 75".

Form 65 was entitled: "Order of Reference in Proceedings Under Section 75".

Form 66 was entitled: "Bond of Conciliation Commissioner".

Form 67 was entitled: "Notice of First Meeting of Creditors in Proceedings Under Section 75".

Form 68 was entitled: "Application for Confirmation of a Composition or Extension Proposal Under Section 75".

Form 69 was entitled: "Order Confirming a Composition or Extension Proposal Under Section 75".

NOTES OF ADVISORY COMMITTEE

This form [these forms] may be abrogated inasmuch as the time for filing a petition under section 75 (Agricultural Compositions and Extensions) expired March 1, 1949. There is only one case currently pending under section 75. It should be closed in the near future.

FORM 70. [BANKRUPTCY DOCKET OF REFEREE]

Bankruptcy docket of..... Referee..... Cause No. ....

In the matter of	Petition Filed.....	Vol.....
	Adjudicated.....	Pov.....
	1st Meeting.....	Inv.....
	Last Day Filing Claims.....	Ch.....
Address.....	Discharge.....	Sec.....
Occupation.....		
Employer.....	Is Any Interest in Real Estate Involved?.....	
Receiver.....	Dividends Paid (Date and Percent)	
Addr.....		
Trustee.....		
Addr.....		
Attorneys for	Other Items	
Pet Cr.....		
Addr.....		
Bkpt.....		
Addr.....		
Recvr.....		
Addr.....		
Trustee.....		
Addr.....		

Date	Proceedings	Receipts		Disbursements	

(Added June 23, 1947.)

PRIOR FORMS

Prior Form 70, promulgated Apr. 17, 1933, relating to notice of first meeting of creditors in proceedings under section 74 of the Bankruptcy Act, was abrogated Jan. 16, 1939, eff. Feb. 13, 1939, and was not replaced.

FORM 71. [REFEREE'S CLAIM REGISTER]

Referee's claim register re..... Cause No.....

Date Filed	No.	Name and Address of Claimant and Attorney	Amount Filed and Allowed	Remarks
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	

(Added June 23, 1947.)

PRIOR FORMS

Prior Form 71, promulgated Apr. 17, 1933, was replaced by Form 67.

FORM 72. ORDER ALLOWING CLAIMS

At _____ in said district on _____, 19__.

Upon the proofs of claim of the creditors hereinafter set out, duly filed herein, no objection having been filed to the allowance thereof by parties in interest, and it appearing that the said claims have been duly proven and should be allowed, and no adverse interest being represented, now it is **ORDERED** that said claims be and the same hereby are allowed as unsecured claims in the respective sums set opposite the several names, as follows, to wit:

_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ _____

Referee in Bankruptcy.

(Added June 23, 1947.)

PRIOR FORMS

Prior Form 72, promulgated Apr. 17, 1933, as amended Mar. 30, 1936, relating to application for confirmation of a composition or extension proposal under section 74 or section 75 [11 U. S. C. §§ 202, 203], was abrogated Jan. 16, 1939, eff. Feb. 13, 1939, and was not replaced.

Form 73, promulgated Apr. 17, 1933, as amended Mar. 30, 1936, was abrogated Jan. 16, 1939, eff. Feb. 13, 1939, and was not replaced.

Form 74, promulgated Apr. 17, 1933, was replaced by Form 69.

Form 75, promulgated Apr. 16, 1933, was abrogated June 1, 1936, and not replaced.

Form 76, promulgated Apr. 17, 1933, was replaced by Form 68.

U. S. GOVERNMENT PRINTING OFFICE : 1971 O - 47-500 (Vol. 2)